

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Deandra G. Benjamin, Circuit Court Judge
Appellate Case Tracking No. 2012-21905

THE STATE,

RESPONDENT,

-v-

ISAAC ANTONIO ANDERSON,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

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AUG 06 2014

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1 counsel just said you didn't take any written
2 statements. Had DSS already been conducting an
3 investigation in this case?

4 A Yes.

5 Q And were you aware that they had talked to a number
6 of people in this case?

7 A Yes.

8 Q Nothing further.

9 THE COURT: All right. Anything else?

10 MR. COLLINS: No questions.

11 THE COURT: All right, sir, you may step down.

12 (Witness steps down.)

13 THE COURT: All right. Yes, ma'am.

14 MS. SIMPSON: The State calls Dr. Susan
15 Luberoff.

16 MS. PINNOCK: Your Honor, may we approach?

17 (WHEREUPON, a bench conference was
18 held in the presence of the jury but out
19 of the hearing of the jury.)

20 (Witness approaches.)

21 THE BAILIFF: Place your left hand on the
22 Bible, and raise your right hand, please.

23 (Witness complies.)

24 THE CLERK: Do you swear or affirm the
25 testimony you are about to give in this case will

1 be the truth, the whole truth, and nothing but the
2 truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Have a seat in the witness box.

5 (Witness complies.)

6 THE CLERK: State your name for the record,
7 please.

8 THE WITNESS: I'm Susan Breeland Luberoff,
9 L-U-B-E-R-O-F-F.

10 THE COURT: All right. And just one second.
11 Give me one second and let me review the document
12 she just handed up.

13 (Pause.)

14 MS. SIMPSON: Thank you, Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. SIMPSON: May it please the Court?

17 SUSAN BREELAND LUBEROFF, M.D.,

18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SIMPSON:

21 Q Good morning, Dr. Luberoff. Where do you work?

22 A I work at the Assessment and Resource Center.

23 Q What is the ARC?

24 A It is a facility that evaluates children who are
25 suspected of having been physically or sexually

1 abused or significantly neglected. And I do the
2 medical portion of those evaluations.

3 Q Can you tell the jury a little bit about your
4 educational background and training?

5 A Sure. I graduated from the third class of the
6 medical school here in Columbia in 1983. And I
7 completed a three-year residency at Children's
8 Hospital at Richland Memorial in 1986.

9 Since then, I have been a pediatrician. I
10 have had particular extra training in the medical
11 evaluation and medical aspects of different types
12 of child abuse.

13 I am board certified in pediatrics. And also
14 board certified in the subspecialty of child abuse
15 pediatrics.

16 I am an associate professor of clinical
17 pediatrics with the USC School of Medicine, and I'm
18 stationed at the Assessment and Resource Center for
19 my job.

20 Q I know you've had -- you said you had some
21 specialized training in child abuse. Does that
22 include child sexual assault examination?

23 A Yes, it does.

24 Q Can you tell us a little bit about that?

25 A I have actually been doing this type of work since

1 about 1989. And I spent about a six-week period of
2 time in Denver at the Kempe National Center on
3 Child Abuse I believe in the summer of 1990 as a
4 scholar in residence receiving extra training in
5 child abuse.

6 I also completed a three-week training in
7 Huntsville at the National Children's Advocacy
8 Center, particularly about child sexual abuse.

9 I have attended over the course of my career
10 numerous trainings specifically about the medical
11 aspects, doing the examinations, and child sexual
12 abuse investigations, and so on. And I also
13 actually provide training in that area.

14 Q And how many, I guess, child sexual assault
15 examinations would you say you have conducted and
16 performed over the years?

17 A Probably in the neighborhood of 8,000 at this
18 point.

19 MS. SIMPSON: Your Honor, at this time --

20 Q Oh, have you ever been qualified as an expert
21 before?

22 A I have.

23 Q About how many times?

24 A I stopped counting at a hundred, years ago.

25 MS. SIMPSON: Your Honor, at this time the

1 State would offer Dr. Luberoff as an expert in
2 child sexual assault examination.

3 THE COURT: Any questions?

4 MS. PINNOCK: No, Your Honor, no objection.

5 THE COURT: All right, ladies and gentlemen of
6 the jury, normally a person cannot give opinion
7 testimony. Normally when a person testifies, they
8 must testify as to what they either saw, heard, or
9 sensed by smell, or something of that nature.
10 However, there is an exception when someone is
11 qualified because of education or experience. They
12 are permitted to give their opinion in certain
13 areas if the Court qualifies them that way.

14 This witness will be qualified in the area of
15 child sexual assault examination to give opinion
16 testimony in that area. That does not mean that
17 you must accept the opinion, but it is evidence for
18 you to use in any way that you see fit and give it
19 the appropriate weight and credibility you believe
20 is appropriate.

21 All right. Thank you.

22 BY MS. SIMPSON:

23 Q Can you tell the jury about what exactly is
24 encompassed in a child sexual assault examination?

25 A When I do an examination of a child that comes in

.1 with a worry about sexual abuse, my exam includes a
2 detailed examination of all of the skin of the
3 child, a detailed examination of the genitalia, and
4 then regular parts of an exam that you ordinarily
5 have: Listening to the heart, looking at the ears,
6 looking at the mouth, and so on.

7 It is essentially a very complete physical
8 examination, but with extra careful attention to
9 the skin, the genitalia, and also looking for any
10 evidence of neglect.

11 When a child comes in to the Assessment and
12 Resource Center for this kind of examination, we
13 examine for any kind of abuse.

14 So whether the complaint or the concern is
15 physical abuse or sexual abuse or neglect, we look
16 for evidence of any of those things.

17 When a child has an exam in our facility, the
18 child first actually sees another member of our
19 team, and that is usually a child life specialist,
20 which is someone who is specially trained in
21 helping a child be comfortable in a medical
22 setting. And that child life specialist will
23 actually go over with the child everything the
24 child can expect during the exam, what positions
25 I'm going to need for the child to be in, any

1 sensory things that might happen, so if I'm going
2 to touch a child with something that is cold, the
3 child is going to feel that cold thing. If they
4 are going to hear something like the tearing open
5 of a paper to get a Q-tip out, they are going to
6 hear those things, so that none of that is
7 startling to the child when I do the exam.

8 And then once the child life specialist feels
9 like the child is adequately prepared and can
10 comfortably assist in the exam and participate in
11 it, then it is my turn to come in and do the exam.

12 And my exam generally starts with things that
13 are very non-threatening. I will look at the hands
14 first, the arms, the feet, the legs.

15 Later I'm going to move into the genital
16 portion of the exam.

17 And then after I do the genital portions,
18 there is still a lot of other things after that
19 that children are familiar with, like looking in
20 the ears, listening to the heart. And that helps
21 children, especially children who are old enough to
22 be embarrassed by the genital portion, to have
23 something else happen after that and kind of get
24 over their embarrassment before they leave the
25 room.

1 And that is the order in which we did things
2 with [REDACTED].

3 Q And you explained that you examined -- and I will
4 move kind of to the genital portion of your
5 examination. On a female, does that include the
6 hymen?

7 A Yes, it does.

8 Q What is the hymen?

9 A The hymen is a piece of tissue that is near the
10 beginning of the vagina. It is actually recessed
11 up inside the body somewhat. And it is normal
12 living human tissue. It is a mucous membrane type
13 of tissue, which means that it is one of the moist
14 tissues in the body that is constantly bathed in
15 moisture. And it is a normal structure that is
16 near the beginning of the vagina, part of the
17 genitalia.

18 Q And how does the hymen allow for penetration?

19 A The hymen has an opening in it. Almost all girls
20 are born with an opening in the hymen. It is not
21 normal really to be born without an opening.

22 Little girls from before they are born begin
23 to produce mucous that needs to get outside of the
24 body. The vagina starts producing mucous and the
25 cervix produces mucous and it has to get out. So

1 there is an opening in the hymen to begin with. So
2 penetration or something going past the hymen is
3 actually quite easy to have happen, just like
4 things can easily go into your mouth or into your
5 nose or into other openings in your body. There is
6 an opening there.

7 Q What are some of the common misconceptions about
8 the hymen?

9 A In the United States it is quite common for people
10 to grow up believing that the hymen is a very
11 fragile membrane that the first time it is ever
12 touched or anything goes past it, it ruptures or
13 gets destroyed or in some way records that event of
14 penetration.

15 That is a misconception that even doctors who
16 were children before they were doctors grow up with
17 often.

18 And that actually turns out to be an unusual
19 case that the hymen is injured when something goes
20 past it.

21 Q And would you always expect to find evidence of
22 trauma following a sexual assault?

23 A No. In fact, it is more common to not find
24 evidence of trauma following a sexual assault,
25 especially if the child is not seen within a few

1 hours after the sexual assault.

2 If there is an injury to that portion of the
3 body, then it has the ability to heal just like
4 other tissues in our body have the ability to heal.
5 And it heals very quickly.

6 It heals in a manner similar to the way that
7 the inside of your mouth heals. If you have an
8 injury to the inside of your mouth, like I injured
9 myself once biting down on a pork chop bone. That
10 hurt and I had a little injury there, but within a
11 few days it was completely healed. And it doesn't
12 have a scar in my mouth from that, or anything of
13 that nature.

14 And the hymen heals very richly and very
15 quickly and almost never needs scar tissue as part
16 of its healing, it simply heals back to the way
17 that it was before, most of the time.

18 Q And so, I guess, in the same vein, does
19 penetration, even when it does occur, I guess at
20 the point of the penetration, are there scars or
21 tearing that you would expect?

22 A No, not usually. You know, it might actually help
23 me if there would be a way for me to sort of
24 illustrate this. I'm not an artist, but it might
25 help me be more clear.

1 MS. SIMPSON: Permission for the witness to
2 step down?

3 THE COURT: Yes, ma'am.

4 (Witness steps down.)

5 BY MS. SIMPSON:

6 Q There you go. And if you can just explain for us
7 what you are talking about.

8 A Okay. Just to kind of be clear where the hymen is
9 and sort of what structure we're talking about.
10 Again, I'm not an artist. I'm going to draw this
11 illustration with the child laying on her back.
12 That is the position that we must commonly examine
13 little girls in, and that is the position that
14 [REDACTED] had for her exam.

15 This is her buttocks and her legs going out
16 this way. And the genitalia are going to be
17 exaggerated on this illustration. They are going
18 to be bigger than they actually are.

19 This area is the urethra, or the area where
20 your urine comes out when you pee.

21 This that I have illustrated over to the side
22 is to represent the labia, or the lips that cover
23 the vaginal area and protect the vaginal area.

24 This dark area in the center is the opening
25 into the vagina, the opening in the hymen.

1 And then this portion, squiggly line, is what
2 I have illustrated as the hymen here on this very
3 pretty drawing.

4 Now, the hymen is recessed inside the body.
5 And depending on that particular child and how
6 heavy the child is, and so on, it can be recessed
7 as far as a couple of inches up into the body. So
8 it is not right on the outside where it can be
9 injured just in the course of doing bicycle riding,
10 or things like that.

11 Hymens change from one consistency or one type
12 before puberty to something very different after
13 puberty. And I think part of the way that a hymen
14 looks before puberty is part of why it has a
15 reputation for being real fragile and tearing real
16 easily.

17 Before puberty, a hymen looks fragile. It
18 looks almost like if you were able to take it out
19 and hold it up to the light almost like you can see
20 light through it. So it is kind of thin to begin
21 with. But even though it is thin, it has stretchy
22 properties to it. And, again, it is living tissue.

23 At puberty, at the time when little girls
24 start to have hormone changes, when their breasts
25 start to develop and they start to get pubic hair

1 and hair under their arms, a big effect that that
2 hormone has is to thicken up that hymen. It starts
3 growing and it gets thicker and thicker and thicker
4 until by the time the child is actually having
5 periods, the hymen is thick, really similar to the
6 way my thumb is. It is very, very thick. And it
7 grows not only in thickness, but it grows on the
8 surface area of it so it ends up kind of folding in
9 on itself for it all to fit around the opening.

10 And the net effect of all of that growth is
11 that by the time a child is of the age where she
12 could conceive a child, an age where the ovaries
13 are working and they are through puberty and having
14 periods, the hymen has grown so much that if an
15 object was introduced into that opening there is
16 enough room for that hymen to simply spread out and
17 allow that object, usually without injury. And
18 then if there is injury, it does, as I mentioned
19 several times, it does heal very nicely.

20 Q Okay. So even if there were tears or scarring, if
21 that had occurred I guess years prior, would you
22 necessarily be able to observe that?

23 A If there were tears that had happened years prior,
24 I would absolutely expect those to be healed. The
25 hymen does not require scar tissue to heal. Other

1 parts of the body require scars.

2 If you have a deep cut in your skin, for
3 instance, and scar tissue was needed to heal a deep
4 cut. But this type of tissue doesn't need scarring
5 to heal.

6 The scarring is not something -- if you see
7 scarring, then that usually means that there was a
8 tear down into skin or muscle or some other
9 structure.

10 When there is an injury in the healing
11 process, usually the edges will bind themselves and
12 will heal back exactly like it was.

13 Occasionally, if there is a big tear in the
14 hymen, the edges might not quite find each other.
15 And so occasionally we'll see a missing piece of
16 hymen, or what is called a transaction or almost
17 like a cut through the hymen where edges didn't
18 find each other, but that is unusual for us to find
19 that, even in children where there has been
20 extensive penetration.

21 Actually, even in pregnant teenagers who come
22 in for exams, the hymen is usually completely
23 normal. Completely normal. And when they are
24 pregnant we know there has been penetration.

25 Q Thank you.

1 (Witness returns to witness stand.)

2 Q And I want to move now to this case. Did you
3 actually have the opportunity to examine [REDACTED]
4 [REDACTED]?

5 A I did.

6 Q The victim in this case? When was that?

7 A I believe it was on November 23rd of 2009.

8 Q And you said earlier that -- I guess you kind of
9 described the process that you used with [REDACTED].
10 Can you tell us a little more about that?

11 A With [REDACTED], we did have a child life specialist do
12 her prep, or her preparation for her exam. I did
13 the kind of exam that I was describing earlier. I
14 also used a special instrument called a Colposcope
15 to examine her genitals. And a Colposcope is --
16 essentially, it is a bright light with like
17 binoculars that allow me to see things magnified so
18 I can get a really good look and see the area under
19 magnification to look for any subtle differences
20 that I might not be able to see under regular
21 lighting and just with my own eyes.

22 Q And what -- did you have some information available
23 to you at the time that you performed the exam?

24 A I did.

25 Q What kind of information did you have?

1 A I had what we call intake information, which is the
2 information that we get when a child has an
3 appointment made at our clinic so I knew what the
4 reason was that someone was worried and had set up
5 the appointment.

6 I also had some medical information on [REDACTED].
7 She had already been to see two physicians before
8 she came to see me. And one of those physicians
9 had done some testing for sexually transmitted
10 diseases. That is usually a portion of the exam
11 that I do, but if a child comes to me and has
12 already had some of that done and I have those
13 records, then that can keep me from having to
14 repeat or, for example, put a needle in a child's
15 arm who has already had the needle in her arm and
16 already had those tests done. So I did have some
17 test results from an earlier recent examination.

18 Q Okay. And do you necessarily rely on this
19 information that is available to you or is your
20 examination independent?

21 A My examination is independent. Certainly if there
22 is lab information, then I am going to rely on that
23 to help me decide what labs I need to do that day.

24 The physical exam information that might be
25 available in a report from a child that has already

1 been seen by another doctor sometimes is
2 information that is important to me.

3 For example, if I am seeing the child for
4 physical abuse and a doctor already saw the child
5 and saw bruises, but the bruises are gone by the
6 time I see the child, that information can still be
7 information that I need to comment on in my report.

8 In ██████'s case, the examination that she had
9 already had before she saw me did not inform my
10 examination except in helping me decide what labs
11 to do.

12 Q And with her examination -- and I know the jury has
13 heard a little bit about this, but does it differ
14 based on allegations of chronic abuse versus, say,
15 acute?

16 A The examination that we -- there are two really
17 types or settings for sexual abuse examinations in
18 children, and adults, for that matter.

19 If a child has experienced sexual abuse within
20 a certain time window before they get to medical
21 care where there might be DNA evidence left on that
22 child's body still, like semen or sperm on that
23 child, then that exam is more of an evidence
24 collection exam. That usually is not actually done
25 at our facility. It is typical for those children

1 to show up in the emergency room where someone has
2 discovered something happening or the child has
3 just told and they get straight to the emergency
4 room first.

5 And in that setting, there is an evidence
6 collection looking for DNA.

7 By the time a child has gotten three days past
8 a sexual encounter, it is so unlikely that you are
9 going to be able to retrieve DNA off of that child,
10 that it is not even appropriate to go to the
11 emergency room or to do that evidence collection
12 portion.

13 At that point, what is appropriate is for the
14 child to come to a Children's Advocacy Center and
15 have this very detailed overall exam.

16 And even when a child does go to an emergency
17 room immediately after an assault and get the Q-tip
18 swab for DNA collection, that child still gets
19 referred to us for the actual examination, which is
20 a detailed specialized exam.

21 In [REDACTED]'s case, well over three days had
22 passed since -- actually since the case came to
23 light, and so on. So the evidence collection
24 emergency room visit was not appropriate and
25 wouldn't have added anything to answer any

1 questions about ██████'s case. So she was
2 appropriately appointed to us to come for the child
3 sexual abuse exam that she had.

4 Q And just to back up just a little bit, even in the
5 case of where the abuse I guess happened fairly
6 acutely or within several hours or days, would
7 bathing, and things of that nature, affect the
8 evidence collection in those cases?

9 A Yes. As a matter of fact, if a child presents to
10 the emergency room and more than about 12 to 24
11 hours have passed, it is very unlikely to find DNA
12 on that child. Where you will start finding it is
13 on the clothing that she was wearing at the time,
14 and other sources. But it is actually in children
15 who haven't reached puberty yet we won't even do an
16 evidence collection attempt after 24 hours, because
17 the more hours that go by and the more things the
18 child has done to clean up, the less chance there
19 is of there being any DNA present.

20 Q And so you performed the examination on ██████. Did
21 you have any findings in this case?

22 A Yes, I did.

23 Q And what were those?

24 A ██████'s examination was completely normal.

25 Q And is a normal exam still consistent with --

1 MR. PINNOCK: Objection, Your Honor. May we
2 approach?

3 THE COURT: Yes, ma'am.

4 (WHEREUPON, a bench conference was
5 held in the presence of the jury but out
6 of the hearing of the jury.)

7 BY MS. SIMPSON:

8 Q Let's back up. So [REDACTED]'s exam was normal,
9 correct?

10 A Yes. And I also found that she was into the
11 process. She had some breast development and some
12 pubic hair. She had not, according to her history
13 that she gave to me, had not yet started her
14 period, but she was in the part of puberty where
15 her hymen was thickening up a good deal and had
16 started folding in on itself.

17 Q So the healing properties, I guess, essentially
18 increased at that point? Or how is it termed?

19 A Well, it becomes more difficult even to injure the
20 hymen.

21 Q And is a normal exam still consistent with the
22 victim's medical history of sexual assault?

23 A Yes, it is. A normal exam is what we expect to
24 see. We do this exam largely for the purpose of
25 making sure that the child is okay, that the child

1 has not caught a sexually transmitted infection,
2 that the child's worries about her body are
3 addressed. Often children will be worried that
4 their body has been mutilated or that people are
5 going to be able to tell.

6 Those are the main reasons for doing the exam.
7 Sometimes we do see an injury and that injury is
8 important in the investigation, but the purpose of
9 the exam really is to insure that the child is
10 healthy, and so we expect to see that area look
11 normal.

12 Q And I know we have talked about the vaginal area.
13 Would you expect to have any injuries or findings
14 with respect to allegations of oral sex where maybe
15 a penis was in the mouth or a tongue in the vagina,
16 things of that nature?

17 A Sometimes we will see bruising in the mouth when a
18 penis has been in the mouth, but that generally
19 goes away within 24 to 48 hours.

20 You know, every once in a while there are
21 other injuries to the mouth, but they are very,
22 very, very unusual and heal very quickly.

23 And I forgot the other part of your question,
24 I'm sorry.

25 Q With the tongue being inserted into the vagina.

1 A And tongue into a vagina very rarely causes injury.
2 The tongue is compressible and, as I mentioned,
3 that opening in the hymen is -- the hymen itself is
4 stretchy. It is normal human issue. It is moved
5 out of the way. And so there is rarely injury from
6 the tongue being in that area.

7 Q And is that the same as digital penetration with
8 respect to fingers?

9 A When fingers are introduced into the vagina, again,
10 there is very rarely injury. Usually these things
11 happen in the setting of someone taking some time
12 and care and not wanting to injure the child.

13 MS. PINNOCK: Objection, Your Honor.

14 THE COURT: Sustained. Please disregard the
15 last answer.

16 A Digital penetration rarely results in injury to the
17 hymen.

18 Q Thank you, Dr. Luberoff.

19 THE COURT: All right, please answer any
20 questions Ms. Pinnock has.

21 MS. PINNOCK: May it please the Court?

22 CROSS-EXAMINATION

23 BY MS. PINNOCK:

24 Q Good morning.

25 A Good morning.

1 Q Dr. Luberoff, do you know Dr. Bacon?

2 A Yes, I do.

3 Q Do y'all work together at the USC Specialty Clinic?

4 A Actually we were residents together. We have known
5 each other for a very long time, yes.

6 Q Okay. And you used her report or her notes from
7 her office?

8 A I did.

9 Q And she saw [REDACTED] on November 6th?

10 A Yes, I believe that's correct.

11 Q Okay. Did you review the report from Dr. Lazaro?

12 A I did.

13 Q And Dr. Lazaro saw [REDACTED] on the 3rd?

14 A Yes.

15 Q Okay. And you reviewed both of those reports
16 before you did your exam?

17 A Dr. Lazaro is a pediatrician, just to clarify. I
18 don't remember whether I saw them before I did the
19 exam, but it was sometime in the course of my
20 collecting records. I definitely had the results
21 of Dr. Bacon's laboratory results. In fact, I
22 called her office to get some of those results.
23 But I don't recall whether I saw the records before
24 I did the exam or not. I have since of course seen
25 those.

1 Q Okay. So you have at least reviewed what she said
2 on the 6th?

3 A I have.

4 Q All right. And the date of disclosure from what
5 you learned was on the 2nd?

6 A Of November?

7 Q Yes.

8 A Yes.

9 Q So November 2nd [REDACTED] says that something happened
10 to her from what you were told. On the 3rd she
11 goes to Midlands Pediatrics. She was seen by
12 Dr. Lazaro. On the 6th she goes to see Dr. Bacon
13 and then you see her on the 23rd?

14 A That's correct.

15 Q And you said you are employed at the Assessment
16 Resource Center?

17 A I am employed by the University of South Carolina
18 and I am stationed at the Assessment and Resource
19 Center.

20 Q All right. And that is part of the
21 Multidisciplinary Team?

22 A Yes.

23 Q For investigations?

24 A Yes.

25 Q So pretty much the equivalent of law enforcement?

- 1 A Law enforcement is a member of the
2 Multidisciplinary Team. The Department of Social
3 Services is. The Solicitor's Office --
- 4 Q The Solicitor's Office?
- 5 A -- is, yes.
- 6 Q And you spoke with Ms. Simpson before you came here
7 today, right?
- 8 A I'm sorry?
- 9 Q You spoke with Ms. Simpson?
- 10 A I did.
- 11 Q Okay. And you reviewed your report?
- 12 A Yes.
- 13 Q She asked you some questions similar to what she
14 asked you today?
- 15 A Yes.
- 16 Q And how many times did you say you testified in
17 court?
- 18 A I have done this job for many years, and I stopped
19 counting -- counting family court and criminal
20 court, I stopped counting at about a hundred.
- 21 Q Okay.
- 22 A A long time ago.
- 23 Q And of your more than a hundred times, how many
24 times have you testified for the Defense?
- 25 A First of all, I don't testify for one side or the

1 other. I am most often called by the Prosecution.
2 I have testified on the invitation of the Defense
3 probably about ten times or so in my career. Most
4 of the time, though, I am actually invited by the
5 Prosecution side.

6 Q Okay. So ten times out of over a hundred times
7 testifying in court?

8 A Yes.

9 Q So a tenth of your experience in court is for the
10 Defense?

11 A It is on the invitation of the Defense, right.
12 Most of the time when the Defense wants to invite
13 me to testify -- well, let me put it the other way.
14 Often -- often cases -- I don't know -- you know
15 what? I don't know how y'all make the decisions,
16 actually.

17 Q Okay. So, I mean, we can say that at least
18 90 percent of your time in court testifying as an
19 expert in exams is for the ARC or in your capacity
20 at the ARC?

21 A Oh, yes.

22 Q Okay. Now, do you have your report up there with
23 you?

24 A I don't.

25 Q Go ahead and look through it and make sure I have

1 all the pages for you.

2 (Pause.)

3 A Okay, these are not mine.

4 Q Okay.

5 A And then, yes, this is my report.

6 Q Okay. All right, you said when you met with [REDACTED]
7 and you get pretty much a history from her and her
8 mother, or somebody in your office meets with both
9 of them and gets a full medical history from the
10 time she was born to the time of your exam, right?

11 A Not a detailed medical history from the time she is
12 born to the time of our exam, but a history of
13 things like injuries, hospitalizations, significant
14 things likes that.

15 Q Things that could help you with your examination?

16 A Right.

17 Q You get a history -- you get all the information
18 you can get regarding why you are there before you
19 do your exam?

20 A I don't -- I don't re-interview the child. I don't
21 personally obtain that history directly from the
22 parent before I do the exam. I'm working with the
23 information that I have from the intake process.

24 Q Uh-huh.

25 A And sometimes from additional information that has

1 come in since then.

2 Q And you have just testified that you do an
3 extremely detailed -- extremely detailed, complete
4 exam. It starts from head to toe, skin, vaginal
5 area, the whole nine yards, right?

6 A Yes.

7 Q And that is to make sure -- or to look -- you are
8 looking for any sort of clues or any sort of
9 evidence that you can find during your exam, right?

10 A Correct.

11 Q With [REDACTED] [REDACTED] you didn't find anything?

12 A I didn't.

13 Q Dr. Bacon didn't find anything?

14 A She did not.

15 Q Dr. Lazaro didn't find anything?

16 A She did not.

17 Q So your report is no different from theirs?

18 A Correct.

19 Q And you just testified that -- I'm sorry, you said
20 you wouldn't expect to see any sort of injury?

21 A Most of the time we do not see injury. I do not
22 expect to see injury. Sometimes we do.

23 Q So your testimony today is no injury, a normal exam
24 you said does not rule out sexual assault?

25 A That's correct.

1 Q If there was injury, a cut, some sort of bruising
2 down there, some sort of abnormality, you would
3 come to court and say that was consistent with
4 sexual abuse, right?

5 A Well, it depends on what the injury was.

6 Q Injury to the hymen, you would say it was
7 consistent?

8 A Depends on what the injury to the hymen is. But
9 injury to the hymen can be, often are, from sexual
10 abuse if there is an injury there, yes.

11 Q Okay. So if there is injury that is consistent --
12 and your testimony, if there is no injury, it is
13 consistent?

14 A Correct.

15 Q So a normal exam doesn't mean anything?

16 A It means the child is healthy.

17 Q And you said you used a Colposcope?

18 A Yes.

19 Q Did you take photographs?

20 A I don't think so. Let me look.

21 (Pause.)

22 A I did not take photographs. I generally don't take
23 photographs unless there is something unusual to
24 document.

25 Q Okay. So if you find something --

1 A In a normal exam --

2 Q I'm sorry, go ahead.

3 A In a normal exam I generally don't photograph.

4 Q Okay. But if you found something, you would take
5 pictures of it?

6 A Often. Not always. But it depends on how the
7 child is doing with the exam at that point, and
8 some other factors.

9 Q Now, you said because [REDACTED] was approaching, she
10 had not started puberty all the way yet, but
11 because she was approaching, then it was more
12 difficult to injure the hymen because you are
13 prepubertal?

14 A She was into puberty.

15 Q Uh-huh.

16 A She was a good ways into puberty. And the hymen as
17 it thickens up and grows, then it allows more
18 easily for penetration without being injured. So
19 it is not as easy to injure given the same
20 circumstances as if the child were younger.

21 Q Okay. So the younger you are -- the older you are,
22 the less likely it is to injure your hymen?

23 A Correct. Given the same circumstances.

24 Q I'm sorry, did you testify that it is not common
25 for girls to injure their hymens doing normal,

1 everyday activity?

2 A I did.

3 Q So riding a bike wouldn't injure it?

4 A I referred to that, anyway. Riding a bike does not
5 injure the hymen unless something unusual happens.

6 If the child, for example, has an unusual accident
7 where some portion of the body impales her vaginal
8 area, like a handlebar injury, then that is
9 possible. But normal bicycle riding does not
10 injure the hymen. It is an internal organ. It is
11 inside the body and protected by the labia and
12 protected by the bony structures in that area.

13 Q Right. You said the more a child weighs, that the
14 heavier you are the farther up it can be before you
15 would typically see it?

16 A If children are very, very heavy and therefore the
17 fleshy part of their bottom is thicker, then that
18 gives more distance between the hymen and the
19 outside.

20 Q Okay.

21 A Yes.

22 Q And you examined [REDACTED] [REDACTED] -- she is not in here
23 now, but you examined her?

24 A I did.

25 MS. PINNOCK: Beg the Court's indulgence.

1 (Pause.)

2 BY MS. PINNOCK:

3 Q Just a couple more questions, Doctor.

4 Hypothetically, if somebody was saying -- if

5 somebody was -- had sex two to three times a week

6 for four years, starting at age seven, is it your

7 testimony that you would not expect to see any sort

8 of healed injury, any sort of injury that that

9 person had never had intercourse at all?

10 A Most of the time those exams are normal.

11 Q Four years?

12 A Yes.

13 Q Two to three times a week?

14 A (Nods affirmatively.)

15 Q Starting at age seven?

16 A (Nods affirmatively.)

17 Q You want us -- you are telling this jury that you

18 wouldn't expect to see anything?

19 A Usually we don't see injury.

20 Q No healed injuries?

21 A Not usually. Sometimes, but not usually.

22 Q Sometimes, but not usually. And, again, you are

23 testifying for the State, right?

24 A I'm here at the invitation of the State, yes. I am

25 here to educate the court.

1 Q And you got \$175 per hour to review this case prior
2 to coming here, right?

3 A No, I don't charge for the review of the case.

4 Q \$300 an hour --

5 A We do have a letter that says that, but I don't
6 actually charge. My boss is paid \$300 an hour for
7 me to be here at the courthouse, yes. I don't
8 personally get any of that.

9 Q Testifying as part of the Multidisciplinary Team?

10 A Correct:

11 MS. PINNOCK: Thank you.

12 THE COURT: Yes, ma'am.

13 MS. SIMPSON: Brief redirect.

14 REDIRECT EXAMINATION

15 BY MS. SIMPSON:

16 Q And you are paid regardless which side you testify
17 for by your supervisor, I guess?

18 A I'm a salaried employee, so I don't -- I don't --
19 I'm not personally paid anything for being here.
20 My boss is reimbursed for my time to be here. And
21 it depends on which side invites me. Whichever
22 side that invites me is the side that is billed.

23 Q And she talked a little bit about 90 percent for
24 the State, 10 percent for the Defense. Your
25 primary -- what is your primary purpose in

1 conducting a medical exam for a child?

2 A The primary purpose is to make sure that the child
3 is healthy. That if it is called for, the child
4 gets screened for any infections or diseases that
5 might be appropriate. And also to make sure that
6 the people involved in the investigation understand
7 the medical information in the case. That is the
8 big portion of my job is making sure that the
9 investigators and the Defense attorney and anyone
10 else involved in the judicial process understands
11 how the medical information fits and doesn't
12 over-interpret something or misinterpret something
13 from the medical records.

14 Q Thank you, Dr. Luberoff.

15 MS. PINNOCK: One question, Your Honor.

16 REXCROSS-EXAMINATION

17 BY MS. PINNOCK:

18 Q Dr. Luberoff, if [REDACTED] [REDACTED] had never been
19 assaulted, if she had never had any sort of sexual
20 intercourse, it would be a normal exam, right?

21 A I would expect a normal exam, yes.

22 Q Thank you.

23 THE COURT: All right. Anything else from the
24 State?

25 MS. SIMPSON: Oh, no, Your Honor.

1 THE COURT: All right, ma'am, you may step
2 down.

3 (Witness steps down.)

4 THE COURT: Any objection to this witness
5 being excused?

6 MS. SIMPSON: No, Your Honor.

7 MS. PINNOCK: No, Your Honor.

8 (Witness excused.)

9 THE COURT: All right. Your next witness?

10 MS. SIMPSON: Your Honor, our next witness is
11 going to be Heather Smith. I think we have some
12 issues to address.

13 THE COURT: All right. Let me see you all one
14 second.

15 (WHEREUPON, a bench conference was
16 held in the presence of the jury but out
17 of the hearing of the jury.)

18 THE COURT: All right, ladies and gentlemen of
19 the jury, there are some matters of law that I need
20 to take up, and instead of you all sitting back
21 there in the jury room, I am going to go ahead and
22 let you go to lunch. It will probably take a
23 little while. So we will start back at
24 2:00 o'clock. So you will get a long lunch break.
25 We'll start back at 2:00 o'clock.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Deandra G. Benjamin, Circuit Court Judge
Appellate Case Tracking No. 2012-21905

THE STATE,

RESPONDENT,

-v-

ISAAC ANTONIO ANDERSON,

APPELLANT

CERTIFICATION OF COUNSEL


The undersigned hereby certifies pursuant to Rule 210, SCACR, that the foregoing Record on Appeal contains only those matters designated by the parties and no other materials.


Joshua S. Nasrollahi

Robert M. Dudek
Chief Appellate Defender

Attorneys for
Isaac Antonio Anderson

SUBSCRIBED AND SWORN TO before me
This 4th day of August 2014.



Notary Public for South Carolina
My Commission Expires: 5/22/2023

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Deandra G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

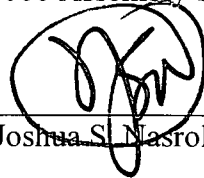
-v-

ISAAC ANTONIO ANDERSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that three (3) true copies of the Supplemental Record on Appeal in the above-referenced case has been served upon Alan Wilson, Attorney General for the State of South Carolina, William M. Blicht, Jr., Esquire, Assistant Attorney General, Office of the Attorney General, and Daniel E. Johson, c/o the Attorney General's Office, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 4th day of August, 2014.

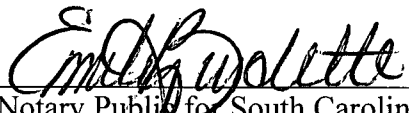


Joshua S. Nasrollahi

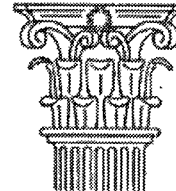
Robert M. Dudek
Chief Appellate Defender

Attorneys for
Isaac Antonio Anderson

SUBSCRIBED AND SWORN TO before me
This 4th day of August 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/22/2023

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August 04, 2014

VIA U.S. MAIL

Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC
(803) 734-1890
(803) 734-1839 (fax)

RE: *State v. Isaac Antonio Anderson, 2012-212905*
Our File No. COA-13.1357.01

Dear Madame Clerk:

Please find enclosed with this letter one (1) original and one (15) copies of the Supplemental Record on Appeal. Your attention to this matter is greatly appreciated. If you have any questions or concerns, please do not hesitate to contact me at your earliest convenience. With kind regards, I am

Very Sincerely Yours,


Emily Burdette
Paralegal

Encl. Supplemental Record on Appeal
Certificate of Service

cc: Isaac Anderson
William M. Blich, Jr.
Allan McCrory Wilson
Daniel E. Johnson
Robert M. Dudek
File

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