

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CARLOS ROBERTO LOPEZ,

APPELLANT

APPELLATE CASE NO. 2014-000828

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2012-GS-26-02470, 00535

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

April 14-15, 2014

CARLOS ROBERTO LOPEZ,)

Defendant.)

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Martin D. Spratlin, Esquire
Attorney for Plaintiff

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Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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MOTIONS

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1 **(APRIL 14, 2014.)**

2 MOTIONS:

3 MR. SPRATLIN: I believe Mr. Chrisco has a scheduling
4 matter he would like to address of the Court.

5 THE COURT: Yes, sir.

6 MR. CHRISCO: We use a system in our office that is not
7 on-site, it's a web-based, that does all of our files and
8 stuff. They are changing that and so they are having what
9 they call a webinar to tell us all the changes and stuff that
10 are going to be in it and it's from 2:00 to 3:30. I'm just
11 wondering if -- I've known about this for six weeks but I did
12 not think it would -- I did not think it was gonna interfere
13 with anything at that time.

14 THE COURT: So, you'll be out from 2:00 to 3:30.

15 MR. CHRISCO: Yes, Your Honor.

16 THE COURT: Okay. How long do you think this trial is
17 going to take?

18 MR. SPRATLIN: Your Honor, I have five, maybe possibly
19 six witnesses in this case. One of the main reasons the State
20 would like to start today if at all possible is the
21 interpreter situation. Miriam was -- this case was supposed
22 to go to trial last week, however, the interpreter, through no
23 fault of her own, got very sick and was unable to perform the
24 interpreting duties. So, the case moved to the first up case
25 before Your Honor this term. Miriam has cleared her schedule

1 to be here Monday and Tuesday. She says she can make
2 arrangements for Wednesday but she'll need to know now if -- I
3 actually anticipated this case taking a day, a solid day
4 probably, with the interpreter especially. If it wasn't for
5 the interpreter situation, I think it would be a half day to
6 three quarters of the day. So, if we aren't gonna be able to
7 start until tomorrow because of this conflict then ---

8 THE COURT: Well, let me see. What is it they're
9 actually doing? Is this something where you can get
10 information from somebody else in the office or is it
11 something that you have to personally be there to provide
12 information or how does that work

13 MR. CHRISCO: But it's something that you have to be
14 there that if there are any questions then you need to ask
15 those and I am one of those that is just real versed in this
16 program that I would probably recognize questions that some of
17 the other people would never even think about.

18 THE COURT: The problem I've got is I've already got
19 Jury, told them to be here at 1:30 so we could start
20 selection.

21 MR. CHRISCO: Your Honor, we can start at 1:30, if we
22 start promptly. I don't see where it's gonna take that long
23 to pick a jury.

24 THE COURT: I mean, we've got voir dire and all that.

25 MR. CHRISCO: It doesn't take that long, Your Honor.

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1 THE COURT: Okay. Well, let's meet at 1:30. We'll start
2 the jury selection, if we get the jury selected before, we'll
3 just go -- let's do this, we'll come back at 1:30, we'll pick
4 the jury, we'll get the jury seated, then however much time is
5 left, you can go and when will come back and get started
6 -- opening statements and everything but at least at 3:30.

7 How long is it going to take you -- where is y'all's
8 office?

9 MR. CHRISCO: Two blocks from here, Your Honor.

10 THE COURT: Okay. Just say a quarter till 4:00, we'll
11 start opening, you know, opening charges, opening statements
12 and we'll get going then. But we'll meet at 1:30 and at least
13 a couple of the jury. Okay?

14 MR. SPRATLIN: Yes, sir. And how would you like me and
15 Mr. Chrisco here early to take care of any pretrial motions or
16 anything along those lines?

17 THE COURT: If we've got to pretrial motions, yes, let's
18 do it ahead of time. When do y'all want to do those?

19 MR. SPRATLIN: Your Honor, the State is at Your Honor's
20 disposal, whenever you would like us back.

21 THE COURT: 1:15?

22 MR. CHRISCO: 1:20 will do it, Your Honor.

23 THE COURT: Okay. 1:20, sounds good. Thank you.

24 (RECESS - 11:59 A.M.)

25 *****OFF THE RECORD*****

1 (On the Record - 1:30 P.M.)

2 THE COURT: Let's go head and put the interpreter under
3 oath sense she's gonna be doing the interpretation throughout
4 the trial. All right.

5 | MIRIAM BERROUET WAS DULY SWORN, AS

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6 | INTERPRETER:
```

7 THE COURT: And, ma'am, your name?

8 MS. BERROUET: Miriam Berrouet.

9 THE COURT: Can you spell your last name, please?

10 MS. BERROUET: B, as in boy, -E-R-R-O-U-E-T.

11 THE COURT: Thank you, Ms. Berrouet.

12 All right. This is indictment numbers 2012-GS-26-2470,
13 2014-GS-26-535, the State of South Carolina versus Carolos
14 Roberto Lopez. It's before the Court for trial. The
15 Defendant is charged with criminal sexual conduct with a minor
16 in the first degree and lewd act upon a minor.

17 Gentlemen, any pretrial motions?

18 MR. SPRATLIN: Your Honor, the State has one motion in
19 limine, this may be a little premature but just to go ahead
20 and put the Court on notice. The grandfather of the minor
21 victim in this case is on the sex offender registry from a
22 1973, I believe, conviction for assault with intent to commit
23 rape in California. The victim in that case was a thirty-
24 year-old female. The State is making a motion in limine to
25 keep that information out because it isn't relevant to this

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MOTIONS

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1 case, it has no bearing whatsoever on the Defendant's guilt or
2 innocence.

3 THE COURT: And how long ago was the conviction?

4 MR. SPRATLIN: 1970 -- it was actually, I believe, 1987.

5 THE COURT: And when was he released from prison?

6 MR. SPRATLIN: He was released from prison it looks like,
7 Your Honor, back in 1991 or '92. He will not be testifying so
8 it will not be an impeachment issue or he will not -- I don't
9 anticipate him testifying in the case unless that comes out
10 through other means or testimony. The State's basis for
11 trying to get that information out is to basically stop the
12 Defense from using third-party guilt if they cannot establish
13 a basis for that third-party guilt.

14 THE COURT: Okay, so wait a minute. This is the victim's
15 ---

16 MR. SPRATLIN: Grandfather.

17 THE COURT: And he's not testifying?

18 MR. SPRATLIN: He's not testifying. Now, at the time
19 these incidents occurred, the child did live with her
20 grandmother and her grandfather, that being the person on the
21 sex offender registry. However, Your Honor, there needs to be
22 more than just mere speculation that someone else could have
23 committed the crime before the Defense is allowed to introduce
24 third-party guilt per several cases that I have -- one, I can
25 hand up to the Court, State v. Cooper, which states in

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MOTIONS

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1 relevant portion, evidence offered by an accused as to the
2 commission of the crime by another person must be limited to
3 such facts as are inconsistent with his own guilt. In that
4 such facts has raised a reasonable inference or presumption as
5 to own innocence, evidence which can have no other effect than
6 to cast a mere suspicion upon another or to raise a
7 conjectural inference as to the commission of the crime by
8 another is not admissible. In the State feels that the fact
9 that the grandfather is on the sex offender registry does no
10 more than raise a mere conjectural inference that he could
11 have committed this crime. I have that case if the Court
12 would like to review it.

13 THE COURT: Mr. Chrisco, what's your position?

14 MR. CHRISCO: Your Honor, I think it's a little
15 premature. When we get there or if we get there, then I think
16 that's the time to address it but I can't say anything until
17 we get to that point, Your Honor.

18 THE COURT: Well, this is a motion in limine. I'll just
19 have to see how it produces itself. I don't know if they're
20 going to be able to produce evidence of the third-party guilt
21 or not. If that is their trial tactic and they get into it,
22 I'll address the issue then because it may be admissible. I
23 agree with you, they can't just take the stand and throw that
24 out there without something that supports third-party guilt.
25 But I'm not gonna grant your motion in limine saying it's

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MOTIONS

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1 inadmissible as a matter of law until I hear what the Defense
2 trial strategy and tactics are.

3 MR. SPRATLIN: Yes, sir. What I would just ask for the
4 State's side is that prior to that evidence being introduced,
5 if the Defense feels they have laid proper groundwork, that we
6 address that outside the presence of the Jury because if the
7 bell is once rung, it cannot be unrung.

8 THE COURT: Well, that's with anything. If you intend to
9 introduce it -- what's your position, Mr. Chrisco, of just
10 going ahead and putting the Court on notice that we need to
11 take up a matter of law?

12 MR. CHRISCO: Your Honor, I think the proper etiquette is
13 just what the Solicitor said. When I get to that point, I
14 will let the Court know and we can take it up outside of the
15 Jury, if we get to that point.

16 THE COURT: All right. That sounds good.

17 MR. SPRATLIN: Yes, sir. Thank you. That's all the
18 pretrial motions the State has at this point in time.

19 THE COURT: Anything from the Defense?

20 MR. CHRISCO: Yes, Your Honor, two. One motion is a
21 motion to sequester all witnesses.

22 THE COURT: All right. Mr. Spratlin?

23 MR. SPRATLIN: No objection from the State, Your Honor.
24 The State would however ask that investigating officer Agent
25 Weaver with South Carolina Law Enforcement Division be allowed

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MOTIONS

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1 to remain in the courtroom, as well as the minor victim in the
2 case.

3 THE COURT: Okay. Is he going to be the first to testify
4 or ---

5 MR. SPRATLIN: No, sir. He'll actually be one of my last
6 witnesses but per for the statute we are allowed to have an
7 investigating officer stay in the courtroom for the purpose of
8 the trial.

9 THE COURT: Okay. But was he the investigating officer
10 that headed up the whole investigation?

11 MR. SPRATLIN: Yes, sir. He took out the arrest
12 warrants, he is the primary officer, he was with the Horry
13 County Police Department at that point in time. He has since
14 moved on to the South Carolina Law Enforcement Division.

15 THE COURT: Okay. But I guess the point is, as the chief
16 investigator, he's gonna have the most substantial facts of
17 the case.

18 MR. SPRATLIN: Your Honor, his testimony will actually
19 not be that substantial. His testimony is going to be
20 essentially techniques that are used in investigating these
21 kinds of cases, as well as what he did in this case which was
22 essentially talk to witnesses. There was no statement from
23 the Defendant. The State is not seeking to introduce any
24 statements from the Defendant. I anticipate Mr. Weaver's
25 testimony to be actually fairly short and collateral to the

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MOTIONS

13

1 case.

2 THE COURT: Okay. But without the other agents are
3 there?

4 MR. SPRATLIN: There are no other police officers.

5 THE COURT: All right. That'll be good. And his name
6 again?

7 MR. SPRATLIN: David Weaver.

8 THE COURT: Agent David Weaver is the chief investigating
9 officer and can stay in and the minor victim can be in the
10 courtroom.

11 MR. SPRATLIN: Yes, sir.

12 THE COURT: All right, Mr. Chrisco, what else?

13 MR. CHRISCO: The second motion, Your Honor, is to call
14 the alleged victim by her name and not as victim.

15 THE COURT: Okay. Yeah, don't say victim unless you're
16 gonna say alleged victim. Okay?

17 MR. SPRATLIN: Yes, sir. If I refer to the victim I will
18 refer to her as alleged victim.

19 THE COURT: Any reason as to why we can't refer to her by
20 her name?

21 MR. SPRATLIN: No, sir. I'll actually referred to her as
22 Minor or Minor , which is her ---

23 THE COURT: I'll grant that motion.

24 All right. Mr. Chrisco, anything else?

25 MR. CHRISCO: Nothing further from the Defense, Your

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VOIR DIRE

14

1 Honor.

2 THE COURT: All right. Anything further from the State?

3 MR. SPRATLIN: No, Your Honor. The State would proceed
4 with jury selection.

5 MR. CHRISCO: May I have a couple of minutes with my
6 client right here, Your Honor?

7 THE COURT: Okay. How much time do you need?

8 MR. CHRISCO: About a minute.

9 THE COURT: Okay. Let's take -- well, I'll tell you
10 what, let's go ahead we'll take a break, go ahead and let's
11 get the jury panel in. Any problem with them going ahead and
12 getting the jury panel in the courtroom?

13 MR. CHRISCO: No, sir.

14 THE COURT: All right. Let's go ahead and take a break
15 while they get the jury panel up here. Okay?

16 MR. SPRATLIN: Yes, sir.

17 (RECESS - 1:40 P.M.)

18 *****OFF THE RECORD*****

19 (On the Record - 1:56 P.M.)

20 (REPORTER'S NOTE: Jury Venire enters courtroom. 1:56 P.M.)

21 VOIR DIRE:

22 THE COURT: All right. Ladies and gentlemen, we are
23 getting ready to start the trial of the case of the State of
24 South Carolina versus Carlos Roberto Lopez. Mr. Lopez has
25 been charged with criminal sexual conduct with a minor in the

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VOIR DIRE

15

1 first degree and lewd act upon a minor. And just like the
2 qualification process I've got some questions to go over with
3 you which are referred to as voir dire questioning. That is
4 to determine whether or not you're qualified to serve as
5 jurors in this particular case. And it also gives the
6 attorneys some additional information that assists them in the
7 jury selection process. So, if I could get all members of the
8 jury panel to please stand and raise your right hand -- you'll
9 realize that jury duty you're just like witnesses, you are
10 constantly taking oaths. Do you solemnly swear or affirm that
11 you will truthfully answer some questions asked to you by the
12 court with the truth, the whole truth and nothing but the
13 truth? If so, say I do.

14 (REPORTER'S NOTE: Jury unanimously complies.)

15 THE COURT: Thank you very much. Please be seated.

16 All right. Is there any member of the jury panel that
17 did not respond to the oath by saying I do; if so, please
18 stand.

19 (REPORTER'S NOTE: No response.)

20 THE COURT: All right. Ladies and gentlemen, please
21 listen up as I go over this -- these questions with you. As I
22 said, the Defendant, Carlos Roberto Lopez is the Defendant in
23 this case.

24 What is the name of the alleged victim?

25 MR. SPRATLIN: Your Honor, the alleged victim in this

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VOIR DIRE

16

1 case is Ms. Minor

2 THE COURT: ?

3 MR. SPRATLIN: Ms. Minor is the alleged victim
4 in this case. Is there any member of the jury panel related
5 by blood or marriage, have a close personal relationship,
6 business relationship, social relationship or any other type
7 of relationship with either Carlos Roberto Lopez or Minor
8 ; if so, please stand.

9 (REPORTER'S NOTE: No response.)

10 THE COURT: All right. The allegations in this case are
11 that between December 8th, 2010 and December 25th, 2011,
12 Carlos Roberto Lopez engaged in digital and vaginal
13 penetration with Minor who is under the age of
14 eleven. Also, the allegation is that on or about April 13th,
15 2012, he committed a lewd act upon a minor under the age of
16 sixteen, the minor being Dennis Hostetter.

17 MR. SPRATLIN: I'm sorry, Your Honor. That must be a
18 typo on the indictment. It's Minor -- is the
19 victim on that.

20 THE COURT: Okay. So, it's the same alleged victim?

21 MR. SPRATLIN: Yes, sir, Your Honor. I would ask to
22 them in the indictment at this point in time.

23 THE COURT: Okay. We'll address that in just a minute.

24 MR. SPRATLIN: Yes, sir.

25 THE COURT: So, is there any member of the jury panel

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VOIR DIRE

17

1 that has heard anything, read anything, knows anything or
2 discussed anything about this case? The allegations are that
3 this occurred in Myrtle Beach, South Carolina. If so, please
4 stand.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: All right. In addition to the Defendant and
7 Minor , potential witnesses in this case are Susan
8 Hostetter; Dennis Hostetter; Jessica Cerney, C-E-R-N-E-Y, or
9 Cerney; Agent David Weaver; and Dr. Carol Rahter, R-A-H-T-E-R.
10 Is there any member of the jury panel related by blood or
11 marriage, have a close personal relationship, business
12 relationship, social relationship or any other type of
13 relationship with any of these potential witnesses; if so,
14 please stand.

15 Yes, ma'am. Your name and number?

16 JUROR 291: Saundra Porter, 291, and I think I've worked
17 with Dr. Rahter at the Conway ER and some point in time.

18 THE COURT: All right. Now, Ms. Porter, how long ago
19 with this at the end?

20 JUROR 291: In -- before 2001.

21 THE COURT: Okay. And what type of working relationship
22 did you have with Dr. Rahter?

23 JUROR 291: I worked a few days in the ER. My primary
24 assignment was PCU.

25 THE COURT: Did you work directly for Dr. Rahter?

1 JUROR 291: Just in the ER with patients.

2 THE COURT: Okay. Would that relationship, or your
3 working relationship with Dr. Rahter affect your ability to
4 give both the State and the Defendant in this case a fair and
5 impartial trial?

6 JUROR 291: I don't think so.

7 THE COURT: And I appreciate you're saying you don't
8 think so but my primary concern is I have to make sure that
9 both the State and the Defendant get a fair trial without any
10 influence from any outside source whatsoever. And if you
11 think -- and there's nothing wrong with that, we all are
12 subject to influences. But if you think that there is any
13 possibility that you may be influenced as a result of that
14 relationship with Dr. Rahter, I need to know it.

15 JUROR 291: There might be a slight possibility.

16 THE COURT: All right. Ms. Porter, I'm gonna go ahead
17 and excuse you from this particular case. Please stay with us
18 for right now. Okay?

19 Anyone else have any type of relationship with any of
20 these potential witnesses? If so, please stand.

21 (REPORTER'S NOTE: No response.)

22 THE COURT: All right. Prosecuting this case on behalf
23 of the State is attorney Martin D. Spratlin of the Fifteenth
24 Circuit Solicitor's Office. The Defendant is represented by
25 Attorney Ed Chrisco of the Horry County Public Defender's

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19

VOIR DIRE

1 Office. Is there any member of the jury panel related by
2 blood or marriage, have a close personal relationship,
3 business relationship, social relationship or any other type
4 of relationship with either of these attorneys? If so, please
5 stand.

6 (REPORTER'S NOTE: No response.)

7 THE COURT: Has any member of the jury panel ever been
8 represented by either of these attorneys? If so, please
9 stand.

10 (REPORTER'S NOTE: No response.)

11 THE COURT: Has any member of the jury panel ever been
12 involved in any legal action in which either of these
13 attorneys represented another party to that action? If so,
14 please stand.

15 (REPORTER'S NOTE: No response.)

16 THE COURT: Has any member of the jury panel either
17 personally, have a family member or a close personal friend
18 employed with the Fifteenth Circuit Solicitor's Office or the
19 Horry County Public Defender's Office? If so, please stand.

20 THE COURT: Yes, sir. Your name and number?

21 JUROR 295: 295.

22 THE COURT: Mr. William C. Purvis, Jr.?

23 JUROR 295: Yes, sir.

24 THE COURT: All right. Mr. Purvis, who is it that's
25 employed with which office?

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VOIR DIRE

20

1 JUROR 295: Travis Hyman, Solicitor's Office.

2 THE COURT: Who is it?

3 JUROR 295: Travis Hyman.

4 THE COURT: Okay. And who is that; what is the
5 relationship?

6 JUROR 295: He would be my second cousin.

7 THE COURT: Okay. Now, how much contact do you have with
8 him?

9 JUROR 295: A fair amount.

10 THE COURT: Okay. Would his employment affect your
11 ability to be fair and impartial in this case?

12 JUROR 295: No, sir.

13 THE COURT: Okay. Now when you say you have a good bit
14 of contact with Mr. Hyman, I'm assuming y'all have not
15 discussed this case?

16 JUROR 295: No, sir.

17 THE COURT: Okay. When was the last time you saw him?

18 JUROR 295: Two weeks ago.

19 THE COURT: Okay. Would you be able to disregard your
20 relationship to him in its entirety and disregard his
21 employment in its entirety and base your decision in this case
22 exclusively on the testimony and evidence in this case?

23 JUROR 295: Yes, sir.

24 THE COURT: Okay. Thank you, Mr. Purvis, for bringing
25 that matter to our attention. Okay?

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21

VOIR DIRE

1 Anyone else?

2 Yes, ma'am. If you would please stand and give me your
3 name and jury number.

4 JUROR 302: 302, Darlene Roberts.

5 THE COURT: All right. Ms. Roberts, who is it?

6 JUROR 302: I used to be a neighbor to Kay Richardson.

7 THE COURT: The Court Reporter?

8 JUROR 302: Uh-huh (affirmative response).

9 THE COURT: All right. That would not disqualify you in
10 this case. Okay? Thank you, ma'am.

11 JUROR 302: Just wanted to let you know.

12 THE COURT: And I appreciate that. Thank you.

13 Anyone else have an employee or a friend or a family
14 member that's employed with the Solicitor's Office or the
15 Public Defender's Office? If so, please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Any jury member formed or expressed an
18 opinion about any of the issues involved in this case? If so,
19 please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: Any member of the jury panel aware of any
22 bias or prejudice towards either the State or the Defendant in
23 this case? If so, please stand.

24 (REPORTER'S NOTE: No response.)

25 THE COURT: Any member of the jury panel that was a

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VOIR DIRE

22

1 member of the Grand Jury that issued the indictments in this
2 case? If so, please stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: Is there any member of the jury panel that is
5 member of or a contributor to a group which has as its primary
6 concern the promotion of law enforcement or victim's rights?
7 Some of these organizations but not all of them but some of
8 them are Mothers Against Drunk Drivers, what is commonly
9 referred to as MADD; Students Against Drunk Drivers, SADD;
10 Citizens Against Violent Crime, also known as CAV; or Citizens
11 Against Spousal Abuse, also known as CASA. Any member of the
12 jury panel a contributor to or a member of any such
13 organization? If so, please stand.

14 (REPORTER'S NOTE: No response.)

15 THE COURT: Let me see the attorneys for one second.

16 (REPORTER'S NOTE: A bench conference was held off the record
17 in the presence of the Jury but out of hearing of the Jury.)

18 THE COURT: Does any member of the jury panel know of any
19 reason whatsoever why he or she should not serve as a juror in
20 this case with a particular emphasis being placed on your
21 ability to be fair and impartial to both the State and the
22 Defendant? If so, please stand.

23 Yes, sir. Your name and number?

24 JUROR 111: 111, Robert Edge. You and I need to talk
25 about it.

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23

VOIR DIRE

1 THE COURT: Hold one second. All right. Mr. Edge, if
2 you would come forward, please.

3 MR. SPRATLIN: Your Honor, should me and Mr. Chrisco come
4 up?

5 THE COURT: Yeah, if you want to come on up.

6 (REPORTER'S NOTE: The following sidebar was held in the
7 presence but out of hearing of the Jury Venire.)

8 THE COURT: All right, sir. What's your situation?

9 JUROR 111: My daughter was raped on the streets of
10 Conway.

11 THE COURT: That would affect your ability do you think
12 as an impartial juror in this case?

13 JUROR 111: In this particular case, I think so. I don't
14 know which way I'd go but I don't think I can ---

15 THE COURT: Be fair? Okay. And I understand.

16 JUROR 111: I had a hard time with it and I still have a
17 hard time with it, so I just don't think it would be ---

18 THE COURT: I understand that. I appreciate your
19 bringing that to our attention. I'll excuse you from this
20 particular case. Okay?

21 JUROR 111: Yeah. Can I come back or not come back or
22 what?

23 THE COURT: No, you'll still come back. You call that
24 number. Okay?

25 NUMBER 111: Okay. Just come back and call that number

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VOIR DIRE

24

1 there after 6 o'clock?

2 THE COURT: Well, just sit with us for right now and I'll
3 give you some instructions on what you need to do. Okay?

4 JUROR 111: All right.

5 THE COURT: Thank you.

6 (REPORTER'S NOTE: The following takes place in the presence
7 of the Jury.)

8 THE COURT: All right. I'm gonna excuse Juror 11, Mr.
9 Edge from this particular case.

10 Anyone else know of any reason whatsoever why he or she
11 should not serve as a juror in this case with particular
12 emphasis being placed on your ability to be fair and impartial
13 to both the State and the Defendant? If so, please stand.

14 (REPORTER'S NOTE: No response.)

15 THE COURT: Any additional questioning from the State?

16 MR. SPRATLIN: No, sir, Your Honor.

17 THE COURT: Any from the Defense?

18 MR. CHRISCO: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen -- Yes,
20 ma'am. Your name and number?

21 JUROR 159: 159, Amie Hayes.

22 THE COURT: All hold for one second. All right. Ms.
23 Hayes, if you'd come forward please. Hold on for one second.

24 (REPORTER'S NOTE: The following sidebar was held in the
25 presence but outside the hearing of the Jury Venire.)

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25

VOIR DIRE

1 THE COURT: What's your situation?

2 JUROR 159: I would really like to serve but I'm kind of
3 a victim of that myself and I don't think I can be fair in
4 this.

5 THE COURT: If you think that there is a chance you could
6 not be fair to either one of the parties, that's what we need
7 to know.

8 JUROR 159: I just don't think I could, to be honest with
9 you.

10 THE COURT: That's fine. That's fine. I understand
11 that. That's why we go through the questioning. I appreciate
12 you bringing that to our attention. Okay?

13 JUROR 159: Thank you.

14 THE COURT: Thank you, ma'am.

15 (REPORTER'S NOTE: The following takes place in the presence
16 of the Jury.)

17 THE COURT: All right. I'm going to excuse Juror 159,
18 Amie D. Hayes from this particular case.

19 Anyone else?

20 (REPORTER'S NOTE: No response.)

21 THE COURT: All right. Any further questioning from the
22 State?

23 MR. SPRATLIN: No, sir.

24 THE COURT: Any from the Defense?

25 MR. CHRISCO: No, Your Honor.

1 THE COURT: All right. Ladies and gentlemen, those who
2 have not been excused, your names will be fed into a computer
3 and we'll generate a new list now. Okay. Your names have
4 been fed into a computer and generated on a list and as your
5 name is called if you'll please come forward, stand in front
6 of the attorneys, turn around and face the attorneys, and the
7 State is gonna look at their notes and look at you a little
8 while and then look back at their notes and look at your
9 little while and think a little while and decide whether or
10 not they want you as a juror in this case. And if they want
11 you as a juror in this case then the Defense attorney is gonna
12 look at your little while and look at his notes a little while
13 and look back at you a little while and decide if he wants you
14 as a juror in this case. And we go by this process until we
15 get twelve jurors and, what do we need to, one or two
16 alternates? One alternate?

17 MR. SPRATLIN: One alternate should be sufficient, Your
18 Honor.

19 THE COURT: Okay.

20 MR. CHRISCO: Your Honor, I'd ask for two.

21 THE COURT: Okay. We'll go with two.

22 All right. We'll select a jury of twelve people and two
23 alternates and we go through this process. State gets so many
24 strikes and the Defense gets so many strikes. So, if your
25 name is called, if you'll please come forward and stand right

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JURY SELECTION

27

1 here in front of the bench and face the attorneys and you'll
2 get further instruction. Bring the any coats, pocketbooks,
3 newspapers, whatever you might have with you, bring those
4 forward when you come forward if your name is called. Now, if
5 you get struck from this particular jury, please do not take
6 it personally. It just means that for whatever reason you did
7 not fit a certain profile that the attorneys were looking for
8 in this particular case. Often times, I see a potential juror
9 who is struck from one case by a side and then is taken by
10 that same side on the next case. Sometimes, I see one taken
11 as a juror in one case and then in the next case they are
12 struck by the same side. So, there's really no rhyme or
13 reason as to why certain jurors are taken and certain jurors
14 are struck in the case so please do not take that personally.

15 But please listen up as your name is called if you'll
16 please come forward and stand in front of the bench and we'll
17 give you some further instructions at that time.

18 This is a five and ten strike; is that correct?

19 MR. SPRATLIN: Yes, sir, Your Honor.

20 THE COURT: All right.

21 JURY SELECTION:

22 CLERK: Juror Number 46, Lucky Bromell.

23 What say the State?

24 MR. SPRATLIN: I'm sorry, Madame Clerk, what was that
25 number again?

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JURY SELECTION

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1 CLERK: 46.

2 MR. SPRATLIN: Please present this juror.

3 CLERK: Defense?

4 MR. CHRISCO: Seat the juror.

5 CLERK: Please be seated in the jury box.

6 108, Courtney Duncan.

7 What say the State?

8 MR. SPRATLIN: Please present the juror.

9 CLERK: Defense?

10 MR. CHRISCO: Please excuse the juror from the trial of
11 this case.

12 CLERK: You are excused from this particular case.

13 300, Kristin Rice.

14 What say the State?

15 MR. SPRATLIN: Please present this juror.

16 CLERK: Defense?

17 MR. CHRISCO: Seat the juror.

18 CLERK: Please be seated in the jury box.

19 5, Thomas Alkire.

20 What say the State?

21 MR. SPRATLIN: Please present the juror.

22 Defense?

23 MR. CHRISCO: Please excuse the juror from the trial of
24 this case.

25 CLERK: You are excused from this particular case.

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JURY SELECTION

29

1 74, Kurt Christiansen.

2 What say the State?

3 MR. SPRATLIN: Please excuse this juror.

4 CLERK: You are excused from this particular case.

5 288, Maureen Polizze.

6 What say the State?

7 MR. SPRATLIN: Please present the juror.

8 Defense?

9 MR. CHRISCO: Please excuse the juror from the trial of
10 this case.

11 CLERK: You are excused from this particular case.

12 352, Jennifer Thompkins.

13 MR. CHRISCO: What was that number?

14 CLERK: 352.

15 What say the State?

16 MR. SPRATLIN: Please present this juror.

17 CLERK: Defense?

18 MR. CHRISCO: Seat the juror.

19 CLERK: Please be seated in the jury box.

20 217, Luther Lee.

21 What say the State?

22 MR. SPRATLIN: Please present this juror.

23 CLERK: Defense?

24 MR. CHRISCO: May I inquire as to his occupation, Your
25 Honor?

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JURY SELECTION

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1 THE COURT: All right. Mr. Lee, where do you work?

2 JUROR 217: Retired mechanic.

3 THE COURT: All right.

4 MR. CHRISCO: Seat the juror.

5 CLERK: Please be seated in the jury box.

6 100, Faith Donnelly.

7 What say the State?

8 MR. SPRATLIN: Please present this juror.

9 CLERK: Defense?

10 MR. CHRISCO: Please excuse the juror in the trial of
11 this case.

12 CLERK: You are excused from this particular case.

13 138, Kelly Gill.

14 What say the State?

15 MR. SPRATLIN: Please present this juror.

16 CLERK: Defense?

17 MR. CHRISCO: Seat the juror.

18 CLERK: Please be seated in the jury box.

19 302, Darlene Roberts.

20 What say the State?

21 MR. SPRATLIN: Please excuse this juror from the trial of
22 this case.

23 CLERK: You're excused from this particular case.

24 243, Mary McCray.

25 What say the State?

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JURY SELECTION

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1 MR. SPRATLIN: Please present this juror.
2 CLERK: Defense?
3 MR. CHRISCO: Seat the juror.
4 CLERK: Please be seated in the jury box.
5 67, Larry Carter, Jr.
6 What say the State?
7 MR. SPRATLIN: Please excuse this juror.
8 CLERK: You are excused from this particular case.
9 200, Susan Johnston.
10 MR. CHRISCO: What was the number?
11 CLERK: 200.
12 What say the State?
13 MR. SPRATLIN: Please present this juror.
14 CLERK: Defense?
15 MR. CHRISCO: Seat the juror.
16 CLERK: Please be seated in the jury box.
17 295, William Purvis, Jr.
18 What say the State?
19 MR. SPRATLIN: Please present this juror.
20 CLERK: Defense?
21 MR. CHRISCO: Excuse the juror in the trial of this case.
22 CLERK: You are excused from this particular case.
23 232, Matthew Malena.
24 What say the State?
25 MR. SPRATLIN: Please present this juror.

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JURY SELECTION

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1 CLERK: Defense?

2 MR. CHRISCO: Please excuse the juror in the trial of
3 this case.

4 CLERK: You are excused from this particular case.
5 275, Bruce Patonay.

6 JUROR 275: Patonay.

7 CLERK: Patonay.
8 What say the State?

9 MR. SPRATLIN: Please present the juror.

10 CLERK: Defense?

11 MR. CHRISCO: What was the number?

12 CLERK: 275.

13 MR. CHRISCO: Seat the juror.

14 CLERK: Please be seated in the jury box.
15 98, Timothy Devens.

16 What say the State?

17 MR. SPRATLIN: Please present this juror.

18 CLERK: Defense?

19 MR. CHRISCO: Seat the juror.

20 CLERK: Please be seated in the jury box.
21 299, Jeffrey Rayman.

22 What say the State?

23 MR. SPRATLIN: Please present this juror.

24 CLERK: Defense?

25 MR. CHRISCO: Please excuse the juror in the trial of

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JURY SELECTION

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1 this case.

2 CLERK: You are excused from this particular case.

3 21, Benny Barnhill.

4 What say the State?

5 MR. SPRATLIN: Please present this juror.

6 CLERK: Defense?

7 MR. CHRISCO: Seat the juror.

8 CLERK: Please be seated in the jury box.

9 29, Donna Belue.

10 What say the State?

11 MR. SPRATLIN: Please present this juror.

12 CLERK: Defense?

13 MR. CHRISCO: Seat the juror.

14 CLERK: Please be seated in the jury box.

15 149, Robert Ann Hamilton.

16 What say the State?

17 MR. SPRATLIN: Please present this juror.

18 CLERK: Defense?

19 MR. CHRISCO: Seat the juror.

20 CLERK: Please be seated in the jury box.

21 THE COURT: All right. First alternate, State will get
22 one strike; Defense gets two.

23 CLERK: 230, Theresa Macanas.

24 What say the State?

25 MR. SPRATLIN: Please present this juror.

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JURY SELECTION

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1 CLERK: Defense?

2 MR. CHRISCO: Seat the juror.

3 CLERK: Please be seated in the jury box.

4 THE COURT: All right. Next alternate, State gets one
5 strike; Defense gets two.

6 CLERK: 247, Debra McDowell.

7 What say the State?

8 MR. SPRATLIN: Please present the juror.

9 CLERK: Defense?

10 MR. CHRISCO: Please excuse the juror in the trial of
11 this case.

12 CLERK: You are excused from this particular case.

13 10, Wayna Anderson.

14 What say the State?

15 MR. SPRATLIN: Please present this juror.

16 CLERK: Defense?

17 MR. CHRISCO: Please excuse the juror in the trial of
18 this case.

19 CLERK: You are excused from this particular case.

20 77, Leonardo Colletta.

21 What say the State?

22 MR. SPRATLIN: Please present the juror.

23 CLERK: Defense?

24 MR. CHRISCO: Seat the juror.

25 CLERK: Please be seated in the jury box.

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JURY SELECTION

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1 THE COURT: Ladies and gentlemen, you'll be the Jury that
2 will preside over this first case. I'm gonna excuse you back
3 to the jury room for just a few minutes and then we'll bring
4 you back out. I need to excuse the remainder of the jury
5 panel. While you're in the jury room, if I could get you to
6 do me a favor and that would be to select a foreperson for
7 this Jury. I understand that you might not know everyone and
8 if you can't select a foreperson, don't worry about it, I can
9 appoint someone to serve as foreperson. Many judges appoint
10 their own foreperson. I like to give the Jury the opportunity
11 to select one on their own accord if they are able to do so.
12 If you can select a foreperson, just write his or her name on
13 a sheet of paper with the jury number and we'll bring you back
14 into the courtroom at that time. Now, the foreperson has
15 absolutely no more authority, no more influence, no more
16 important than any other juror. The sole function of the
17 foreperson is to act as a liaison between the Court and the
18 Jury. If the Jury has a need, the foreperson lets the Court
19 know. If the Jury has a question, foreperson lets the Court
20 know. When it's time to deliberate, the foreperson will
21 preside over the deliberations. But other than that, the
22 foreperson has no more authority, no more influence and no
23 more importance than any of the juror. The only restriction
24 would be that Ms. Macanas and Mr. Colletta. As the
25 alternates, you would not be eligible to serve as jurors

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JURY SELECTION

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1 because you're alternates at this point in time. When we come
2 back into the courtroom, the two alternates will always occupy
3 the two seats where you now sit. The foreperson will always
4 see here on the front row next to the alternate in the second
5 seat closest to the witness stand. The rest of you are at
6 liberty to sit in whatever seat you would like. If you want
7 to sit in the same see throughout the trial of the case, you
8 can do that. If you want to alternate seats during the trial
9 of the case, you can do that. The only requirement is that we
10 have the foreperson sit in the second seat in the alternates
11 occupy the alternates seats. So, I'm going to excuse you back
12 to the jury room for just a few minutes. Try to select that
13 foreperson, write his or her name on a sheet of paper with the
14 jury number and we'll bring you back out in just a second.
15 Thank you very much.

16 Everyone else remain seated while the Jury is excused.
17 (REPORTER'S NOTE: Jury exits courtroom. 2:27 P.M.)

18 THE COURT: All right. Any challenges to the selection
19 or composition of the Jury by the State?

20 MR. SPRATLIN: No, Your Honor.

21 THE COURT: Any by the Defense?

22 MR. CHRISCO: No, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, we do have
24 our jury for this first case, so those of you who remain in
25 the jury panel, I'm gonna excuse you for the remainder of the

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MOTIONS

1 day. You should've been given a number, phone number, for the
2 Clerk of Court's Office. You need to call that number after 6
3 P.M. today and I will give you some for the direction as to
4 when you need to return. I do want to thank you for your
5 service. I hope everybody gets to serve on a jury but I know
6 that's not possible and I know everyone won't but if you're
7 not able to serve on a jury and if you don't get to serve on a
8 jury, as I said during qualifications, you have still
9 performed your service as jurors for this week and I want to
10 thank you for that. I hope everybody has a good day and
11 please call that number after 6 P.M. today. Thank you very
12 much. You're free to go.

13 (REPORTER'S NOTE: Remaining Jury Venire exits courtroom.
14 2:29 P.M.)

15 THE COURT: All right. Let's give the Jury just a few
16 minutes and see if they can select a foreperson. Let's make
17 sure that all of the witnesses are sequestered with the
18 exception of the chief investigator and the alleged victim in
19 this case.

20 Anything from the State before we break?

21 MOTIONS:

22 MR. SPRATLIN: Your Honor, the State would just make that
23 motion to amend the indictment, I believe the wrong victim was
24 listed on the indictment and we would move that that be
25 changed to Minor

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MOTIONS

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1 THE COURT: Okay. Indictment 2014-GS-26-535, it lists
2 Dennis Hostetter, age blank.

3 MR. SPRATLIN: Your Honor, we would ask that that the
4 change to Minor , age ten to eleven -- or age nine
5 to ten.

6 MR. CHRISCO: I would object, Your Honor. That wasn't
7 before the Grand Jury. The Grand Jury acted upon what's
8 exactly in that indictment and, when they took the thirty or
9 thirty-five seconds to do it, that's what they did, Your
10 Honor.

11 THE COURT: Well, what was the testimony before the Grand
12 Jury?

13 MR. SPRATLIN: Your Honor, the testimony before the Grand
14 Jury for the end about the minor child. I was not present for
15 the testimony before the Grand Jury but I can tell you that it
16 was a scrivener's error, probably done by my assistant, and
17 instead of putting the victim Minor , she put the
18 grandfather since his name was listed first in the victim
19 contact information. It is simply a scrivener's error. The
20 purpose of the indictment is to put the Defense on notice for
21 what charge they must defend against.

22 THE COURT: Well, and I agree with that and I think that
23 they are on notice. The problem I've got though is the
24 jurisdictional issue here. If they stated that Minor was
25 the victim, then how did the Grand Jury issue a true bill

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1 indictment that listed somebody else as the victim ---

2 MR. SPRATLIN: Your Honor, the ---

3 THE COURT: --- if they testified that Mr. Hostetter was
4 the victim ---

5 MR. SPRATLIN: Your Honor, they would not have testified
6 that Mr. Hostetter was the victim. Mr. Hostetter at all times
7 during this was well above the age of sixteen. It was a
8 scrivener's error, Your Honor.

9 THE COURT: And I understand that it was a scrivener's
10 error and I agree with that. The question is, is -- and I
11 need to do a little research so I'm going to take it under
12 advisement. I need to go look and see -- the question is, is
13 where the indictment misidentifies an alleged victim.
14 Regardless of the testimony, I guess it just means it's
15 obvious that the Grand Jury did not read the indictment when
16 they true billed it.

17 MR. SPRATLIN: That's probably what happened, Your Honor.
18 The Grand Jury probably found probable cause based on the
19 testimony of the officer presenting at the Grand Jury and
20 simply affirmed the indictment without reading it or simply
21 overlooked the fact that the wrong name was on it.

22 MR. CHRISCO: Or the officer that presented it could have
23 misspoke and said Dennis Hostetter and not said the other
24 person.

25 THE COURT: Well, and I understand that but, Mr. Chrisco,

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1 I'm -- and if I'm wrong, please let me know -- I'm assuming
2 that this -- throughout the trial preparation, y'all have been
3 operating that the victim on the lewd act was the same victim
4 that was in the criminal sexual conduct with a minor.

5 MR. CHRISCO: Your Honor, my client was originally
6 arrested for criminal sexual conduct in the first degree.

7 THE COURT: Okay.

8 MR. SPRATLIN: And, Your Honor, that was true billed by
9 the Grand Jury, the direct indictment and he was serve notice
10 of that at the arraignment which happened before Judge John
11 that ---

12 THE COURT: Well, the thing is -- and I guess my question
13 is, is the CSC with a minor was indicted in June 2012.

14 MR. SPRATLIN: Yes, sir.

15 THE COURT: The lewd act was just indicted March 20th of
16 2014. Now, was there -- when y'all received the indictment, I
17 guess that would have been, what, three weeks ago on the lewd
18 act?

19 MR. SPRATLIN: And, Your Honor, he was arraigned actually
20 on that back March 21st, on the arraignment or indictment --
21 arraignment paperwork which states that he was originally
22 arraigned on four counts of criminal sexual conduct with a
23 minor and one count of lewd act upon a minor.

24 THE COURT: Okay. During that arraignment and upon
25 receipt of this indictment, was it ever, other than what's

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MOTIONS

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1 written on the indictment, was anything ever presented to your
2 client or were you ever under the assumption that the victim
3 of the lewd act was someone other than Minor ?

4 MR. CHRISCO: No, Your Honor.

5 THE COURT: Okay. All right.

6 MR. SPRATLIN: Just for this record, I would direct the
7 Court, the Court still has any other questions to State v
8 Bryson, 357 S.C. 106, which states that changing the identity
9 of the victim, unless the crime involves two counts that can
10 only be distinguished by the victim's identity. In this case,
11 that's not the situation. It's the same -- it's the same
12 victim on both counts.

13 THE COURT: Okay. Let me go check that case right quick.
14 Okay? Let me see what it says. Because I'm going to be
15 honest with you, I don't know that there is much of a notice
16 problem here. My question is whether there's a jurisdictional
17 problem where you have a Grand Jury that issues an indictment
18 against one alleged victim which means that they didn't read
19 the indictment ---

20 MR. SPRATLIN: Yes, sir.

21 THE COURT: --- or that someone else ---

22 MR. CHRISCO: That's the problem I have.

23 THE COURT: --- something else was said and so I don't
24 know what the -- I'm more concerned with the jurisdictional
25 issue that I am with a notice issue. So, let's take a quick

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1 break and let me go do a little bit of research and we'll come
2 right back. Okay?

3 MR. SPRATLIN: Yes, sir. Thank you, Your Honor.

4 (RECESS - 2:36 P.M.)

5 *****OFF THE RECORD*****

6 (On the Record - 3:01 P.M.)

7 (REPORTER'S NOTE: The following takes place outside the
8 presence of the Jury.)

9 THE COURT: All right. I'm going to grant the State's
10 motion to allow an amendment to the indictment to change the
11 name of the alleged victim in 2014-GS-26-535 from Dennis
12 Hostetter to Minor , who I understand Mr. Hostetter
13 you said was the grandfather?

14 MR. SPRATLIN: Yes, sir, Your Honor.

15 THE COURT: Okay. All right. I reviewed the case you
16 cited -- and quite frankly, the case you cited held the other
17 way but then it was later reversed that is a U.S. Supreme
18 Court case that later reversed it that said that it's no
19 longer a jurisdictional issue if the indictment adequately
20 puts the Defendant on notice as to the charge against him, the
21 nature of the charge and the circumstances surrounding it,
22 particularly where it does not change the charge but simply
23 just changes either the date of the offense or the name of the
24 victim or something of that nature. So, I'm gonna allow the
25 amendment.

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BY THE COURT

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1 MR. SPRATLIN: Yes, Your Honor. I think you also found a
2 typo in the Prosecutor's Deskbook, so I'll make sure Ms. Fox
3 knows that.

4 THE COURT: Sounds good. Now, the Jury sent out a note,
5 Tim Devens, Juror Number 98, was selected as the foreperson.

6 I'm going to Mark this as Court's Exhibit One.

7 COURT'S EXHIBIT NUMBER ONE

8 MARKED FOR IDENTIFICATION

9 THE COURT: All right. Anything from the State before we
10 bring the Jury in?

11 MR. SPRATLIN: No, sir, Your Honor.

12 THE COURT: All right. Anything from the Defense?

13 MR. CHRISCO: No, Your Honor.

14 THE COURT: All right. I'm gonna assume -- we'll just go
15 ahead, bring the Jury in, put them under oath. I'll give the
16 preliminary charge and will start straight in; is that
17 correct?

18 MR. SPRATLIN: Yes, sir, Your Honor; I think we're
19 prepared.

20 MR. CHRISCO: Yes, Your Honor.

21 THE COURT: All right. Let's go ahead and bring the Jury
22 in.

23 (REPORTER'S NOTE: Jury enters courtroom. 3:04 P.M.)

24 BY THE COURT:

25 THE COURT: All right. Ladies and gentlemen, welcome

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BY THE COURT

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1 back. We're ready to begin the trial of this case. I
2 understand, Mr. Devens, you've been selected as foreperson; is
3 that correct?

4 JUROR 98: Yes, sir.

5 THE COURT: All right. Thank you very much for serving
6 in that capacity. As I told you before the Jury went out, if
7 you would always occupy that seat where you now see it. Ms.
8 Macanas and Mr. Colletta, if you would always occupy your
9 seats where you now sit. The rest of you are at liberty to
10 sit in whatever seat you would like, whether it be the same
11 seat throughout the trial of the case, a different seat
12 throughout the trial of the case or whatever makes you feel
13 more comfortable.

14 Now, were getting ready to start the trial of the case of
15 Carlos Roberto -- State versus Carlos Roberto Lopez. Just
16 like jury qualifications and just like to voir dire, jurors
17 are constantly taking oaths, so I'll please need this Jury to
18 stand and raise your right hand while the Clerk administers
19 the oath for you to serve as jurors on this specific case.
20 (REPORTER'S NOTE: Jury is duly sworn.)

21 THE COURT: Is there any member of the Jury that did not
22 respond to the oath by saying I do? If so, please stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: All right, very well. Thank you very much.

25 All right. Ladies and gentlemen, we are about to begin

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BY THE COURT

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1 the trial of the case of the State versus Carlos Roberto Lopez
2 but before we begin that trial I want to go over some matters
3 with you just to let you know what you can expect from us
4 during the trial of this case and to let you know what's
5 expected of you during the trial of this case. From watching
6 movies, TV shows, reading books, things of that nature, trials
7 are often full of a lot of action, a lot of suspense, and
8 while that might be the case in this trial it probably won't
9 be. The primary function of this trial is to determine the
10 truth, to find out what happened in this case. That is often
11 a slow, laborious, repetitive process, the exact opposite of
12 what you might be accustomed to when you read a book or watch
13 a movie or watch a TV show or something of that nature.
14 However, I do hope that you do find this trial educational. I
15 hope that you to find it informative and I want to thank you
16 from the outset for serving as jurors in this case.

17 Now, the attorneys appearing before you are advocates for
18 the parties they represent but, first and foremost, they are
19 officers of the Court. They are sworn to uphold the integrity
20 and the fairness of our judicial system and to help you in a
21 search for the truth. You should expect them to be
22 professional, competent and ethical in the representation of
23 their client's interests. And what I now say is intended to
24 serve as an introduction to the trial of this case. These
25 remarks are not a charge on the law of the case. I will

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1 instruct you on the law applicable to this case at the end of
2 the trial before you retire to consider your verdict. This is
3 merely an explanation of the procedure that we will follow in
4 the trial of this case so that you can better understand what
5 might be happening.

6 Now, the Defendant is charged by two indictments filed
7 with the Court. One indictment charges the Defendant with the
8 crime of criminal sexual conduct with a minor in the first
9 degree. The other indictment charges the Defendant with
10 committing a lewd act upon a minor. Now, these indictments
11 are simply the charges by which this case is brought into this
12 court and they are not in any sense evidence of any of the
13 allegations contained in the indictments. The Defendant has
14 pled not guilty to these indictments. The State, therefore,
15 has the burden of proving each of the elements of the
16 indictments beyond a reasonable doubt. It will be your duty,
17 ladies and gentlemen, to determine whether the State has met
18 that burden. Your purpose as jurors is to find and determine
19 the facts of this case. You are the sole judge of the facts
20 of this case. If at any time I make a comment regarding the
21 facts, you must disregard my comment. You are to determine
22 the facts from the testimony you hear and the other evidence
23 introduced in court. It's up to you to determine the
24 inferences which you feel may properly be drawn from that
25 evidence. It is especially important that you perform your

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1 duty of determining the facts diligently and conscientiously
2 because ordinarily there is no way to correct an erroneous
3 determination of the facts by a jury. On the other hand, and
4 with equal emphasis, the same law that makes you the judge of
5 the facts of this case makes me the judge of the law. The law
6 as given by the Court is the only law that you can consider.
7 You must accept and follow the law as I give it to you even
8 though you may disagree with that law. Just as I cannot tell
9 you what the facts of this case are, you cannot disagree with
10 me about the law to be applied in this case. Your job is to
11 take the law as I give it to you and apply it to the facts as
12 you find those facts to be from the testimony of the witnesses
13 and any other evidence that is introduced. After doing that,
14 you will then render your verdict, a true and just verdict
15 under the solemn oath that you just took as jurors. Now until
16 I advise you to begin your deliberation, you must not discuss
17 this case with anyone. You cannot discuss it with your fellow
18 jurors, you cannot discuss it with any friends, family members
19 or anyone involved in the case. After the case is submitted
20 to you, you can then discuss it only in the jury room with
21 your fellow jurors. The attorneys and parties in the case
22 have been advised that they're not to talk to you at all. So,
23 if you have any friends or anyone involved in the case that do
24 not even speak to you, they are just following the
25 instructions, they're not being rude.

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1 Now, during the trial of this case, I ask that you not
2 read or listen to or watch any news reports about the case if
3 there is any. This includes anything that may have been in
4 the newspapers or on the Internet, the radio or the
5 television. You must not consider anything you may have read
6 or heard about the case outside of the courtroom, whether that
7 be before or during the trial of this case. It is important
8 that you keep an open mind and not decide any issue in this
9 case until all of the evidence has been presented, the parties
10 have made their closing arguments and I've instructed you on
11 the law of the case. It is your solemn responsibility to
12 determine the guilt or the innocence of the Defendant and your
13 verdict must be based solely on the evidence as it is
14 presented to you in this trial and on the law as I instruct
15 you during and at the close of the trial.

16 Now, in just a moment the Solicitor will make what's
17 called an opening statement in which the Solicitor will
18 explain to you the issues in this case or at least what the
19 Solicitor thinks the issues in this case are. The attorney
20 for the Defendant may also make an opening statement, although
21 he is not required to do so. What the attorneys tell you
22 during their opening statements is not evidence in this case,
23 it is only their contention as to what the issues in this case
24 are. The evidence in this case will be presented to you by
25 testimony of sworn witnesses from the witness stand. Also,

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1 exhibits may be introduced into evidence for your
2 consideration.

3 Now, in determining what the true facts are in this case,
4 you must decide whether or not the testimony of a witness is
5 believable. It will be my responsibility to rule as a matter
6 of law as to whether certain testimony is admissible at all or
7 not. However, once the testimony is admitted into evidence,
8 whether or not you believe it is solely for you to determine.
9 In deciding whether to believe a witness, you have the right
10 to consider the interest of any witness, the bias of any
11 witness, the prejudice of any witness, the opportunity for the
12 witness to have seen the matters and things about which the
13 witness may testify and the way the witness acts on the
14 witness stand. You have the right to consider anything that
15 is in the record that will help you evaluate the testimony of
16 the witnesses. That means that it is your duty to pay close
17 attention to these witnesses, to observe them, to listen to
18 them and to pay close attention to the attorneys and to the
19 Court. Don't let your thoughts wonder but give strict
20 attention to the testimony in this case. So, at the end of
21 all the testimony, and after the arguments of counsel and a
22 charge on the law by the Court, you would then be in a
23 position to determine what the true facts are, and to apply
24 those facts to the law thus rendering a true and just verdict.

25 All right. Is there any challenges or additions to the

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OPENING BY SPRATLIN

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1 opening charges by the State?

2 MR. SPRATLIN: No, Your Honor.

3 THE COURT: Any by the Defense?

4 MR. CHRISCO: No, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, we will now
6 begin the trial with the opening statements from the State.

7 MR. SPRATLIN: Thank you, Your Honor. May it please the
8 Court?

9 THE COURT: Yes, sir.

10 OPENING BY MR. SPRATLIN:

11 MR. SPRATLIN: Good afternoon, ladies and gentlemen. I
12 appreciate your time here today. As you no doubt could tell
13 from the charges the Judge read off, this is a child
14 molestation case. The Defendant Carlos Lopez was the
15 boyfriend of the -- Minor or GMinor, as she is often
16 called, Minor mother. And you're gonna hear now,
17 when Minor was the between the ages of nine and ten years
18 old, the Defendant molested her several times.

19 One thing that may be distracting for you in this case is
20 that -- and some of you may never have thought about before
21 these kinds of cases -- these kinds of cases happen in the
22 dark. By that, I don't mean that they happen without the
23 lights on but they happen where no one can see it. Only the
24 Defendant and the child see what's happening, hear what's
25 happening and feel what's happening. They don't happen around

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OPENING BY SPRATLIN

1 a whole lot of other people. In an armed robbery, murder
2 even, you'll have witnesses who might see something, might see
3 the gun, might see the events. In these kinds of cases, you
4 don't have that. To that end, your gonna hear from the most
5 important witness either late today or early tomorrow morning,
6 I'm not sure if we'll get to her today or not, but you're
7 gonna hear from Minor . She is no twelve. She's
8 gonna tell you what the Defendant did to her when she was nine
9 and ten. She's gonna tell you how he took his penis and
10 placed it inside her vagina. She's gonna tell you how he
11 licked her. She's gonna tell you how he pulled up her
12 nightgown and tried to stick his penis inside of her butt.
13 Those may be hard terms for you to hear and that may be blunt
14 for you but I'm not a hide from that because this case is
15 gonna make each and every one of you uncomfortable. And it's
16 when you feel most uncomfortable that you need to pay
17 attention the most because that's when the evidence your
18 hearing is the most important. Now, all the evidence is
19 important and you need to pay attention throughout the entire
20 trial, but when that little girl is up there telling you what
21 that man did to her, that's when I suspect you need to pay the
22 most attention. Now, you're gonna hear from other people
23 besides Minor . Like I said, these crimes happen in the
24 dark. No one turned on the light switch and saw what was
25 happening. What you're gonna hear from these witnesses, these

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OPENING BY SPRATLIN

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1 witnesses are going to confirm as much as they can watch
2 Minor is going to tell you.
3 You're gonna hear from Susan Hostetter, who is the girl's
4 mother -- grandmother, excuse me. She has custody of
5 Minor, she had custody back in and has pretty much always
6 had custody of Minor. She's gonna tell you that Minor
7 lived with her and her husband and would often go over to her
8 mother's house. Her mother is Jessica Cerney and you're gonna
9 hear from Jessica as well. Now, Jessica Cerney was at the
10 time that Defendant's girlfriend, lived with him in the house
11 which Minor used to go over to. Susan Hostetter is gonna
12 tell you how Minor would often times look forward to going
13 over to her mother's, wanted to go see her mother, wanted to
14 spend time with her. She's gonna tell you that things changed
15 and Minor stopped wanting to go over to see her mother,
16 that Minor didn't want to go over there. And she's gonna
17 tell you she didn't know why. She didn't know why until a
18 friend or until her other daughter told her that she witnessed
19 Minor do something inappropriate with the child, saw
20 Minor acting sexually towards another child. That
21 prompted Susan to go talk to Minor and that's when all
22 this came out. That's when what that Defendant was doing to
23 her came out. Susan is gonna tell you all about that. Now,
24 she can't tell you she saw the Defendant to put his penis
25 inside that little girl, she can't tell you that she saw him

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OPENING BY SPRATLIN

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1 trying to rape that little girl because she didn't but she can
2 help you confirm part of what Minor is gonna tell you.
3 You're gonna hear -- as I said you're gonna hear from
4 Jessica Cerney, the mother of Minor, the Defendant's
5 former girlfriend. You're gonna hear how she did live with
6 the Defendant and how Minor would come over, that
7 Minor would spend weekends there, how she would
8 occasionally have to go to work or she'd have to run an errand
9 or she'd have to do this or that and she'd leave Minor
10 with the Defendant. There was also -- Minor had her
11 sister there too, who is living with the mother and Carlos,
12 and her sister was four years old. You're not gonna hear from
13 her today.. But you're gonna hear from the mother who is going
14 to tell you how she would leave Minor in the care of the
15 Defendant. Again, she never saw what happened to Minor
16 when she was in the care of the Defendant, only Minor can
17 tell you that. Jessica Cerney is not gonna tell you she ever
18 turned on the lights and saw what was happening, only
19 Minor can tell you what happened. She'll confirm that the
20 Defendant had the opportunity to do exactly what Minor
21 says he did. As I said, I suspect that after you hear from
22 Jessica, you're gonna hear from Minor herself. Following
23 Minor's testimony, you're gonna hear from David Weaver,
24 he's now with South Carolina Law Enforcement Division. Back
25 when this arrest was made in April of 2012, he was working at

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OPENING BY SPRATLIN

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1 Horry County Police Department. He was the detective assigned
2 to this case. He's gonna give you a little bit of idea on
3 what he did in the investigation of this case. Now, he didn't
4 say anything either, he didn't see the action but they don't
5 happen in front of law enforcement, it happened in front of a
6 nine, ten-year-old girl. But he's gonna tell you how he
7 talked to all the witnesses, how he did an investigation and
8 came to the conclusion that there was enough evidence to take
9 out a warrant and arrest the Defendant. He's gonna tell you
10 that he didn't seek DNA because in these kinds of cases
11 oftentimes the child doesn't disclose in a timely manner,
12 doesn't disclose right when the abuse occurs, waits, waits
13 until there is no physical evidence. The last person you're
14 gonna hear from is Dr. Carol Rahter. She's here to basically
15 answer some questions you might have. She's a medical doctor.
16 She works with abuse children. She has twenty-some years'
17 experience in working with abuse children. She conducted a
18 physical examination on Minor . She's gonna tell you
19 certain things that you might otherwise -- certain things that
20 you might have misconceptions about. I'm not sure if any of
21 y'all are familiar with what's called a hymen, but Dr. Rahter
22 is and she'll tell you all about it. People think -- and,
23 again, there's going to be some uncomfortable subject matter
24 here and the only way I can do that -- and if I'm offending
25 anyone, I apologize -- but she's gonna tell you that when --

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OPENING BY SPRATLIN

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1 even if a young child is penetrated, several weeks later,
2 within seventy-two hours actually, you'll probably find no
3 evidence that that child was penetrated; that the hymen
4 doesn't actually break as much as it erodes away over time;
5 how it's common in her twenty-years' experience to see no
6 trauma to a child even after being sexually abused. She's
7 also gonna tell you how it's common that children don't tell
8 right away that they were abused, how they wait, how they're
9 scared, how they often time believe that nobody will believe
10 them and so they don't tell immediately, how that's common in
11 her twenty-years' experience.

12 Ladies and gentlemen, these crimes happen in the dark but
13 the evidence presented here today is gonna shed light on what
14 that defendant did to Minor and that's why at the end of
15 the trial; I'm gonna come back before you -- and it's not
16 gonna be a very long trial, I suspect we'll be done sometime
17 tomorrow, but at the end of the trial after you've heard all
18 the evidence I'm gonna come back up here and tell you why we
19 have shown that that Defendant is guilty and why you must
20 return a verdict of guilty. Thank you.

21 THE COURT: Mr. Chrisco, does the Defense wish to make an
22 opening statement?

23 MR. CHRISCO: May it please the Court?

24 THE COURT: Yes, sir.

25 OPENING STATEMENT BY MR. CHRISCO:

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OPENING BY CHRISCO

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1 MR. CHRISCO: Let me tell you who's sitting over here.
2 We got the interpreter to interpret here in Court, Mr. Lopez
3 is seated here. The first person who is seated sitting there
4 is actually an intern, an old-looking intern but he's a
5 retired attorney out of the State of New York. And next,
6 seated to him, is an attorney with the Public Defender's
7 Office.

8 This is the system in which allegations get resolved.
9 This is where we are today. Just because an allegation is
10 made doesn't mean that it's true it just means that there's an
11 allegation made. We live in a system where we have checks and
12 balances. If you'll remember a few hundred years ago they had
13 the witch trials in Salem, Massachusetts. We all know now by
14 looking back that they were very -- shams, that people were
15 all excited about what was going on and didn't understand a
16 lot things and a lot of innocent people were in fact murdered.
17 We have this saying in the law that says that you are not
18 guilty until you are proven so. In other words, you're
19 innocent until you are proven guilty. I know that everybody
20 has heard that -- you've probably heard it a few hundred times
21 at least. I'll give you an example, you go to a football game
22 at a stadium, you're sitting down with your friends, you see
23 the security guard taking out someone with their hands behind
24 their back, you turn to your friend and say, what do he do?
25 I'd like for you to go away from human nature and remember in

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1 the law that you're innocent until you are proven guilty.
2 That means that each person that takes this stand, they take
3 an oath to tell the truth. If that was it, it would be
4 simple, but it's not. They take the oath to tell the truth
5 but you, as jurors, sit here and you determine if you think
6 they've done that. And you do that by the experiences that
7 you brought into court. That's the reason you were chosen.
8 You were chosen because you looked like you had common sense.
9 The same common sense that you've had out there, you brought
10 it here, keep it, don't set it aside. Keep that common sense.
11 You can believe all of what a witness says, none of what a
12 witness says, some of what a witness says or most of what a
13 witness says; it's up to you. You are the triers of the
14 facts. His Honor, is the trier of the law. He judges the
15 law; you judge the facts. Later on, when everybody testifies,
16 you take it back and deliberate, you determine what you think
17 the facts are. You will have heard the Judge give you what
18 the law is and you'll fit the facts to that law. It's not as
19 easy as what I just said; it's very hard. What I want you to
20 do is I want you to listen. I want you to listen, put your
21 common sense to use. Listen to what the testimony is. If
22 you'll do that, when I come back and talk with you once the
23 trial is over -- I don't know when it's gonna get over -- one
24 thing I've learned, you never know until you know. Once the
25 trial is over, I'll come back and tell you what you've heard

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1 and ask for you to look at it. If you agree with that, that's
2 fine. But whatever you do, whatever you do, as long as you
3 have taken the time to listen and to judge what the facts are
4 is all the Defendant asks you to do. Thank you.

5 THE COURT: All right. Ladies and gentlemen, we'll now
6 begin the evidentiary portion of this trial with calling the
7 State's first witness. All right?

8 MR. SPRATLIN: Your Honor, the State would first call Ms.
9 Susan Hostetter to the stand.

10 SUSAN HOSTETTER, HAVING BEEN DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 CLERK: If you will state your full name and spell your
13 last name.

14 MS. HOSTETTER: Susan Hostetter, H-O-S-T-E-T-T-E-R.

15 DIRECT EXAMINATION OF SUSAN HOSTETTER BY MR. SPRATLIN:

16 Q: Ms. Hostetter, I'm going to ask a very personal question,
17 how old are you?

18 A: Fifty-five.

19 Q: Fifty-five. What county do you currently live in?

20 A: Horry.

21 Q: What part of Horry County do you live in?

22 A: Carolina Forest.

23 Q: How long have you lived in Horry County?

24 A: Since 2000.

25 Q: Since 2000?

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- 1 A: Uh-huh (affirmative response).
- 2 Q: If I can get you to speak up just a little bit and speak
3 into that microphone to make sure all the jurors can hear you.
- 4 A: Since 2000.
- 5 Q: Okay. Where did you live before you moved Horry County?
- 6 A: Greenville, South Carolina.
- 7 Q: Greenville. Let me ask, how many children do you have?
- 8 A: Two.
- 9 Q: What are their names?
- 10 A: Jessica and Sierra.
- 11 Q: All right. Let me ask you about Jessica. Has she
12 provided you or given you any grandchildren?
- 13 A: Yes, two -- three, excuse me.
- 14 Q: It's all right; I know you're a little nervous. How many
15 grands? What are their names?
- 16 A: Minor , M. and G. .
- 17 Q: Minor , M. and ---
- 18 A: G. .
- 19 Q: G. ; all right. Let me ask you, back between December
20 2011 and March 2012, when all this kind of came out, how old
21 was Minor ?
- 22 A: Ten.
- 23 Q: Ten. What about M. ?
- 24 A: She was four.
- 25 Q: Four. And how old is -- I'm sorry -- G. ?

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- 1 A: He's eight months.
- 2 Q: Eight months. So, he's eight months right now?
- 3 A: Right now.
- 4 Q: Okay. So, he wasn't even born when all this was
- 5 happening?
- 6 A: No.
- 7 Q: All right. Ms. Hostetter, let me ask you who all lives
- 8 with you in Carolina forest?
- 9 A: My husband, Dennis, Minor and her sister M.
- 10 Q: How long has Minor lived with you?
- 11 A: Five years.
- 12 Q: Five years. What about M. ; how long has M.
- 13 lived with you?
- 14 A: About a year.
- 15 Q: A year. So, back in 2011 -- back around 2011, where was
- 16 M. living?
- 17 A: With her mom.
- 18 Q: With her mom. Where was her mom living, if you know?
- 19 A: Bay Street in Myrtle Beach.
- 20 Q: Was anybody else living with her mom?
- 21 A: Carlos.
- 22 Q: Carlos, okay. How many times do you think you met
- 23 Carlos?
- 24 A: Four or five, six, I mean ---
- 25 Q: And what would be the circumstances when you would meet

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1 him?

2 A: I'd go pick up the girls or he would come to my house to
3 pick them up or I'd go up there and he'd be there.

4 Q: Would you recognize Carlos again if you saw him?

5 A: Yes.

6 Q: Do you see Carlos here in the courthouse?

7 A: Yes.

8 Q: Would you please point him out and identify an article of
9 clothing he's wearing?

10 A: He has on a blue shirt, sitting over at this table.

11 MR. SPRATLIN: Please let the record reflect the witness
12 has identified the Defendant.

13 BY MR. SPRATLIN:

14 Q: Now, you said you would go pick up the girls -- Minor
15 was sitting with you at this time?

16 A: Right.

17 Q: How often, if at all, would Minor go over to her
18 mother's?

19 A: It varied from week to week. She -- at first, she went,
20 you know, three or four times, and two or three times, you
21 know, and then she got to where she didn't want to go at all.

22 Q: Back when she was going three or four times, what was
23 Minor's demeanor about going over to her mother's?

24 A: At first, she was fine; she wanted to go. Then, as time
25 went on, she really didn't want to go unless her mom was

1 there. And then like at the end, she just didn't want to go
2 at all.

3 Q: Back to around the 2011 timeframe that we're talking
4 about here, did you ever become concerned about Minor
5 being abused?

6 MR. CHRISCO: Objection, Your Honor. He's leading the
7 witness.

8 THE COURT: Okay. Just -- sustained. Go ahead.

9 BY MR. SPRATLIN:

10 Q: What, if anything, caused you to be concerned about
11 Minor 's welfare?

12 A: Well, she started not wanting to go to her mom's and I
13 couldn't figure out why because she loved to go over there and
14 so I kept -- I insisted that she go because her poppa and I
15 needed a break every once in a while. And then it just got
16 worse and she got to where she would cry and not want to go.
17 And finally, I would ask her why and she wouldn't say
18 anything. And finally that -- she told me that Carlos was
19 touching her where he shouldn't be.

20 Q: What, if any, information did you get before you started
21 asking Minor about Carlos touching her or if somebody was
22 touching her?

23 A: I'm sorry. I'm not sure I understand.

24 Q: Were there any actions that ---

25 MR. CHRISCO: Objection, Your Honor. Leading again, Your

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1 Honor.

2 THE COURT: All right. Sustained.

3 A: Well, my daughter and her husband and their little boy
4 lived across the street.

5 BY MR. SPRATLIN:

6 Q: Let me ask you which door are you referring to?

7 A: Oh, Sierra, my youngest daughter.

8 Q: So, not ---

9 A: Not Minor 's mother, no.

10 Q: What information did you get from Sierra that caused you
11 to be concerned, if any?

12 A: Well, she come to my door one day with Minor ,
13 Minor was over playing with her son, and she came to my
14 door one day and she was just hysterical and I said, what's
15 wrong, what's wrong? And she said, Minor is doing some
16 inappropriate things to L. and I just can't have, you
17 know, I just can't have this over there, I just can't have her
18 over there. She was just so hysterical I couldn't even hardly
19 to talk to her.

20 Q: What sort of inappropriate things -- without giving
21 specifics about what she said or what was told to you, what
22 sort of -- what was the nature of those things?

23 A: She said that Minor -- L. was laying on the
24 floor, L. is her son, and that Minor was sitting on
25 his face.

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1 Q: Okay. Then when you got this information, what did you
2 do with it?

3 A: I was just totally -- I just didn't know what to say, I
4 mean, because I've never, you know -- where did you get this,
5 where did -- you know, so I started questioning Minor
6 about where -- what was going -- you know, why did she do this
7 and where did you see that or where did, you know, and she
8 didn't want to tell me. And finally I said you had to see
9 this or something somewhere because you wouldn't have just
10 come up with it. And so then she told me that Carlos had been
11 touching her where he shouldn't be.

12 Q: Okay. And once Minor told you that, what did you do?

13 A: I called the police.

14 MR. SPRATLIN: I beg the Court's indulgence for one
15 second.

16 THE COURT: All right.

17 MR. SPRATLIN: No other questions, Your Honor.

18 THE COURT: All right. Cross examination.

19 CROSS EXAMINATION OF SUSAN HOSTETTER BY MR. CHRISCO:

20 Q: You said you -- I'm trying to understand -- that you kept
21 all three children? All three children live with you?

22 A: No.

23 Q: Which ones live with you?

24 A: Minor and M. now.

25 Q: When did M. come to you?

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SUSAN HOSTETTER - CROSS BY CHRISCO

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- 1 A: About when school started about a year ago.
- 2 Q: And why was that?
- 3 A: Just so she could go to school and her mom wasn't really
- 4 able to take care of her.
- 5 Q: Why wasn't her mom able to take care of her?
- 6 A: She just couldn't afford to get her back and forth to
- 7 school with gas and so I just brought her to my house so I'd
- 8 make sure she got there.
- 9 Q: Now, she's had another child?
- 10 A: Yeah.
- 11 Q: How old is that child?
- 12 A: Eight months.
- 13 Q: How long has Minor stayed with you and your husband?
- 14 A: Five years.
- 15 Q: So, she came there when she was what ---
- 16 A: She was about six -- five or six.
- 17 Q: And how old is she now?
- 18 A: Twelve.
- 19 Q: Have you talked with the Solicitor about this case?
- 20 A: Yes.
- 21 Q: How many times have you talked to him about it?
- 22 A: About four.
- 23 Q: How much time did you spend each time you talked with the
- 24 Solicitor about the case?
- 25 A: Probably thirty minutes, I mean, in between me and

1 Q Minor together.

2 Q: Did you write any statements?

3 A: No.

4 Q: None whatsoever?

5 A: (Indicates negatively.)

6 Q: When did your other daughter come across screaming that

7 Minor was doing something inappropriate; what date was
8 that?

9 A: Oh, I don't remember the date, not exactly, I mean it was
10 like -- I don't really -- I don't remember the date.

11 Q: Do you know if it was around a holiday?

12 A: It was after Christmas.

13 Q: So, it -- could it've been in as early as January?

14 A: No, it was in January. Right when she told me that is
15 when I called the police. So but -- I mean, that's been two
16 years ago. I don't remember the exact dates.

17 Q: Do you remember what day of the week it was?

18 A: No.

19 Q: Do you remember if anything else was going on during that
20 period of time?

21 A: No, everything was fine. I mean, she had just gone over
22 there to play.

23 Q: There wasn't any other turmoil or going on ---

24 A: No.

25 Q: --- in your family or maybe your neighbor's family?

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1 A: No.

2 Q: No problems in your life at that time except for when
3 this came up?

4 A: There's always something going on but nothing, no,
5 nothing I remember that stands out, no.

6 Q: You said something about touching her where he shouldn't;
7 who said that?

8 A: Minor .

9 Q: What did she say exactly?

10 A: Well, she said Carlos has been touching me where he
11 shouldn't be, because I had always told her that nobody needed
12 to touch her where her bathing suit covered.

13 MR. CHRISCO: No further questions, Your Honor.

14 THE COURT: Redirect?

15 MR. SPRATLIN: No redirect, Your Honor.

16 THE COURT: All right. You may step down. Thank you,
17 ma'am.

18 State can call the next witness.

19 MR. SPRATLIN: The State would next call Ms. Jessica
20 Cerney to the stand.

21 THE COURT: All right.

22 MR. SPRATLIN: Your Honor, this witness will not be being
23 recalled. Under the rule of sequestration, may she remain in
24 the courtroom?

25 THE COURT: If she's not gonna be called -- recalled as a

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1 witness, any objection from the Defense?

2 MR. CHRISCO: Your Honor, I do not know at this time
3 whether she'll be recalled or not.

4 THE COURT: Okay. We'll need to sequester her then. But
5 we need to sequester her somewhere outside the presence of the
6 other jurors [sic] since she's already testified.

7 MR. SPRATLIN: Yes, sir.

8 THE COURT: Please come forward, ma'am.

9 JESSICA CERNEY, HAVING BEEN DULY
10 SWORN, TESTIFIES AS FOLLOWS:

11 CLERK: If you could just scoot to the microphone, state
12 your full name and spell your last name.

13 MS. CERNEY: Jessica Annette Cerney, C-E-R-N-E-Y.

14 DIRECT EXAMINATION OF JESSICA CERNEY BY MR. SPRATLIN:

15 Q: Ms. Cerney, I'm going to need you to speak up as much as
16 you can and need you to speak into that microphone so the
17 jurors can hear you.

18 How old are you?

19 A: How old am I?

20 Q: What's your age?

21 A: Thirty-three.

22 Q: And if you could, speak up again into that microphone.
23 I'm having a little trouble hearing you, so I know the Jury
24 probably is too.

25 A: Okay.

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- 1 Q: How old are you?
- 2 A: Thirty-three.
- 3 Q: Thirty-three, okay. What County do you currently live
- 4 in?
- 5 A: Horry.
- 6 Q: Horry. How long have you lived in Horry County?
- 7 A: Since -- well, '99, 2000.
- 8 Q: '99, 2000. Before that, where did you live?
- 9 A: I lived in a little town called Williamston.
- 10 Q: I'm sorry?
- 11 A: A little town called Williamston.
- 12 Q: Winston. Is that -- what state is that?
- 13 A: South Carolina.
- 14 Q: South Carolina. All right. How many children do you
- 15 have?
- 16 A: Three.
- 17 Q: Three. What's your oldest child's name?
- 18 A: Minor .
- 19 Q: What's Minor 's last name?
- 20 A: .
- 21 Q: And do you know Minor 's birthday?
- 22 A: Do what?
- 23 Q: Do you know Minor 's birthday?
- 24 A: Yes, December the th.
- 25 Q: What year?

1 A: .

2 Q: Okay. And what your second oldest child's name?

3 A: M. .

4 Q: M. . And what is M. 's birthday?

5 A: Her birthday is November th of .

6 Q: And you said you had three, so what's your youngest
7 child's name?

8 A: G. .

9 Q: G. ?

10 A: .

11 Q: , all right. And what's his date of birth?

12 A: August the of .

13 Q: 20 , okay. I wasn't sure if you meant '1 or '1 .

14 A: This is '1 , so it is 201 , sorry.

15 Q: Do you know the Defendant, Carlos Lopez?

16 A: Yes.

17 Q: How long have you known him?

18 A: Now, about ---

19 MR. CHRISCO: Your Honor, I'm having a hard time hearing
20 her.

21 THE COURT: All right. Please speak into the microphone.
22 There you go.

23 A: Okay. Around about five years or so.

24 Q: Five years. What's the nature of your relationship or
25 what was the nature of your relationship with Carlos?

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- 1 A: He was my boyfriend.
- 2 Q: Boyfriend. When did you two first start dating, about
3 what time?
- 4 A: When my friend introduced us.
- 5 Q: All right. Do you remember roughly -- I know it's hard
6 to remember.
- 7 A: I remember it was -- we were together for about two and a
8 half and it's been no more for two and so it -- I remember it
9 was the summertime.
- 10 Q: Okay. Do you remember about how old Minor was?
- 11 A: She was probably -- about maybe close to eight,
12 seven/eightish.
- 13 Q: And if you know, how old is the Defendant?
- 14 A: He's thirty-five, thirty-six.
- 15 Q: Now, at some point did you at any point back around 2011,
16 who all did you live with?
- 17 A: I lived -- it was me and M. and Carlos.
- 18 Q: And G. , he wasn't born yet?
- 19 A: No.
- 20 Q: Where did y'all live?
- 21 A: On Bay Street.
- 22 Q: And what city is that in?
- 23 A: It's Myrtle Beach.
- 24 Q: In what County or region?
- 25 A: Horry.

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1 Q: Horry County. How old was M. at the time when you
2 lived in the house with Carlos?

3 A: She was maybe three.

4 Q: Three years. Minor, your oldest daughter, where was
5 she living?

6 A: She was living with her grandmother. She would come and
7 visit me periodically you like on the weekends and she would
8 come and stay like sometimes she would stay for the week,
9 sometimes she would say just weekend, sometimes she'd stay
10 three days, four days.

11 Q: Okay. When did Minor come to live with her
12 grandmother and grandfather?

13 A: When she was, I believe, around six or seven.

14 Q: Why was that?

15 A: Because I didn't have a place to take her and stuff like
16 that.

17 Q: All right. So, you said Minor -- again, how often
18 would Minor come over to your place?

19 A: She would come -- I mean it changed every week. It was
20 for sure on the weekends when she was at school but sometimes
21 she would stay for the whole week, sometimes she would stay
22 for two days, three days. I mean, at one point she was
23 staying a lot and wanting to move in and then all of a sudden
24 she just -- it was less and less and I just -- I didn't
25 understand at the time.

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1 Q: Okay. Did you have a job around this time period that
2 you were living with Carlos?

3 A: Yes, I did actually. I worked for Walmart and then I
4 also worked for a temp agency and ---

5 Q: What -- I'm sorry. Go ahead.

6 A: And I worked full-time for Walmart and I also worked for
7 a temp agency called IHT just doing like banquets and stuff
8 and I was also in college full-time.

9 Q: All right. When, if ever, which you have to go to work
10 when Minor was over?

11 A: Sometimes, I mean, more times than not.

12 Q: When you would go to work when Minor was over, who
13 would watch Minor ?

14 A: Carlos would.

15 Q: Who else would be in the house with Carlos?

16 A: Just Carlos and the kids.

17 Q: How often do you think it happened that it was just
18 Carlos in the kids at home?

19 A: I would say at least a couple of times a week, two or
20 three times a week at least because whenever, you know, my mom
21 and them usually watch them but whenever she couldn't watch
22 them he kind of field in the gaps because, you know, it was a
23 crazy schedule, you know, with two jobs and going to school
24 full-time.

25 Q: What were you going to school for?

1 A: I was going for medical billing and coding.

2 Q: What if anything happened around March of 2012 that
3 caused you to be concerned about Minor and the Defendant?

4 A: Well, she just -- she just acted different like she at
5 one point she was wanting -- she was talking about wanting to
6 move in, move back home because she had been with grandma and
7 then all of a sudden she wasn't so sure she wanted to come
8 over and I would go and pick her up and start to bring her to
9 the house and we get almost home and she'd go, no, I want to
10 go back to grandma's, I want to go back to grandma's. And I'd
11 say no, it's okay, you just going to stay with us, I'll take
12 you back tomorrow if you want to go back tomorrow. If I'd
13 have known...

14 Q: Jessica, I think that's all the questions I have. Please
15 answer any questions that Mr. Chrisco might have.

16 A: Okay.

17 CROSS EXAMINATION OF JESSICA CERNEY BY MR. CHRISCO:

18 Q: Good afternoon. When you first heard this allegation,
19 who did you hear from?

20 A: Who did I hear about the whole thing with Carlos and
21 Minor ?

22 Q: Yes.

23 A: I heard it from my mom.

24 Q: What did you say?

25 A: I was in shock at first. At first, you know, I went

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- 1 through denial saying oh no. I ask her repeatedly I was like,
2 are you sure, are you sure it's not someone else. I named all
3 kinds of different names and everything and she just was so
4 sure and so stuck with that's who done it to her.
- 5 Q: Now, isn't it true that you said, they're going to put me
6 in jail, they're going to put me in jail?
- 7 A: Well, of course, I thought because ---
- 8 Q: Did you say that?
- 9 A: Yeah, because I had left my child with someone that hurt
10 her.
- 11 Q: That was your first reaction?
- 12 A: That wasn't my first reaction.
- 13 Q: Did you graduate from the records and billing?
- 14 A: No, not yet.
- 15 Q: How long does it take?
- 16 A: It takes around two years, two and a half years.
- 17 Q: How long had you been going at the time?
- 18 A: At the time, I had been going for around three semesters.
- 19 Q: And how many semesters does it go?
- 20 A: That's nine semesters -- or that's nine months --- three,
21 six -- yeah, nine months, give or take.
- 22 Q: How come Minor lived with her parents to start with?
- 23 A: Because at that -- at that ---
- 24 Q: That's your mother and your father?
- 25 A: No, my father is deceased.

- 1 Q: When did he die?
- 2 A: He died in 2007.
- 3 Q: And when -- when did your mother marry your stepfather?
- 4 A: The exact year I'm not sure but I know it was when
- 5 Minor was little.
- 6 Q: What she already staying with her mother at that point
- 7 when they got married or when they met each other?
- 8 A: They've been together since I was fifteen.
- 9 Q: You said 2007 is when your father died?
- 10 A: Yes, sir.
- 11 Q: They weren't married at the time?
- 12 A: No, they got divorced when I was twelve.
- 13 Q: So, what year was that?
- 14 A: In I believe like '92, '93, something -- somewhere right
- 15 in there.
- 16 Q: When did she marry your stepfather?
- 17 A: I'm not sure exactly when they got married. I know
- 18 Minor was younger.
- 19 Q: Six years, seven years?
- 20 A: No, I'm thinking more like maybe three, two, three,
- 21 because she was a flower girl.
- 22 Q: Were they going together at that time?
- 23 A: Who, my parents or my ---
- 24 Q: Your stepfather and your mother.
- 25 A: Yes.

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1 Q: At the time that this occurred?

2 A: Yes.

3 Q: But they were weren't married?

4 A: Yes, they were married at that time.

5 Q: So, they would've been married just before the alleged
6 instances happened; is that correct?

7 A: No, because the incident happened when she was nine and
8 they got married when she was two or three. I'm not sure on
9 the exact date because I wasn't very happy that my mother was
10 remarrying.

11 Q: I'm trying to follow along here. So, Minor was two
12 or three when your mother married your stepfather?

13 A: Right.

14 Q: So, was she living with ---

15 A: Me at the time. She was living with me.

16 Q: She was living with you. And she didn't go and live with
17 your mother until she was what?

18 A: Like maybe six, seven, somewhere around in there.

19 Q: Okay. Court's indulgence?

20 THE COURT: All right.

21 Q: When your other daughter first came -- excuse me. Did
22 you ever ask Minor who did it?

23 A: I did after I was told.

24 Q: What did she tell you?

25 A: She told me Carlos did it.

- 1 Q: Did she give you another name?
- 2 A: Well, her and my cousin, little cousin, had messed around
- 3 a little bit but besides that, no.
- 4 Q: She only gave you the one name?
- 5 A: The one name.
- 6 Q: She didn't give you any other names?
- 7 A: No.
- 8 Q: M. , that's your middle child?
- 9 A: That's my middle child.
- 10 Q: And she is how old?
- 11 A: Right now, at the present time, she's six.
- 12 Q: Six.
- 13 A: Six.
- 14 Q: And what was her last name?
- 15 A: Alvarez.
- 16 Q: And you've had another child since this happened?
- 17 A: Right.
- 18 Q: And the name escapes me right now. What is the child's
- 19 name?
- 20 A: G.
- 21 Q: G. . What is G. 's last name?
- 22 A: It's .
- 23 Q: Both names sound like Hispanic names, are they?
- 24 A: Two of them are, yes.
- 25 Q: At the time that you and Mr. Lopez, you had another old

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1 boyfriend that was hanging around at some point, did you not?

2 A: Not at the time I was with him, no.

3 Q: But during this time, there was never another person is
4 what you're saying?

5 A: Another Spanish man, no.

6 Q: Or any person?

7 A: Hanging around, I had friends that would frequently visit
8 but besides that ---

9 Q: Any of those friends that they used to be -- dated at one
10 point or another?

11 A: No.

12 Q: And you're sure about that?

13 A: I'm pretty positive. I don't believe -- when I was
14 dating him I wasn't dating anyone else.

15 Q: And there was never another person from the past hanging
16 around the house?

17 A: No.

18 Q: What about somebody named Virgil?

19 A: Virgil, he was my mechanic. He come around periodically.
20 He never was really -- I never dated him. He was nothing like
21 that. He was just a friend. I've known him for approximately
22 around about eleven years.

23 Q: At this time?

24 A: Well, eleven years now because she was one years old when
25 I met him.

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1 Q: So, that would've been somewhere around 2002?

2 A: Right.

3 Q: No further questions.

4 THE COURT: Redirect?

5 MR. SPRATLIN: No, Your Honor.

6 THE COURT: All right. You may step down.

7 MR. SPRATLIN: The State would next call Ms. Minor
8 to the stand.

9 THE COURT: All right.

10 Minor, HAVING BEEN DULY

11 SWORN, TESTIFIES AS FOLLOWS:

12 MR. CHRISCO: Your Honor, may we approach?

13 THE COURT: Yeah.

14 (REPORTER'S NOTE: A bench conference was held off the record
15 in the presence of the Jury but out of hearing of the Jury.)

16 CLERK: If you could speak into the microphone. State
17 your full name and spell your last name.

18 Minor : Minor , .

19 THE COURT: All right. Minor , how old are you?

20 Minor : I am twelve years old at the time.

21 THE COURT: Okay. How old are you now?

22 Minor : Oh, I still am twelve.

23 THE COURT: You're twelve years old?

24 Minor : Right now, yes.

25 THE COURT: All right. Now, you just took an oath to

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1 tell the truth, do you understand that?

2 Minor : Yes, sir.

3 THE COURT: Okay. Do you know the difference between
4 telling the truth and telling a lie?

5 Minor : Yes, sir.

6 THE COURT: Okay. Which should you do?

7 Minor : You should always tell the truth because a
8 lie will just get you in much more trouble than you are
9 already going to get into if you just tell the truth.

10 THE COURT: Okay. So, you understand that you are to
11 tell the truth?

12 Minor : Yes, Your Honor.

13 THE COURT: All right. Now, do you know what a lie is?

14 Minor : Yes, sir.

15 THE COURT: And what is a lie?

16 Minor : A lie is something that is not the truth,
17 that is fake.

18 THE COURT: Okay. And you understand that you're not
19 supposed to tell a lie now?

20 Minor : Yes, sir.

21 THE COURT: Okay. All right. I'm going to allow her to
22 testify.

23 Go ahead.

24 MR. SPRATLIN: Thank you, Your Honor.

25 DIRECT EXAMINATION OF Minor BY MR. SPRATLIN:

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- 1 Q: Minor , where do you go to school?
- 2 A: I go to Ocean Bay Middle School.
- 3 Q: What grade are you currently in?
- 4 A: I'm in sixth grade.
- 5 Q: Sixth grade. All right. Who do you currently live with?
- 6 A: I live with my grandfather and my grandmother.
- 7 Q: And what's your grandmother's name?
- 8 A: Susan Bagwell Hostetter.
- 9 Q: All right. And who else lives with you besides your
- 10 grandma and grandpa?
- 11 A: My younger sister M. .
- 12 Q: How old is M. now?
- 13 A: She right now is either six or five.
- 14 Q: Okay. All right. Besides MM. , do you have any other
- 15 brothers and sisters?
- 16 A: Yes, I have one brother named G. , who is eight months
- 17 old.
- 18 Q: He's eight months old?
- 19 A: Yes, sir.
- 20 Q: All right. Who does he live with?
- 21 A: He lives with my mother and her boyfriend named Ricky.
- 22 Q: Okay. As far as your mother goes, who is your mother?
- 23 Do you know her name?
- 24 A: Yes, Jessica Annette Cerney.
- 25 Q: Cerney. Back around 2011, who were you living with?

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- 1 A: At the time, I was living with my grandmother and my
2 grandfather and with my mom on the weekends.
- 3 Q: How often do you think you'd go over to your mother's
4 house?
- 5 A: About every weekend, sometimes like my mother said, I'd
6 stay longer or I had stayed for a week or something because of
7 grandma having to go to work or Poppa having to go to work
8 early in the morning and Grandma was out using her vacation
9 days.
- 10 Q: All right. Besides your mom, who else lived with your
11 mother?
- 12 A: Carlos.
- 13 Q: Carlos. All right. Do you know Carlos' last name?
- 14 A: Lopez.
- 15 Q: Lopez. All right. Did anybody else live with her mom
16 besides Carlos?
- 17 A: Yes. Periodically, Virgil and my sister.
- 18 Q: And your sister?
- 19 A: Yes.
- 20 Q: Okay. And occasionally someone named Virgil would stay
21 over as well?
- 22 A: Yes, sir.
- 23 Q: All right. How old was your sister back around 2011 when
24 your mom lived with Carlos?
- 25 A: At that time, either two or three; I'm still sketchy on

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- 1 that.
- 2 Q: Okay. She was younger?
- 3 A: Yes.
- 4 Q: All right. And how old were you?
- 5 A: I know for a fact I was nine and I was turning ten.
- 6 Q: Okay. When is your date of birth? When were you born?
- 7 A: December , 20 , at Conway Hospital.
- 8 Q: All right. Okay. Minor , would your mother always be
- 9 home when you were over there visiting with her mother?
- 10 A: No, sir. Sometimes, she was at work or it was very few
- 11 -- it was very unlike her to have to go to school during the
- 12 day, so she would usually be either at work, getting
- 13 cigarettes from the gas station or something like that.
- 14 Q: When she would leave the house, who would stay there with
- 15 you and your sister?
- 16 A: Carlos.
- 17 Q: Was anybody else there?
- 18 A: No, sometimes Virgil but that was very rarely.
- 19 Q: I'm gonna have to ask you some tough questions.
- 20 A: Yes, sir.
- 21 Q: When your mom would leave you alone, you and your sister
- 22 along with Carlos, would anything happen that would make you
- 23 feel uncomfortable?
- 24 A: Yes, sir.
- 25 Q: What would happen?

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- 1 A: What would happen is he would touch me and do things to
2 me that he should not have done.
- 3 Q: Okay. I need to think about the first time Carlos ever
4 did anything that he shouldn't have done to you. Can you tell
5 me as best you can when that was?
- 6 A: When that was, I do not know approximately.
- 7 Q: Okay. How old were you?
- 8 A: I was nine.
- 9 Q: You were nine. All right. And what did Carlos do?
- 10 A: What he did was he laid me down on the -- in front of our
11 entertainment center and he pulled down my pants and my
12 underwear and started licking and touching where he shouldn't.
- 13 Q: When you say licking and touching where he shouldn't,
14 specifically, Minor , where do you mean?
- 15 A: My vaginal area.
- 16 Q: How long did he do this for?
- 17 A: This -- that, I do not know, but I know for me it seemed
18 like five, ten minutes.
- 19 Q: Okay. You said he was licking and touching. What part
20 of his body was he using to touch your vagina area?
- 21 A: His hands.
- 22 Q: How did it feel to you when he was using his hands to
23 touch your vagina area?
- 24 A: It felt very weird and awkward and very uncomfortable.
- 25 Q: Did you ever feel any part of him go inside of you?

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- 1 A: At this particular incident?
- 2 Q: Yes, ma'am.
- 3 A: No.
- 4 Q: Okay. What did he do with his mouth?
- 5 A: He put his tongue in one of my vaginal holes and it felt
- 6 very weird, awkward, same as I said before.
- 7 Q: All right. When he was doing this, was he saying
- 8 anything to you?
- 9 A: No, but afterwards said he said don't tell your momma
- 10 afterwards because he heard my mother driving in.
- 11 Q: Did he say anything else to you?
- 12 A: He said something in Spanish a couple of days later that
- 13 I didn't -- that I didn't know what he was saying.
- 14 Q: Did he tell you not to tell your mom in English?
- 15 A: Yes.
- 16 Q: And did you tell your mom?
- 17 A: At that time, I did not but about a year later I did.
- 18 Q: Why didn't you tell her at that time?
- 19 A: Because I heard about stuff like this before and I heard
- 20 that they would say people would get you and, at the time, I
- 21 was very fond of horror movies and I thought something like
- 22 that would happen to me like in a horror film.
- 23 Q: Okay. When Carlos was touching you, what did you look
- 24 at?
- 25 A: Sir?

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Minor - DIRECT BY SPRATLIN

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1 Q: When Carlos was touching you, what did you look at?

2 A: I looked straight up or if I was in front of the TV I
3 would look at the TV so then I wouldn't look at him because I
4 didn't want to feel any more uncomfortable than already did
5 because that was weird enough just having that happened.

6 Q: And are you certain it was Carlos that was touching you?

7 A: Yes, sir. I am a hundred percent certain.

8 Q: Was this the only time that Carlos ever touched you?

9 A: No, and since the last time we've met, I've actually
10 remembered a couple of more times than just the four.

11 Q: Well, tell me about the next time you remember Carlos
12 touching you.

13 A: The next time I remember is actually it was at my mom's
14 and she was giving my younger sister a bath. So, she would --
15 she was in the bathroom helping my sister take a bath. I was
16 in -- she told me to go sit in there with Carlos because I had
17 just got done watching a scary movie and I was scared. And
18 she told me to go in there and then the next thing you know he
19 is entering his penis into my anus.

20 Q: Okay. Let me back up for a minute. What were you
21 wearing at this time?

22 A: My mom's old T-shirt that she told me she has had for a
23 couple of years.

24 Q: Were you wearing anything else besides that?

25 A: Yes, I was wearing underwear.

Minor

- DIRECT BY SPRATLIN

1 Q: You were wearing underwear. What time of day was it?

2 A: It was at night.

3 Q: At night. Okay. And what was your mom doing?

4 A: She was giving my younger sister M. a bath.

5 Q: And you said you went in the room with Carlos. Why did
6 you go in the room with Carlos?

7 A: Because after I watch a scary movie, I usually cannot
8 sleep, so she told me just go sit in there, he'll turn it to
9 cartoons or something like that to get your mind type of
10 things. And I went in there and then...

11 Q: All right. When you went in that room -- first of all,
12 what room of the house was it?

13 A: My mom's room, which was directly, directly, if you go
14 straight from her door is right across from the bathroom and
15 between the bathroom and my mom's room there's no halls in
16 that house, so it's the kitchen.

17 Q: When you went in, where was Carlos or what was he doing?

18 A: What he was doing right then is he was laying down in the
19 bed.

20 Q: Okay. When you came in, what did Carlos do?

21 A: What he did was I came in, sat down and then he told me
22 to come sit behind him in the bed and I said okay. And then
23 he pulled -- he got -- he pulled my waist on top of his
24 genital area and put -- brung his underwear down and then
25 started.

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1 Q: Okay. And you said you were wearing a T-shirt and some
2 underwear earlier.

3 A: Yeah.

4 Q: Did he do anything to your T-shirt or your underwear?

5 A: He brought my T-shirt down -- I mean my underwear down,
6 I'm sorry.

7 Q: And what about your T-shirt, did he do anything with
8 that?

9 A: No, sir.

10 Q: Okay. And now when you said he pulled you onto him, what
11 part of his body did he pull you onto?

12 A: His genital area.

13 Q: Okay. And by genital area, what exactly do you mean?

14 A: His penis area.

15 Q: Okay. How did that feel?

16 A: Sir?

17 Q: How did it feel?

18 A: It felt -- in all these incidents, it all felt very weird
19 and it felt just plain out uncomfortable in any way you can
20 say that.

21 Q: What, if anything, did he do with his genital area?

22 A: He entered it into my anus.

23 Q: How long does that go on for?

24 A: About until my mom said, Minor , it's time to go back into
25 the room now, Maddie is done with her bath.

Minor

- DIRECT BY SPRATLIN

1 Q: And then what happened?

2 A: And then he pushed me off of his penis as quick as he
3 could and then I put up -- pulled up my underwear and just
4 went to my room.

5 Q: Now when he put his penis inside of your anus, did he do
6 anything with it?

7 A: Yes, he increased and decreased speed continuously.

8 Q: How long do you think this lasted for?

9 A: About three, four, five minutes.

10 Q: Did you tell your mom what he just did?

11 A: No.

12 Q: Why didn't you?

13 A: At that time, no.

14 Q: Why didn't you tell your mom?

15 A: Because I was scared that somebody would try and get me
16 like the bad people or the boogie man or Jason or Freddy or
17 something like that.

18 Q: Is there another time that you remember Carlos touching
19 where he shouldn't?

20 A: Yes. I remembered that my mom just went out to get some
21 cigarettes at the gas store -- gas station and I just got --
22 she said, Minor , I have to go get cigarettes really quick,
23 stay here with Carlos. So, I stayed there with Carlos and
24 then he brought -- and I was wearing my usual jeans, T-shirt
25 and shoes or tennis shoes and he brought me -- he told my

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1 sister to go play with Barbies in our room and then he put --
2 he said stand right here, which was up against the kitchen --
3 one of the kitchen walls where nobody could see at all what
4 was going on except for my sister who was just playing with
5 Barbies in front of the TV.

6 Q: And how old is your sister around this time again?

7 A: Three or two.

8 Q: And then what happened when Carlos had you stand against
9 the wall?

10 A: He pulled down my pants and my underwear and he unzipped
11 his pants and tried to put his penis in my vagina.

12 Q: Was he able to get his penis fully in your vagina?

13 A: Only a little bit but then he heard my mom honk the horn
14 to come and get the groceries out the car because she went to
15 go get groceries too. And then he stopped all of a sudden and
16 I had to pull my pants back up and rush out there as quick as
17 I could.

18 Q: Are there any other times that you remember Carlos doing
19 something he shouldn't have done?

20 A: I remember that he did. He wasn't supposed to or have
21 shown me.

22 Q: What did he show you?

23 A: Were watching TV in my mom's living room and he had this
24 Mexican show on because he always watched it and it was -- he
25 said, Minor , look. And I looked and then there was a woman

Minor

- DIRECT BY SPRATLIN

1 getting undressed on the TV and he just had me watching it for
2 no reason and I didn't understand at the time what it was or
3 anything.

4 Q: Besides the three times you already told us, the
5 entertainment center, in the kitchen and in your mom's
6 bedroom, were there any other times that Carlos touched you
7 somewhere he shouldn't have?

8 A: That I remember, no, sir.

9 Q: Minor , when Carlos was touching you like this what
10 were you doing?

11 A: Usually, I would just look up or look past him to make
12 myself not start screaming or doing something like that.

13 Q: What about your sister? Was anyone else ever around when
14 this happened?

15 A: No. Besides our dog then, at the time that we had to get
16 rid of then, no, no, sir.

17 Q: So, you had a dog?

18 A: Right. His name was Zeke.

19 Q: Minor , why didn't you ever tell your mom what was
20 going on?

21 A: Because I was scared that somebody or something would
22 come and get me and take me away and do something much more
23 horrible to me like, for instance, Chucky, I was scared that
24 he would come and get me and kill me or kill me when I was
25 asleep.

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1 Q: Did he ever say anything to you when all this was going
2 on?

3 A: Besides don't tell your momma and something that he said
4 in a angry tone in Spanish, no.

5 Q: And you don't speak Spanish?

6 A: No, not at the time I didn't. I didn't speak it fluently
7 unlike now.

8 Q: When all this happened, how old were you?

9 A: I was nine, turning ten.

10 Q: And you are how old now?

11 A: I am twelve years old, about to turn thirteen in
12 December.

13 Q: Okay. And you've been in school pretty much since that
14 time?

15 A: Yes, except for appointments.

16 Q: And in all these events you described, they occurred at
17 your mom's house?

18 A: Yes, sir.

19 Q: And they occurred when you were around nine going on ten?

20 A: Yes, sir.

21 Q: Minor , do you know what city your mom lived in?

22 A: She lived in Myrtle Beach, South Carolina, on Bay Street.

23 Q: All right. Thank you, Minor ; I have no further
24 questions. Mr. Chrisco is going to ask you some questions;
25 please answer any questions he has.

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1 A: Okay.

2 THE COURT: Cross examination?

3 MR. CHRISCO: Thank you, Your Honor.

4 CROSS EXAMINATION OF Minor BY MR. CHRISCO:

5 Q: Hey.

6 A: Hello.

7 Q: Those two instances were the only two instances of the

8 ---

9 A: Of the sexual assault?

10 Q: Uh-huh (affirmative response).

11 A: There were more ---

12 Q: Sexual assault?

13 A: Yes. But since ---

14 Q: Is that phrase you use all the time?

15 A: No, it's -- but I've been thinking that even though I am

16 older and I am more sophisticated now, I shouldn't be using

17 the language that I used to so I decided to go -- because I

18 usually talk like this, though.

19 Q: So, were there any other instances?

20 A: Yes, there were a lot more and the time -- at the time I

21 only thought of them that I realized it was from that time in

22 October till New Year's Eve of that year.

23 Q: You said earlier when the prosecutor was asking you

24 questions the -- you mentioned the entertainment center.

25 A: Yes, sir.

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1 Q: You said that about a year later you talked with her
2 mother about that ---

3 A: Not that specific incident. I said that, well, Carlos
4 did that to me -- did something.

5 Q: Was this after the police had come investigated or was
6 this before?

7 A: This was before the police came to our house.

8 Q: You said that the incident happened in October 2011.

9 A: Yes, sir.

10 Q: A year after that would've been at least October 2012.

11 A: Right. But by year later, I mean, just next year, not a
12 whole entire 365 days. I mean, I told my mom in early April,
13 late March.

14 Q: This was before you sat on the face of your cousin?

15 A: Excuse me?

16 Q: Was this before you sat on the face of your cousin?

17 A: Yes, but I did not sit on his face.

18 Q: What did you do?

19 A: What I did was, we were playing a game where my sister,
20 at the time she was looking for us and we decided to be a team
21 that time. We were back behind his little Thomas the Train
22 bed. We were -- and it was about this far from about that far
23 from the wall and for both hiding there and I was like -- I
24 said, L, , can you move so I can get out because she found
25 us -- she found me because my head was sticking up since I'm

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1 so tall. And then, that's whenever Sierra was like you're
2 doing something inappropriate and I went over to my grandma's.
3 I told her that Carolos has been touching me -- had been
4 touching me inappropriately.

5 Q: Can I stop you for just a minute?

6 A: Yes, sir.

7 Q: Was it you that went to your grandmother's house is it
8 you're aunt that went over there?

9 A: Both me and my aunt.

10 Q: Well, she was screaming and hollering?

11 A: Yeah, she was screaming and hollering while she was
12 running over there.

13 Q: You ran right with her?

14 A: I was walking right behind her.

15 Q: So, she got there first?

16 A: Yes.

17 Q: But you said your mother knew about it before this?

18 A: Before this incident? This is before I even told anybody
19 what happened between me and Carlos. I'm not saying that what
20 people have told you before me is entirely false, it's just
21 that before I told them what went on between me and Carlos, my
22 aunt took me over to my grandmother's.

23 Q: You were wearing your mother's T-shirt. Why were you
24 wearing your mother's T-shirt?

25 A: Because at that time our laundry, our dryer and washer,

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1 for some reason weren't working or were broke and ---

2 Q: How long were they broken and wouldn't work?

3 A: At that time -- I don't approximately know since it was
4 so long ago but the reason why I was wearing my mother's T-
5 shirt was because I didn't have any pajamas that were clean so
6 that I could wear them.

7 Q: This was -- you were wearing the T-shirt at the
8 entertainment center, right? That's what you testified to.

9 A: Yes.

10 Q: Did you give a statement to someone about what had
11 happened?

12 A: During what was going on during that timeframe?

13 Q: Yes.

14 A: Of the incidents, no, because I was -- like I said, I was
15 scared that somebody would come and hurt me in any way, shape
16 or form.

17 Q: I'm talking about the police.

18 A: The police came ---

19 Q: When the police got there, you gave a statement to the
20 police?

21 A: Yes, I did. I was confused on what timeframe you were
22 asking.

23 Q: And, did you tell this directly to the police?

24 A: At first, I told my mom -- my grandmother, and the end
25 she called the police. I talked to the policeman and he and

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1 he said he'd do -- he'd do something about it.

2 Q: When, your aunt caught you with the inappropriate
3 behavior, she was really upset, was she not?

4 A: Yes, sir.

5 Q: That's the reason she ran over to her mother's house to
6 tell her about the inappropriate behavior?

7 A: Yes, sir.

8 Q: Isn't it true that you were just trying to pick somebody
9 out and blame them for something?

10 A: No, sir. Cause I am a hundred percent sure that Carlos
11 did this to me. I know that at the time my mom was not dating
12 anybody else or seeing anybody else. And I know that nobody
13 else would do that to me who I know, that I know as well as I
14 used to know Carlos. So, I am beyond a hundred percent
15 positive that Carlos did this to me and nobody else.

16 Q: Are you an artist?

17 A: Yes.

18 Q: Are you a good artist?

19 A: To myself, for singing, yes, but for certain things like
20 writing, then no.

21 Q: Just the art, you're good at that?

22 A: Yes, sir.

23 Q: Well, who taught you to be like that?

24 A: By like -- be like what?

25 Q: Who taught you? Did you have some famous artist to come

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- CROSS BY CHRISCO

1 in and teach you or ---

2 A: No, it came naturally from my father because he was --
3 he's a magnificent, I mean magnificent artist.

4 Q: You taught yourself?

5 A: Yes, I taught myself by online how-to guides and online
6 pictures and learning how to trace. And then it just came
7 after that, pretty much. It was always natural.

8 Q: In fact, you have said that no one could teach you
9 because you learn better by yourself.

10 A: True.

11 Q: You told -- after the police got involved, you talked
12 about everything that happened?

13 A: Yes, but not with my parents. I talked about talked to
14 it with the lady at the pink house named Natalia.

15 Q: And that was ---

16 A: After the police.

17 Q: And how long did that last?

18 A: That lasted about an hour and thirty-nine minutes, five
19 seconds.

20 Q: That's exactly how long it was; how do you remember this?

21 A: We just watched the video a couple -- a couple of weeks
22 ago.

23 Q: You just watched it?

24 A: Yes, to refresh my memory.

25 Q: Well, there's a lot of things you said here today that's

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Minor - CROSS BY CHRISCO

1 -- was in the video but I have not hear from you today. Why
2 is that?

3 A: Because back then, over the weeks, I get my mind bundled
4 on many things, like tests, studying, quizzes, our Benchmark,
5 and my head gets full with all this stuff that I have to
6 prepare for that some of the stuff gets blocked out and that
7 those are the ones that I remember that were the main ones.

8 Q: Well, don't you think two years ago is probably closer in
9 time to the alleged instances than today is?

10 A: Could you please rephrase that?

11 Q: Two years ago was two years closer to the alleged
12 instances that you allege against Mr. Lopez; is that not
13 right?

14 A: That is.

15 MR. CHRISCO: Your Honor, I want to play the video.

16 THE COURT: Well, finish cross examination.

17 MR. CHRISCO: Court's indulgence.

18 THE COURT: All right. Wait a minute. Let me see the
19 attorneys for a second.

20 (REPORTER'S NOTE: A bench conference was held off the record
21 in the presence of the Jury but out of hearing of the Jury.)

22 BY MR. CHRISCO:

23 Q: In the video, you never mentioned anything about the
24 entertainment center?

25 A: Correct. You are correct but since Mr. Martin here has

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1 told me to think about more incidents that happened ---

2 Q: Told you what to testify to?

3 A: No, he didn't tell me exactly what to testify to. He
4 said just try and remember more. I'm not trying to get him in
5 trouble or anything but -- and I don't ---

6 Q: You're not.

7 A: Okay. I was scared about that part. But also, that also
8 reminded me about whenever I talked about the wall part, it
9 reminded -- I remembered about the entertainment center
10 because it popped up in the middle of class one day in my
11 head.

12 Q: Well, in the video, you talk about wearing your mother's
13 T-shirt because the washer and dryer are both broken. And
14 then you talk about it with the entertainment center.

15 A: Correct. But not in the video, those are the main ones I
16 decided, since there were so many that I should mostly the
17 focus on the main because those are the most important and the
18 ones that I remember the most exact details of.

19 Q: So, you watched the video before you came in here?

20 A: Today?

21 Q: You knew exactly what was on the video.

22 A: Today, I did not watch it. It was a couple of weeks ago
23 and over the course of weeks I have so many things piled onto
24 my mind.

25 Q: You told the lady on the video that he had put his finger

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1 inside your private.

2 A: Yes.

3 Q: And that he pulled it out quickly when he heard your
4 mother coming.

5 A: Yes, sir.

6 Q: And then two minutes later, you tell the lady on the
7 video that he put his private part into your private part and
8 he pulled it out when he heard your mother coming.

9 A: That is true.

10 Q: Well, which was it?

11 A: Which private part?

12 Q: No. Was it his finger or was it his private part that he
13 pulled out?

14 A: Those were two totally -- you have them confused. They
15 were two totally different incidents, I mean ---

16 Q: Not according to the video there wasn't. According to
17 the video, they were the same exact circumstances. Do you
18 deny saying that?

19 A: I deny saying that they were both the same incident.

20 Q: If you told the lady that it was his finger and then you
21 told the lady that it was his private part ---

22 A: Yes.

23 Q: --- and it pertains to the same incident.

24 A: I know I said that but at that time I didn't really
25 understand that they were two -- because at that time I just

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1 remembered -- I remembered them all at that time and ---

2 Q: The only thing the lady asked you to do was describe what
3 happened; that's all she asked you to do.

4 A: Right. And those were two totally different incidents
5 and now you're getting me confused and it's starting to get
6 very confusing for me.

7 Q: So, you deny saying that?

8 A: I do.

9 MR. CHRISCO: Your Honor, I think we should play the
10 video.

11 MR. SPRATLIN: No objection from the State, Your Honor.

12 THE COURT: Okay. How long will it take to get that set
13 up?

14 MR. SPRATLIN: Your Honor, it is about an hour and a half
15 the video. I'll have to get the projector here.

16 THE COURT: Well, and gentlemen, it's gonna take a while
17 for us to get this set up. I'm gonna excuse you back to the
18 jury room for just a few minutes. Please do not discuss the
19 case even among yourselves at this point in time. Okay? I'll
20 excuse you back to the jury room and we'll bring you back in a
21 just a few minutes. Thank you very much.

22 (REPORTER'S NOTE: Jury exits courtroom. 4:44 P.M. The
23 following takes place outside the presence of the Jury.)

24 BY THE COURT:

25 THE COURT: All right. Mr. Chrisco, are you wanting to

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1 play the whole video or just that portion where she makes the
2 inconsistent statement? I mean, it's like a deposition, you
3 don't have to publish the whole deposition if you can zero in
4 on the ---

5 MR. CHRISCO: We can do it either way, Your Honor. We
6 can go to that ---

7 THE COURT: Well, it's your witness. What do you want to
8 do? I mean, if you're using it as a prior inconsistent
9 statement, that's the only way it comes in at this point in
10 time and so it's kind of like a video deposition and so I
11 didn't know if you want ---

12 MR. CHRISCO: Well, I can do it -- I can do it like that
13 and do it one piece, one piece at a time, it's just gonna take
14 longer that way than to actually go to it. If we start in the
15 morning, Your Honor, since it's going to take a few minutes to
16 set this thing up? And also, it's going to be a lengthy
17 process.

18 THE COURT: Well, I can do whatever y'all want to but
19 we've got a witness here who can't talk about her testimony
20 and if you're talking about breaking overnight, you're running
21 the risk of her discussing her testimony with someone.

22 MR. CHRISCO: I'm not worried about that, Your Honor.

23 MR. SPRATLIN: Your Honor, I'll admonish all my witnesses
24 to not discuss their testimony with anyone.

25 THE COURT: Okay.

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1 MR. CHRISCO: I've got enough on the record, Your Honor
2 that I'm not worried about that.

3 THE COURT: Okay. So, we want to start it up in the
4 morning?

5 MR. SPRATLIN: Yes, sir, Your Honor. The State has no
6 objection to the entire video being played if that's what Mr.
7 Chrisco would like to do.

8 THE COURT: Okay. All right. Well, let's go ahead, let
9 me bring the Jury in and we'll break for the evening and we'll
10 start tomorrow morning.

11 Minor , what the law requires is since you are still
12 testifying at this point in time you cannot discuss your
13 testimony with anybody.

14 Minor : Yes, sir.

15 THE COURT: You can't discuss it with any lawyers or with
16 your momma or your grandmomma or your brothers or sisters.
17 Anything that has happened here today you can't discuss with
18 anyone; do you understand that?

19 Minor : Yes, sir. Is it okay, 'cause my dad calls
20 me every day, is it okay if I just told him I was in court
21 today?

22 THE COURT: You can say you were in court but don't say
23 what it was about what you were talking about. Okay?

24 Minor : Okay. 'Cause he knows what it's about but
25 he doesn't know what happened.

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1 THE COURT: Okay. Well, don't tell him anything you said
2 but don't tell them anything that was said during court today.
3 Okay?

4 Minor : And also, on my half of the spectrum here, I
5 personally would not like the video to be played on my
6 personal opinion.

7 THE COURT: Okay. Well, I understand that but there are
8 certain matters that we have to get into. Okay?

9 Minor : Okay.

10 THE COURT: All right. Just stay seated right there for
11 right now.

12 Minor : Yes, sir.

13 THE COURT: Let's go ahead and bring the Jury back in.

14 (REPORTER'S NOTE: Jury enters courtroom. 4:47 P.M.)

15 THE COURT: Ladies and gentlemen, welcome back. I
16 discussed some scheduling issues with the attorneys and given
17 the time of day and how long it's gonna take to setup is
18 recorder so that we can play this cassette you with this disc
19 for you, it's gonna take a while, so we're gonna go ahead and
20 break for the evening and started up that tomorrow morning.
21 So, I'm going to excuse for the evening. Please be back in
22 the jury room at 9:15 -- Do they report back downstairs?

23 MR. BAILIFF: Downstairs.

24 THE COURT: All right. Downstairs at the panel room at
25 9:15 tomorrow morning And we'll try to get started it's

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1 probably around 9:30 that he could be fair, that'll give you
2 an opportunity to get some coffee or whatever the case may be.
3 So, I'm gonna excuse you until 9:15 tomorrow morning. I
4 caution you again do not discuss this case even among
5 yourselves at this point in time, it's too early for
6 deliberations. Don't conduct any independent investigations,
7 don't go looking in the newspaper or on the Internet or trying
8 to find out anything about the case. I hope everybody has
9 good evening and we'll see you back at 9:15 tomorrow morning.
10 Thank you very much.

11 (REPORTER'S NOTE: Jury exits courtroom. 4:51 P.M.)

12 THE COURT: All right. Minor , you can step down.
13 Anything from the State before we recess?

14 MR. SPRATLIN: No, Your Honor. The State will get the
15 projector and a computer prepared to play that statement in
16 the morning. Now, the State has not redacted anything out of
17 that statement including the admonishments of truth, which is
18 technically, under case law that came out Kromah states that
19 what is being introduced through the forensic interviewer, you
20 cannot include the part about the truth or that the child to
21 be admonished to tell the truth during the course of the
22 interview. For the purposes of a prior inconsistent
23 statement, I don't know if the same concerns are present. I
24 can start it late but I haven't had time -- what I normally do
25 when we introduce a statement like this, Your Honor, is

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1 actually go through listen to it, listen for any indication
2 that the forensic interviewer is telling the child's tell the
3 truth. And then I take that portion out using video editing
4 software in order to comply with Kromah. I haven't,
5 obviously, done that in this case and that one of the reasons
6 I didn't want to or did not plan on playing that video because
7 of the burdensome task of redacting that video.

8 THE COURT: All right. Well, this is what we're gonna
9 need to do. I don't know how long it takes to redact, how
10 long it takes to play or whatever the case may be but you and
11 Mr. Chrisco get together, go over the video, you identify what
12 parts you want played.

13 MR. CHRISCO: The part that he's talking about is just
14 right at the first and then it stops.

15 THE COURT: Well, still, the two of y'all get together,
16 whether you want to play the whole video or whether you only
17 want a portion of it. Now, as I understand the rules, you can
18 bring out the part that is the prior inconsistent statement.
19 Then, Mr. Spratlin, it's up to you if you want the whole --
20 it's just like a written deposition. If you want to publish
21 the whole thing, you can publish the whole thing to get the
22 proper context. But, the first thing, Mr. Chrisco, you're
23 going to need to decide is what portion is it because it's --
24 it's not coming in except as a prior inconsistent statement.
25 It's just like a prior deposition or a statement given by her

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1 that you are saying differs from her current testimony and
2 that's the reason it's coming in at this time. So, I would
3 seem to think that it would be limited to that portion that
4 dealt with the inconsistent testimony. Now ---

5 MR. CHRISCO: Therein lies the problem, Your Honor,
6 because when she goes back and revisits and revisits and
7 revisits, the stories begin to change.

8 THE COURT: Well, that's what I'm saying is you need to
9 -- I don't know what questions you have remaining of her or
10 anything of that nature. You may very well want the whole
11 thing in there but it doesn't come in as a prior inconsistent
12 statement until she denies testifying that way and then you
13 play the inconsistent portion. You understand what I'm
14 saying?

15 MR. CHRISCO: Yes, Your Honor.

16 THE COURT: So, I think it's gonna require you to sit
17 down and go over that video since it has not been transcribed,
18 you're gonna have to sit down and go through that to determine
19 because I don't know what portion she's testified to that's
20 inconsistent with the video. I do know the one portion you
21 asked her deals with whether it was one or two incidences and
22 she denied telling the forensic interviewer that it was one
23 incident and that is the portion that we're limited to and
24 we're talking about now.

25 MR. CHRISCO: That portion can be as much as ---

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1 THE COURT: Well, and it may be.

2 MR. CHRISCO: --- twelve to sixteen minutes.

3 THE COURT: It may be. I don't know. I don't know
4 because I haven't seen the video and I don't know in what
5 frame the interview took place, so I don't know. It's just
6 like on a written deposition, it can be twenty pages or it can
7 be three paragraphs on one page. So, I don't know. All
8 right?

9 MR. CHRISCO: I'll get with Mr. Spratlin.

10 THE COURT: All right. Anything from the State before we
11 recess?

12 MR. SPRATLIN: No, Your Honor. The State is prepared to
13 sit down with Mr. Chrisco and go over this video at his
14 convenience.

15 THE COURT: All right. Anything from the Defense before
16 we recess?

17 MR. CHRISCO: No, Your Honor.

18 THE COURT: All right. I've got the Jury coming in at
19 9:15. They'll get a cup of coffee. I don't know if they'll
20 have anything for them to eat or not, but I want this up,
21 ready to go at 9:30 when we come in. Okay?

22 MR. SPRATLIN: Yes, sir.

23 THE COURT: All right. We'll see you tomorrow morning
24 the end.

25 MR. CHRISCO: Thank you, Your Honor.

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BY THE COURT

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1 (RECESS - 4:56 P.M.)

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

3 APRIL 15, 2014

4 (On the Record - 9:36 A.M.)

5 BY THE COURT:

6 THE COURT: All right. We've got a few matters we need
7 to address with the attorneys first. We got word this
8 morning, Juror Number 200, Susan B. Johnston, her husband
9 called, she had to go to the hospital last night, so she's not
10 gonna be with us. So, we'll need to seat one of the
11 alternates. So, Susan B. Johnston -- All right.

12 MR. CHRISCO: So, Juror 230 will take her place?

13 THE COURT: No, in criminal cases -- in civil cases, it
14 just goes to the first alternate and second alternate. I
15 think criminal cases, I have to put the two alternates in a
16 hat and draw at random is the way -- I know there's a
17 difference between General Sessions and Common Pleas. And so,
18 what I'm doing is I'm putting Juror Number 230, which would be
19 Theresa M. Macanas on one sheet of paper and then Juror Number
20 77, Leonardo Colletta on another sheet of paper. All right.
21 Who wants to pick? We'll let the Clerk pick. Okay?

22 MR. SPRATLIN: Yes, sir, Your Honor.

23 MR. CHRISCO: They why do they call it the first
24 alternate and the second alternate if you've got -- why don't
25 you just call them alternates?

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BY THE COURT

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1 THE COURT: I don't know. I just know that -- well, I
2 know the first alternate is seated in a civil case and then
3 the second alternate is seated if needed in a civil case. But
4 for some reason they say, it's by statute, alternate jurors in
5 General Sessions cases or criminal cases, you have two
6 alternates, three alternates, four alternates, however many
7 alternates but when you need on, you select them at a random.

8 MR. SPRATLIN: Never had this happen.

9 THE COURT: All right. Which is turns out that Juror
10 Number 230, Theresa M. Macanas, is the alternate, is the one
11 that will be seated. We will seat her.

12 MR. CHRISCO: Which alternate was the one that couldn't
13 be here -- what number was the one ---

14 THE COURT: Juror Number 200, Susan B. Johnston. Isn't
15 that correct? Yeah, Susan B. Johnston. Said her husband
16 called this morning and he had to take her to the hospital
17 last night with stomach bleeding or something of that nature,
18 internal bleeding of some form, so she had to go to the
19 hospital and she's in the hospital now. He took her last
20 night and called this morning. So, we've got Theresa M.
21 McInnis. I'm going to mark this as Court's Exhibit Two.

22 COURT'S EXHIBIT NUMBER TWO

23 MARKED FOR IDENTIFICATION

24 THE COURT: All right. Also, I got word from the Bailiff
25 that one or more, I don't know how many, of the jurors wanted

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1 to know if they could take notes. So, I'm gonna allow them to
2 take notes, but I am going to give them some instructions on
3 note taking and things of that nature. I understand he's
4 getting the pads and the pencils or writing utensils for them
5 now. I don't know if he's got them now.

6 But where do we stand here, are we ready to go forward?

7 MR. SPRATLIN: Your Honor, we're ready to the play the
8 video. We premarked it as Defense One, just for the record,
9 when the Jury comes out, the Defense attorney can move that
10 into evidence, they have no objection to it. I have the
11 equipment here to play it.

12 MR. CHRISCO: I've got a different take on this.

13 THE COURT: Okay.

14 MR. CHRISCO: The Court yesterday said that he could
15 play the inconsistent statement.

16 THE COURT: Right.

17 MR. CHRISCO: After reviewing the whole complete one hour
18 thirty-nine minutes and five seconds of the tape, I would
19 submit to the Court that the entire video is an inconsistent
20 statement as to what she testified to yesterday.

21 MR. SPRATLIN: And I have no objection to -- we can play
22 the whole thing.

23 THE COURT: Okay. Well, is that what we want to do is
24 play the whole thing at this point in time?

25 MR. SPRATLIN: Yes, sir. There is -- the first seven-

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1 and-a-half minutes of it in which the interviewer discusses
2 the importance of telling the truth. The fact that the room
3 they're in is called the truth room and the fact that in the
4 room you only have to tell the truth. Now, per State v
5 Kromah, I don't have the cite handy with me but it's a case
6 that came out in January of 2013 that says that you cannot
7 have an interviewer, forensic interviewer testify that a child
8 was told to tell the truth or that a child was admonished to
9 tell the truth or that a child in her opinion told the truth,
10 as that is improper bolster. To that end, I would just submit
11 to the Court we can start at the seven-minute-thirty mark if
12 that's acceptable to the Defendant. If they wish to waive
13 that issue, I can start it at the beginning, whichever he
14 would like to do.

15 MR. CHRISCO: Your Honor, I think in the interest of
16 finding -- just playing everything out for a jury to decide,
17 play the tape from the very beginning to the very end.

18 THE COURT: Okay. So, you waive any exclusions that are
19 mandated by statute.

20 MR. CHRISCO: Yes, Your Honor. Your Honor, has already
21 gone through those with -- in front of the Jury with the
22 witness yesterday. This is just the interviewer going through
23 those same procedures with her.

24 THE COURT: All right. Is that agreeable with the State?

25 MR. SPRATLIN: Yes, sir.

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1 THE COURT: All right. So, we -- everybody is in
2 agreement that at this point in time we can play the entire
3 tape which will be marked -- do you want that marked as
4 Defendant's Exhibit One? Mr. Chrisco, is that how you want it
5 introduced?

6 MR. CHRISCO: It will -- well, I'm gonna get it in
7 through the inconsistent statement.

8 THE COURT: Okay. So, it might be -- how do we that if
9 he uses a deposition as prior inconsistent statement. I'm
10 trying to think.

11 MR. SPRATLIN: We would still mark it as Defense exhibit.

12 THE COURT: Yeah, we'll still put it as Defense Exhibit
13 One since you're tendering it into evidence as the
14 inconsistent statement. Okay.

15 THE COURT: All right. Anything from the State before we
16 bring the Jury in?

17 MR. SPRATLIN: No, Your Honor. Prior to the Jury coming
18 in, should the witness resume the witness stand?

19 THE COURT: Yeah, since it's cross examination, if she
20 would come on and when we bring -- when we bring the Jury in,
21 I'm gonna have you put her under oath again, okay.

22 If you'd please just have a seat right there. Thank you,
23 ma'am.

24 All right. Anything from the State before we bring the
25 Jury in?

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1 MR. SPRATLIN: No, sir, Your Honor.

2 THE COURT: Anything from the Defense?

3 MR. CHRISCO: No, Your Honor.

4 THE COURT: All right. Let's get -- has the disc already
5 been marked for identification?

6 MR. SPRATLIN: Yes, sir, Your Honor, it has. I premarked
7 it with the Court Reporter, I think Mr. Chrisco did.

8 THE COURT: And do we want to go ahead and put it in
9 evidence now by stipulation?

10 MR. CHRISCO: Yes, Your Honor.

11 MR. SPRATLIN: No objection.

12 THE COURT: All right. So, Defendant's Exhibit One is
13 admitted into evidence without objection.

14 MR. CHRISCO: May we approach, Your Honor?

15 THE COURT: Yes.

16 (REPORTER'S NOTE: A bench conference was held off the record
17 outside the presence of the Jury.)

18 MR. CHRISCO: Your Honor, I think that I will take her
19 statement where she says it was only one, but it was more than
20 one, it's an inconsistent statement to two things that she
21 said and I would go from fifteen minutes and thirty-five
22 seconds to twenty-nine minutes and thirty-seven seconds.

23 THE COURT: Say that again. Fifteen minutes ---

24 MR. CHRISCO: Fifteen minutes and thirty-five seconds to
25 twenty-nine minutes and thirty-seven seconds.

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1 THE COURT: Fifteen-thirty-five -- so that's the only
2 part ---

3 MR. CHRISCO: That's the only part so far, Your Honor.
4 She's denied this one. Then we'll play that one and we'll go
5 forward with another one.

6 THE COURT: Is that agreeable with the State?

7 MR. SPRATLIN: Your Honor, if we're gonna wind up
8 basically playing the entire video anyway, the State would
9 just prefer to go ahead and play the entire video. I think
10 Mr. Chrisco's concern is his last close and by introducing the
11 Defense exhibit into evidence -- I would agree that we don't
12 introduce it into evidence but we can just play the video for
13 the Court or the Jury if that's amenable to the Court.

14 THE COURT: So, in other words, you're gonna let him play
15 the whole video but not count it as an exhibit that would deny
16 him closing?

17 MR. SPRATLIN: I'd rather do that than break the video up
18 and piecemeal in evidence -- let Mr. Chrisco do what he did
19 yesterday which is ask the question, she denies it and he
20 plays that, and if he's gonna do that with each and every one
21 of the statements anyway, it would be probably be better just
22 to go ahead and play it.

23 THE COURT: Mr. Chrisco, how do you want to handle it?

24 MR. CHRISCO: If that's agreeable with the State, I will
25 proceed as he said.

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1 THE COURT: Okay. So, we'll go ahead and put it in as an
2 exhibit with consent of the parties but the State will still
3 allow the Defense, assuming you do not put up any other
4 evidence ---

5 MR. CHRISCO: That's correct.

6 THE COURT: --- to close last. Correct?

7 MR. SPRATLIN: And just for convenience sake, if it would
8 be easier for the record to mark it as a Court's exhibit, that
9 may be preferable.

10 THE COURT: All right. I guess that's probably what we
11 do with depositions. So, that would be -- let's -- can you
12 change that? Rather than call it Defense Exhibit One, we'll
13 put that as Court's Exhibit Number -- it will be three.
14 That's Court's Exhibit Three.

15 COURT REPORTER: Yes, sir.

16 THE COURT: Okay. All right. So, that's Court's Exhibit
17 Three.

18 COURT'S EXHIBIT NUMBER THREE

19 MARKED FOR IDENTIFICATION

20 THE COURT: Anything from the State before we bring the
21 Jury in?

22 MR. SPRATLIN: No, Your Honor.

23 THE COURT: Anything from the Defense?

24 MR. CHRISCO: No, Your Honor.

25 THE COURT: All right. Let's bring the Jury in.

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1 What we're gonna do is when we bring them back in, I'm
2 gonna go ahead and have the Clerk put the witness under oath
3 again and then say, Mr. Chrisco, you can continue with your
4 cross examination and then if that's when you say we want to
5 play the video. We'll play the video.

6 MR. CHRISCO: Your Honor, if we can stop the Jury from
7 coming in. One thing that maybe we should ask her is if she
8 talked with anybody, any of the other witnesses, last night.

9 THE COURT: Have you talked with anybody?

10 Minor : No.

11 THE COURT: Okay.

12 (REPORTER'S NOTE: Jury enters courtroom. 9:57 A.M.)

13 THE COURT: Ladies and gentlemen, welcome back. I
14 appreciate everyone being on time. I apologize for keeping
15 you back in the jury for so long but we did have some matters
16 that we need to take up and I'll explain those to you at this
17 time. Number one, there has been some type of illness with
18 one of the jurors, Juror Number 200, Ms. Johnston, and so she
19 has been excused as part of this jury. Ms. Theresa M.
20 Macanas. All right. You are now part of the twelve-panel
21 jury. Okay? So, you can stay where you are for the time
22 being but when you come back, you can assume whichever seat
23 you'd like to sit it. If you want to stay in that seat, you
24 can stay in that seat. If you want to move to the front on or
25 whatever makes you feel more comfortable but you are a part of

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1 the jury at this point in time. Mr. Colletta, you are still
2 an alternate, you'll still occupy that seat unless you become
3 a part of the jury at some later time. Okay? All right.

4 Now, I also understand that one or more of you have asked
5 whether or not you can take notes during the trial of this
6 case. And I will allow you to take notes but I do need to
7 give you some instructions. Number one, everyone will be
8 given a pad and everyone will be given a writing instrument
9 but you are not required to take notes. If you want to take
10 notes, you can take notes, but it's personal to you. You do
11 not share your notes with anyone else. You put your name on
12 your notepad and you make sure that you get your same notepad
13 back every time you come in to the courtroom. Now, some
14 people are better note-takers than others. Some people can
15 recall more by just paying attention without taking notes, so
16 I'll leave it up to you as to whether or not you wish to take
17 notes or do not wish to take notes and I'll give you some
18 instructions on note-taking when I charge you on the law
19 before you go to begin your deliberations. The second thing I
20 need to caution you, however, is if you decide to take notes,
21 please do not try to write down everything the witness says
22 because that is going to divert your attention and you're
23 gonna miss some things. Okay? The purpose of note-taking is
24 for you to jot down something that you think is important to
25 refresh your memory at a later time. Please don't try to

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1 write everything down but if something is said or something is
2 introduced and you find that it is important and you want to
3 make sure you remember it later, write it down to refresh your
4 memory. When you leave the courtroom at this juncture, you
5 cannot take your notes with you, you will need to leave them
6 in the jury box. I'll -- you'll be able to take them during
7 your deliberations but I'll give you some instructions on what
8 you can do with your notes when you deliberate. But for the
9 time being, you'll be given a pad. If you want to take notes,
10 make sure you put your name on that pad, make sure you always
11 get that same pad back and make sure you leave it in the jury
12 box when you leave the courtroom. I also remind you at this
13 point in time if you have any cell phones or pager devices,
14 make sure you turn those off at this point in time.

15 All right. Let's go ahead and hand those out. As I
16 said, on the front page, if you would just write your name so
17 that you make sure that you get your same pad back every time
18 and you are not required to take notes but you are allowed to
19 if you choose to. Everybody has something to write with? All
20 right, very well.

21 All right. When we recessed yesterday, we were in the
22 cross examination of Ms. Minor . Is it or
23 (pronounced differently).

24 Minor : .

25 THE COURT: . I apologize. Ms. Minor .

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Minor - CROSS BY CHRISCO

1 All right. Let's put -- since this is a new day, let's put
2 Minor under oath again.

3 Minor, HAVING BEEN DULY
4 SWORN, TESTIFIES AS FOLLOWS:

5 CLERK: State your full name, spall your last name for
6 the Court, please.

7 Minor : Minor

8 THE COURT: All right. Mr. Chrisco, you were in cross
9 examination.

10 MR. CHRISCO: Yes, Your Honor.

11 CONTINUATION OF CROSS EXAMINATION OF Minor BY MR.
12 CHRISCO:

13 Q: I think yesterday when we ended I had asked you wasn't
14 what you had testified to different than what was on the video
15 concerning the first time and you said no?

16 A: Yes, I did say no. I did say no.

17 MR. CHRISCO: And, Your Honor, at this time I would like
18 to play -- the Defense would move to play the video to show
19 the inconsistent statements.

20 THE COURT: Any objection?

21 MR. SPRATLIN: No, objection, Your Honor. I have the
22 equipment set up for -- to make it easier for everybody. If
23 we could get the Madame Clerk's assistance in lowering the
24 display screen.

25 THE COURT: All right.. All right. The video has been

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Minor - CROSS BY CHRISCO

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1 marked as Court's Exhibit Number Three and we'll go ahead and
2 play that at this point in time.

3 All right. If anyone on the jury cannot see it, please
4 just let me know by raising your right hand or if you can hear
5 it let me know by raising your right hand.

6 MR. SPRATLIN: Your Honor, I have special speakers here
7 that will hopefully make the video loud enough for everyone to
8 hear, but I have to line up to courthouse speakers that will
9 make it even louder.

10 THE COURT: All right. As I said, if anybody is having
11 trouble hearing, just let me know by raising your hand and
12 we'll get it fixed.

13 *****OFF THE RECORD*****

14 (REPORTER'S NOTE: Court's Exhibit Number Three played for
15 Jury. Not transcribed herein. 10:02 A.M.)

16 (On the Record - 11:37 A.M.)

17 MR. SPRATLIN: Your Honor, Mr. Chrisco has no objection
18 to stopping it now. The remainder of the video is just the
19 girl coming back in and walking brought back out.

20 THE COURT: Is that good?

21 MR. CHRISCO: I have no objection.

22 THE COURT: All right.

23 MR. CHRISCO: Your Honor, can we take about a five-minute
24 recess?

25 THE COURT: Yeah, we're gonna take a break.

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BY THE COURT

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1 BY THE COURT:

2 THE COURT: All right. Ladies and gentlemen, we've been
3 at it a little while. Let's go ahead and take a morning
4 break. I'll excuse you back to the jury room restroom, get
5 something to drink. You can check phone messages, return
6 calls the tune not discuss the case even amongst yourselves at
7 this point in time. Don't conduct any independent
8 investigations. Leave your writing tablet in the jury box,
9 will be handed back out to you when you come back into the
10 courtroom. We'll take about a ten or fifteen-minute break
11 and bring you back shortly. Thank you very much. Everyone
12 else please remain seated while the Jury is excused.

13 (REPORTER'S NOTE: Jury exits courtroom. 11:38 A.M.)

14 THE COURT: All right. Minor , just like I discussed
15 with you yesterday, we are still in your testimony, said I'll
16 talk to anybody about your testimony. Okay?

17 Minor : Okay. Yes, sir.

18 THE COURT: Okay. Thank you, ma'am.

19 Anything from the State before we break?

20 MR. SPRATLIN: No, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. CHRISCO: No, Your Honor.

23 THE COURT: All right. Let's take about a ten or
24 fifteen-minute break. You can step down if you want to.

25 (RECESS - 11:39 A.M.)

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Minor - REDIRECT BY SPRATLIN

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

(On the Record - 12:00 P.M.)

THE COURT: All right. Anything from the State before we bring the Jury in?

MR. SPRATLIN: No, sir. I believe it's still Mr. Chrisco's witness.

THE COURT: All right. Anything from the Defense before we bring the Jury in?

MR. CHRISCO: No, Your Honor.

THE COURT: All right. Let's bring the Jury in.

(REPORTER'S NOTE: Jury enters courtroom. 12:02 P.M.)

THE COURT: Ladies and gentlemen, welcome back. I'll remind you that you have any cell phones or pager devices, if you would turn those off at this time. Also, please make sure that you have your own notepads and don't have anyone else's notepads.

All right. Mr. Chrisco, you can continue with your cross examination.

MR. CHRISCO: No further questions, Your Honor.

THE COURT: All right. Redirect?

MR. SPRATLIN: Briefly, Your Honor.

REDIRECT EXAMINATION OF Minor BY MR. SPRATLIN:

Q: Minor, do you remember yesterday when Mr. Chrisco asked you had you met with me?

A: Yes, sir.

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Minor - REDIRECT BY SPRATLIN

1 Q: And what did you say I told you to tell when you got on
2 the stand?

3 A: What I remembered.

4 Q: And everything you testified about today before watching
5 that video, is that what you remember?

6 A: Yes, that right there, that video, just helped me refresh
7 it just now.

8 Q: And so now, after watching that video, do you remember
9 more?

10 A: Yes, sir.

11 Q: And what you testified about, again, did that happen?

12 A: Yes, sir.

13 Q: A hundred percent sure?

14 A: A hundred percent sure and a hundred percent fact.

15 MR. SPRATLIN: Beg the Court's indulgence.

16 THE COURT: All right.

17 MR. SPRATLIN: No further questions, Your Honor.

18 THE COURT: All right. You may step down.

19 The State can call their -- well, let me -- let me see
20 the attorneys for a second.

21 (REPORTER'S NOTE: A bench conference was held off the record
22 in the presence of the Jury but out of hearing of the Jury.)

23 THE COURT: All right. The State can call their next
24 witness.

25 MR. SPRATLIN: State would call Dr. Carol Rahter to the

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CAROL ANN RAHTER - DIRECT BY SPRATLIN

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1 stand.

2 CAROL ANN RAHTER, HAVING BEEN DULY
3 SWORN, TESTIFIES AS FOLLOWS:

4 CLERK: State your full name and spell you last name for
5 the Court, please.

6 DR. RAHTER: Carol Ann Rahter, R-A-H-T-E-R.

7 DIRECT EXAMINATION OF CAROL ANN RAHTER BY MR. SPRATLIN:

8 Q: Dr. Rahter, where you currently employed?

9 A: At Waccamaw Hospital in the Emergency Department.

10 Q: What's your role there?

11 A: I'm an emergency physician.

12 Q: And Dr. Rahter, do have any other jobs or various or
13 other places that you've worked?

14 A: Yes. I'm the Medical Director of the Children's Recovery
15 Center.

16 Q: What is the Children's Recovery Center?

17 A: The Children's Recovery Center is a child advocacy center
18 that serves both children in both Horry County and Georgetown
19 County where we assess children after they are referred for
20 any type of abuse.

21 Q: What sort of things to y'all to at the Children's
22 Recovery Center?

23 A: They get a forensic interview, which is audio and
24 videotaped, and I perform all the medical exams there. Then
25 they are provided canceling if it's needed and the non-

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CAROL ANN RAHTER - DIRECT BY SPRATLIN

1 offending parent is also provided canceling.

2 Q: And how long have you been working at the Children's
3 Recovery Center?

4 A: Twenty years.

5 Q: Now, your job as the -- what was your title again at the
6 Children's Recovery Center?

7 A: Medical Director.

8 Q: Medical Director. For your job as the Medical Director
9 at the Children's Recovery Center and your job at the Waccamaw
10 ER or emergency room, what kind of education and training do
11 you have?

12 A: I went to medical school and I did a rotating internship
13 for a year after that, I did two years of emergency medicine
14 residency, I became Board Certified in 1993, and around that
15 time I started in specialty training in the area of child
16 abuse.

17 Q: And what specific child abuse training -- what sort of
18 trainings or seminars specific to child abuse have you
19 attended over the years?

20 A: What I tried to do every year, and sometimes I've been
21 able to do it twice a year, is APSAC, which is the American
22 Professional Society on Abuse of Children, which is a
23 multidisciplinary training, so you get forty hours of training
24 there in all different realms. So, you can get training in
25 forensic interviewing, training in medical exam of children

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1 that have been abused. There's a law enforcement track,
2 there's multiple different tracks there..

3 Q: And you've gone to that regularly?

4 A: Yes.

5 Q: You said you've been working at the Children's Recovery
6 Center for over twenty years. In that time, how many victims,
7 or alleged victims of sexual abuse, do you think you have
8 worked with?

9 A: Over 3000.

10 Q: Over 3000. Prior to today, have you ever been qualified
11 as an expert in a court of law here in South Carolina?

12 A: Yes, I have.

13 Q: What courts have you been qualified as an expert in?

14 A: In Family Court, in Criminal Court and in the Federal
15 Court.

16 Q: And specifically, what areas have you been qualified?

17 A: In the evaluation and examination and treatment of
18 children of abuse.

19 MR. SPRATLIN: Your Honor, at this time, I would move to
20 qualify Dr. Rahter as an expert in the evaluation, examination
21 and treatment of children of abuse.

22 THE COURT: All right. Any challenges or questions?

23 MR. CHRISCO: None, Your Honor.

24 THE COURT: All right. I find this witness to be an
25 expert in the field of child evaluation and examination

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1 regarding abuse.

2 Now, ladies and gentlemen of the Jury, I will give you
3 some instructions when I charge you on the law regarding
4 expert testimony. But, for the purposes of this testimony,
5 I'll just let you know that typically a witness can only
6 testify to their personal knowledge, what they saw, what they
7 tasted, what they smelled, things of that nature. There is an
8 exception for certain witnesses who are classified as an
9 expert witnesses but the only difference is is that in
10 addition to testifying to what they personally know, an expert
11 witness can also render an opinion in the field in which they
12 are qualified as an expert. So, Dr. Rahter, in addition to
13 testifying as her personal knowledge, what she saw, what she
14 smelled, what she tasted, she can also render an opinion in
15 the field of child evaluation and examination regarding child
16 abuse.

17 All right, sir. Go ahead.

18 MR. SPRATLIN: Thank you, Your Honor.

19 BY MR. SPRATLIN:

20 Q: Now, Doctor, in your vast experience dealing with child
21 sexual abuse victims, is it common for the child to not
22 disclose the abuse immediately?

23 A: Most commonly, they do not disclose the abuse
24 immediately.

25 Q: Why is that?

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1 A: Well, there's a multitude of different reasons that have
2 been studied regarding that but the majority of the
3 perpetrators of children are someone that they know, whether
4 it's a family member or an extended family member, someone
5 that they had some kind of relationship with. Children who
6 are assaulted by somebody that's a complete stranger much more
7 commonly disclose immediately. There's a whole pattern of
8 grooming children that occurs that gains their trust and part
9 of that trust is to keep the secret. And they are often --
10 they are told all sorts of things. These kids have told me
11 the perpetrator was going to their children -- their animals,
12 was gonna kill other kids in the family, was gonna kill the
13 mother, that the mother would be mad at them. Probably, the
14 most common thing I hear from these children is that they
15 think they're gonna be in trouble if they tell. But there are
16 all different kinds of threats that go along that keep the
17 secrecy of children.

18 Q: Now, along that same line, when a child talks about or
19 discusses the abuse, is there any particular way that a child
20 is supposed to act?

21 A: No.

22 Q: How different do children act?

23 A: I did -- I've done forensic interviews and over 2000
24 children and some children crawl under the table and get in a
25 ball and won't even talk to you; some children are laughing

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1 when they are telling you about what happened. I think
2 probably the most common thing that happens is that children
3 disclose in a piecemeal fashion. So, it gets a little
4 confusing because sometimes they'll be talking about twelve
5 different incidents but they'll be talking as if it all
6 happened at one time. Or, they may split up one night into
7 multiple different days because they are disclosing in a
8 piecemeal fashion, a little bit comes out at a time, and they
9 tend to look is altogether.

10 Q: So, hypothetically, the fact that a child would not be
11 crying or overly emotional when discussing the abuse, that
12 really has no relevance on whether or the abuse happened?

13 A: Absolutely not.

14 Q: Now, Dr. Rahter, as a medical expert, have you had a
15 chance to examine children who are the victims of sexual
16 abuse?

17 A: Yes, I am.

18 Q: At the Children's Recovery Center, when you conduct a
19 medical examination of a child, what do you do?

20 A: We basically examine the child from top to bottom with a
21 colposcope. A colposcope is like a microscope that's hooked
22 to a TV. We do it that way because it obviously magnifies
23 everything but it also allows the child to be part of the
24 process. So, they watched the TV. So, I always start with
25 her toes and then get the hair on the legs any scars there on

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- 1 their knees, and then we look at their fingers in their
2 fingerprints. So, by the time we get to actually down to the
3 genital exam, they are pretty comfortable with it because they
4 had been watching it on TV and saying, hey, look at this. So,
5 it's magnified fifteen times and it's just an exterior exam.
6 We don't place anything inside a child, with the get the
7 exterior structures by putting some traction on the labia and
8 pulling down and out that exposes the interior structures.
- 9 Q: In the instance of a female victim, what specifically are
10 you looking for when you conduct your examination of their
11 genitalia?
- 12 A: We are looking for any type of broken petechiae, which
13 are broken blood vessels that can occur from friction
14 injuries. You're looking for any lacerations, either acute
15 too, meaning they happen and have not yet healed, to either
16 the labia, the hymen, which is the -- kind of the entrance to
17 the vagina, or the exterior structures back even by the anal
18 area. You're also looking forward healed lacerations:
19 Sometimes, when that area is torn, it heals back and you see
20 nothing. Sometimes, when it's torn it heals -- the edges heal
21 but it's V-shaped. So, that would be considered a healed
22 transection. And then you're looking for any signs of
23 sexually transmitted diseases, any blisters, any warts, any
24 kind of abnormal discharge and so forth.
- 25 Q: Now, Dr. Rahter, how often do you find evidence of injury

1 to genitalia?

2 A: It's pretty rare to find injury in a sexually abused
3 child. I know it's hard to believe but it's the truth. The
4 majority of studies say less than fifteen percent of children
5 who are sexually abused, when they are evaluated, have any
6 kind of injury at all. I think our stats last year were about
7 six percent. And the reason is because they don't disclose
8 right after happens. Now, last year I saw two children who
9 disclosed right after it happened and both of them had
10 petechiae but of the other the 349-39 children, only six
11 percent of them had injury.

12 Q: Only six percent?

13 A: Uh-huh (affirmative response).

14 Q: Doctor, how can it be that a child can be abused sexually
15 but not have any damage?

16 A: Because the tissue down there is mucosal tissue. It's
17 just like very similar to the tissue that's on the inside of
18 his cheek. Anytime you've ever been hit the inside of your
19 cheek, and you know how painful that is, and you that ridge
20 there, if you look inside your mouth the next day most
21 commonly you see nothing and you don't feel the ridge anymore.
22 That tissue heals very rapidly. Sometimes, if it's really bad
23 like you even make you bleed you may feel something there for
24 a couple of days, you may actually see something there for a
25 couple of days, but within seventy-two hours it's completely

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1 healed. That tissue down in the vaginal area is mucosal
2 tissue. So, when there is a tear, it almost common -- almost
3 always is healed within seventy-two hours unless it's a really
4 expensive injury that requires surgery.

5 Q: Dr. Rahter, you mentioned the hymen earlier,
6 traditionally what significance does the hymen hold?

7 A: The hymen is like the vestibule, the entrance to the
8 vagina. So, like if this is the vagina here, it sits in --
9 it's within the labia, which are the exterior structures, and
10 is the entrance that has an opening that goes into the vagina.

11 Q: Traditionally, is there any significance to whether or
12 not a female has an intact hymen or not?

13 A: Well, we never use -- experts never use the word intact
14 because, believe me, even eighty-year-old women still have
15 hymen after they've had active sexual lives for sixty years,
16 there are still hymeneal remnants in eighty-year-old women.
17 So, we don't say intact or not intact. We describe what the
18 hymen looks like. There's multiple different shapes of hymen.
19 Some little girls have crescentic-shaped hymens like a moon,
20 some of them have annular hymens they go all the way around.
21 Once you start your period, you get estrogenized hymen, so it
22 gets stretchy and redundant, kind of like a squeegee in the
23 back of your hair when you stretch it out and then you bring
24 it back together, that's what a girl-who-has-started-her-
25 period's hymen looks like so, they all look different; so you

1 describe what it looks like. In this case, I believe she had
2 a crescentic-shaped hymen.

3 Q: Is that normal?

4 A: Yes, that's a normal finding.

5 Q: Okay. Historically, is it accurate that the hymen is
6 kinda how you tell whether or not someone has had sex? Can
7 you tell from the hymen whether or not a female has been
8 penetrated to?

9 A: No, that's a complete wives tale. I examined to
10 pregnant, at ten-year-old and a twelve-year-old, last year
11 that had totally normal hymens and they were very pregnant.

12 Q: Now, Dr. Rahter, hypothetically speaking, if a grown man
13 took his penis and placed it in, say, a nine-year-old child's
14 vagina would you expect or necessarily expect to find any
15 lasting injuries or scars?

16 A: No, not lasting. I would think -- I would expect that if
17 I saw her shortly afterwards that she most commonly would have
18 broken petechiae or abrasions or bruising. But I think that
19 what a lot of people don't understand is depending on the age
20 of the child, sometimes what they're describing when they are
21 describing what we would think of as intercourse is actually
22 what we called labial intercourse where actually the penis is
23 going in between the labia instead of going into the vagina
24 this way. And sometimes when they demonstrate, they will
25 demonstrate that even though they think it's going inside it's

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1 actually rubbing on the labia.

2 Q: Let me ask you, Doctor, when you examined -- obviously,
3 you examined the child's anus, is that correct?

4 A: Yes, we always do.

5 Q: What, if any, evidence of damage do you normally find of
6 a child sexual abuse victim in their anus?

7 A: It's even less common to find any injury to the anus.
8 I'm sure if any of you have ever changed a two-year-old
9 diaper, you know how large a bowel movement can come out of
10 that area without injury. It stretches just as much when
11 something goes inside that area, especially if there's any
12 lubricant used and you don't see the child for greater than
13 seventy-two hours, you would be extremely rarely find injury
14 to the anal area.

15 Q: So, giving a hypothetical, if a grown man took his penis
16 and placed it in a nine-year-old child's vagina -- anus,
17 excuse me, would you necessarily expect to see injuries?

18 A: No.

19 Q: Now, Dr. Rahter, you already stated this but you had a
20 chance to examine Minor ?

21 A: Yes, I did.

22 Q: And did you follow the guidelines and procedures that you
23 outlined for us earlier?

24 A: Yes, I did.

25 Q: Based upon your medical examination, did you find any

1 trauma or injuries to her vaginal area?

2 A: No, I did not.

3 Q: Did you find any injuries or trauma to her rectal area?

4 A: I did not.

5 Q: Now, does the absence of the injuries or other trauma
6 rule out Minor being abused?

7 A: Absolutely not.

8 Q: Does it in any way rule out the Defendant placing his
9 penis inside her anus?

10 A: No.

11 Q: Does it in any way rule out the Defendant placing his
12 penis inside her vagina?

13 A: No.

14 Q: Thank you, Dr. Rahter. That's all the questions I have
15 for you. Please answer any questions Mr. Chrisco might have.

16 THE COURT: Cross examination.

17 CROSS EXAMINATION OF CAROL ANN RAHTER BY MR. CHRISCO:

18 Q: Did you in any way rule in that she had sexual
19 intercourse with somebody?

20 A: You mean, if she had a normal exam, does that rule it in?

21 Q: You said that all of this was ruled out; did it also rule
22 it in?

23 A: She had a physical exam that was normal, which means it
24 doesn't rule in or rule out sexual abuse.

25 Q: No further questions.

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1 THE COURT: Redirect?

2 MR. SPRATLIN: No, Your Honor. May this witness be
3 excused?

4 THE COURT: You may step down. Any objection to excusing
5 Dr. Rahter?

6 MR. CHRISCO: No, Your Honor.

7 THE COURT: All right. You're free to go. Thank you,
8 ma'am.

9 A: Thank you.

10 THE COURT: All right. Let me see the attorneys.

11 (REPORTER'S NOTE: A bench conference was held off the record
12 in the presence of the Jury but out of hearing of the Jury.)

13 BY THE COURT:

14 THE COURT: All right. Ladies and gentlemen, it's 12:20,
15 so we're gonna go ahead and break for lunch. I'm gonna allow
16 you to go to lunch on your own. Let's be back in the jury
17 room at 1:45. That'll give you about an hour -- not quite an
18 hour and a half, almost an hour and a half to eat lunch and to
19 get back and will resume the trial at that time. Leave your
20 notepads in the jury box. We'll distribute them back when you
21 come back after lunch. Do not discuss the case even among
22 yourselves. Don't conduct any independent investigation. I
23 hope everybody has a good lunch and we'll see you back at
24 1:45. Thank you very much.

25 (REPORTER'S NOTE: Jury exits courtroom. 12:21 P.M. The

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1 following takes place outside the presence of the Jury.)

2 THE COURT: All right. And I'm not gonna hold you to
3 this but I understand you've got one more witness?

4 MR. SPRATLIN: Yes, sir. One more witness, Agent Weaver
5 with SLED.

6 THE COURT: All right. Before we break for lunch, just
7 so you have lunch time to discuss it, I want to go ahead and
8 question the Defendant on his right to testify and I'll go
9 over those rights again but this will at least give him an
10 opportunity at lunchtime to think about it. Okay?

11 All right. Best place him under oath.

12 CARLOS ROBERTO LOPEZ, HAVING BEEN
13 DULY SWORN, TESTIFIES AS FOLLOWS:

14 THE COURT: Sir, your name is Carlos Roberto Lopez?

15 INTERPRETER: Yes.

16 THE COURT: All right. Mr. Lopez, we are nearing the
17 portion of the trial, we haven't reached it yet, but we are
18 nearing a portion of the trial where you must decide whether
19 or not you wish to present a defense or testify in this case.
20 Now, I'll go over these rights with you at a later time but I
21 want to go ahead and go over certain rights you have with you
22 at this time so it'll give you an opportunity to decide
23 whether or not you wish to testify in this case. Do you
24 understand that?

25 INTERPRETER: I'm not -- I don't understand very well my

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1 lawyer.

2 THE COURT: Okay. All right. If you don't understand
3 what I'm saying to you, let me know. I need you to listen
4 very carefully to what I say and if you don't understand
5 anything, let me know. Okay?

6 INTERPRETER: All right.

7 THE COURT: All right. Now, under the Constitution of
8 this country, it says that no person shall be compelled in any
9 criminal case to be a witness against himself. That means
10 that you cannot be required to testify in this case. You have
11 the right to testify if you want to. However, no one can make
12 you testify. This is a personal right and no one can waive
13 this right except for you. If you decide to testify in this
14 case, you will be subject to the same rules that govern other
15 witnesses. You may be examined and cross examined on any
16 relevant issue in this case.

17 Do you have any -- does the State have any prior criminal
18 record that they will be using against him?

19 MR. SPRATLIN: No, Your Honor.

20 THE COURT: All right.

21 If you have any convictions of any crimes that involve
22 dishonesty or false statements or if you've been convicted of
23 a crime punishable by more than one year and I determine that
24 the value of that evidence outweighs its prejudice to you, the
25 Solicitor can introduce your record into evidence to attack

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1 your credibility. Now, according to the State's attorney,
2 they say they don't have anything they would use against you.
3 If you decide to testify, this decision by you must be freely,
4 voluntarily and intelligently made with knowledge of the
5 protection that you cannot be required to testify.

6 If you decide not to testify, I will instruct the Jury
7 that they cannot give the fact that you did not testify any
8 consideration whatsoever and that there is to be absolutely no
9 prejudice to you because you did not testify. It's left
10 entirely up to you whether or not you testify. You can talk
11 with your lawyer, any family members or friends or anyone else
12 you want to but the final decision is left entirely up to you.
13 Do you understand that?

14 INTERPRETER: Yes, I understand.

15 THE COURT: All right. We're gonna break for lunch. I
16 understand after lunch that the State has one more witness
17 they are going to call to testify. After that witness
18 testifies, I'm then gonna ask you again whether or not you
19 wish to testify. Do you understand that?

20 INTERPRETER: Yes, I understand.

21 THE COURT: All right. So, you've got a little while to
22 make your decision and I'll go over this with you again but I
23 want you to be thinking about it over lunch. Okay?

24 INTERPRETER: Okay.

25 BY THE COURT:

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1 THE COURT: All right. Mr. Chrisco, do you want anything
2 else placed on the record?

3 MR. CHRISCO: No, Your Honor.

4 THE COURT: Does the State want anything else placed on
5 the record?

6 MR. SPRATLIN: No, Your Honor.

7 THE COURT: All right. Anything further from the State
8 before we recess for lunch?

9 MR. SPRATLIN: No, sir, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. CHRISCO: No, Your Honor.

12 THE COURT: All right. We'll stand in recess.

13 (RECESS - 12:29 P.M.)

14 *****OFF THE RECORD*****

15 (On the Record - 1:52 P.M.)

16 THE COURT: All right. Anything from the State before we
17 bring the Jury in?

18 MR. SPRATLIN: No, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. CHRISCO: No, Your Honor.

21 THE COURT: All right. Let's bring the Jury in.

22 (REPORTER'S NOTE: Jury enters courtroom. 1:54 P.M.)

23 THE COURT: Ladies and gentlemen, welcome back. I hope
24 everyone had a good lunch. We're now ready to resume the
25 trial of this case. I'll remind you if you have any cell

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1 phones or pager devices turn those off at this time if you
2 brought them into the courtroom. Also, please make sure that
3 you have your own notepad and don't have anyone else's
4 notepad.

5 All right. The State can call their next witness.

6 MR. SPRATLIN: The State would call Agent David Weaver to
7 the stand, Your Honor.

8 THE COURT: All right.

9 DAVID WEAVER, HAVING BEEN DULY SWORN,
10 TESTIFIES AS FOLLOWS:

11 CLERK: Please be seated. State your full name and spell
12 you last name for the Court, please.

13 MR. WEAVER: David Weaver, W-E-A-V-E-R.

14 DIRECT EXAMINATION OF DAVID WEAVER BY MR. SPRATLIN:

15 Q: Agent Weaver, where you currently employed?

16 A: South Carolina State Law Enforcement Division.

17 Q: What's your title there?

18 A: I'm a Special Agent.

19 Q: Agent Weaver, how long have you been with South Carolina
20 Enforcement Division?

21 A: Just about a year and a half now.

22 Q: Where did you work before that?

23 A: The Horry County Police Department.

24 Q: How long did you work with the Horry County Police
25 Department?

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- 1 A: About fifteen years.
- 2 Q: Were you working with them back in April of 2012?
- 3 A: Yes, sir, I was.
- 4 Q: In March of 2012?
- 5 A: Yes, sir.
- 6 Q: What was your job with the Horry County Police Department
- 7 during that timeframe?
- 8 A: I was the detective assigned to the Major Crimes
- 9 Division.
- 10 Q: What do the detectives with the Major Crimes Division
- 11 normally do?
- 12 A: We investigate mostly violent crimes, homicides, sexual
- 13 assaults, robberies, home invasions, anything violent.
- 14 Q: And Detective -- or Agent, excuse me, when you were with
- 15 the Horry County Police Department during that timeframe did
- 16 you have a chance -- did you have any involvement with this
- 17 case?
- 18 A: Yes, sir, I did.
- 19 Q: What involvement did you have?
- 20 A: I was the -- I was the investigating officer on the case.
- 21 Essentially, the case was assigned to me by my supervisor,
- 22 arbitrarily assigned to me. I read over the report and I
- 23 contacted some witnesses, made some interviews in the case,
- 24 spoke to specifically Susan Hostetter, got additional
- 25 information and -- and with that information, I had sent

1 Minor to CRC, Children's Recovery Center, where she could
2 be forensically interviewed.

3 Q: And you were in court earlier when we played the video,
4 was that the interview of the forensic interview?

5 A: Yes, sir, that's correct.

6 Q: Okay. And that occurred at the Children's Recovery
7 Center?

8 A: That's correct. Yes, sir.

9 Q: All right. Is this pretty much standard procedure in
10 cases like this?

11 A: It's protocol, yes, sir.

12 Q: All right. Is there anything more in your opinion as an
13 officer that you could've done to gain more evidence?

14 A: In this particular case, no, just because of the timeline
15 in the timeframe will of the reporting of the crime.

16 Q: And what are you -- what exactly about the timeframe
17 caused the collection of the evidence to be more difficult?

18 A: Well, the allegation was -- the reporting of the crime,
19 it was probably around a four-month span from October 2011 to,
20 I believe, January 2012. And the actual reporting date was
21 in, I believe, March. So, there was some time lapse in
22 between. It's not a typical case where you have a crime and
23 you go out and inspect the scene and, you know, conduct your
24 interviews right there. It's -- I don't want to say a cold
25 case but it wasn't -- it wasn't a fresh case.

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1 Q: With the case like this, are you able to obtain DNA
2 evidence?

3 A: No, sir.

4 Q: Do you make any efforts to obtain DNA?

5 A: We don't -- in these types of cases, we don't.

6 Q: Why is that?

7 A: Just because of the timeframe. There's several reasons.

8 The reasons could be that the potential victim either bathes,

9 showers, washes clothing, linens, that type of thing. So,

10 you're not gonna have any kind of DNA or any type of physical

11 evidence. And not only that, in a particular case like this,

12 you're gonna have a perpetrator or the Defendant, or the

13 alleged Defendant, with the victim, you're gonna find forensic

14 evidence, you're gonna find evidence, trace evidence, you're

15 gonna expect to find that.

16 Q: All right. Agent Weaver, based on your investigation,

17 did you take out warrants on the Defendant?

18 A: I did. Based on the information that I received back

19 from CRC, I read over the report, the information that was

20 disclosed by Minor that she was sexually assaulted by the

21 Defendant, particularly vaginal and anal penetration, digital

22 penetration, I took that information -- I took it to the

23 Judge. I ran the facts of the case by the judge, I believe it

24 was the Honorable Judge Butler, and he issued a warrant.

25 Subsequently, arrest warrants were issued and the Defendant

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1 was arrested.

2 Q: All right. Agent Weaver, that's all the questions I
3 have. Please answer any questions Mr. Chrisco my hand.

4 CROSS EXAMINATION OF DAVID WEAVER BY MR. CHRISCO:

5 Q: You took one child on Mr. Lopez?

6 A: Yes, sir.

7 Q: Did you serve the warrants on Mr. Lopez?

8 A: I didn't personally. I believe a deputy in the Sheriff's
9 Department served the warrant. I was present.

10 Q: Did you follow up or wish to speak to Mr. Lopez?

11 A: I attempted to, yes, sir.

12 Q: And you say you attempted to; what do you mean?

13 A: There was a language barrier. He didn't speak English
14 and I tried to -- I attempted to interview him and he said he
15 didn't understand, no comprende. I didn't have access to an
16 interpreter at that point, so he wasn't ---

17 Q: During the course of your investigation, did you run a
18 criminal record on the -- on Mr. Lopez?

19 A: I did.

20 Q: And what was the result?

21 A: I don't recall today. I don't know if there was -- if he
22 has any priors are not. I believe that information is in our
23 case file.

24 Q: Do you need to look at your case file?

25 A: I don't have it with me today. The Prosecutor may have

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1 it.

2 Q: So, you sent what you had to the Prosecutor?

3 A: Yes, sir. You should have a copy of that as well in
4 discovery.

5 Q: I do but I need for you to say.

6 A: Okay.

7 Q: Go ahead and refresh her recollection.

8 A: Okay.

9 Q: Does he have any prior record?

10 A: No, sir.

11 Q: During the course of your investigation, did you learn if
12 Mr. Lopez was gainfully employed?

13 A: No, I didn't.

14 MR. CHRISCO: No further questions.

15 THE COURT: Redirect?

16 MR. SPRATLIN: No redirect.

17 THE COURT: All right. You may step down.

18 A: Thank you, Your Honor.

19 THE COURT: The State can call the next witness.

20 MR. SPRATLIN: Your Honor, at this time the State would
21 rest.

22 BY THE COURT:

23 THE COURT: All right. Ladies and gentlemen, the State
24 has rested their case for now is the time of the trial where I
25 have to take up some matters of law with the attorneys. So,

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1 I'm going to excuse you back to the jury room for just a few
2 minutes and I'll tell you why we do that. It's not that we
3 are trying to hide anything from you or keep anything from
4 you. But as a told you during your opening or during the
5 opening instructions, you and you alone decide what the facts
6 of this case are and you decide those facts based upon the
7 testimony and other evidence that is introduced into trial.
8 Well, now is the time of the trial where I have to discuss
9 with the attorneys some of the law to be applied in this case.
10 Often times, when we discuss the law requires us to make
11 reference to factual matters. Whatever I say or whatever the
12 attorneys say in deciding these legal matters is not evidence
13 in this case so we don't want you to be influenced by anything
14 I might say or anything the attorneys might say in deciding
15 what law to apply. We don't want that to influence you in
16 your deciding what the facts are in this case and that's why
17 we excuse you back to the jury room. So, I'm going to excuse
18 you back to the jury room for just a few minutes and will
19 bring you back out in just a second. Thank you very much.
20 (REPORTER'S NOTE: Jury exits courtroom. 2:03 P.M. The
21 following takes place outside the presence of the Jury.)

22 THE COURT: All right. Any motions at this time?

23 MR. SPRATLIN: None from the State.

24 THE COURT: Any motions?

25 MR. CHRISCO: I know every time, when a Defense ends,

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1 asks that question and a lot of times take it up and just go
2 through the motion. I have none in this case, Your Honor.

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

4 Does the Defense intend to our does the Defendant intend
5 to offer a defense in this case?

6 MR. CHRISCO: Your Honor, we have talked, and he will
7 tell you his answer when he is questioned by the Court.

8 THE COURT: Okay. Aside from the Defendant, would there
9 be any other witnesses by the Defense?

10 MR. CHRISCO: No, Your Honor.

11 THE COURT: Okay.

12 All right. Please, let's get Mr. Lopez to stand. Let's
13 place him under oath again.

14 CARLOS ROBERTO LOPEZ, HAVING BEEN DULY
15 SWORN, TESTIFIES AS FOLLOWS:

16 THE COURT: Sir, your name is Carlos Roberto Lopez?

17 INTERPRETER: Yes, that's who I am.

18 THE COURT: Mr. Lopez, and this time, I'm going to
19 explain to you for certain rights you have. I discussed some
20 of these with you before we broke for lunch and I'm gonna go
21 over these again with you at this time. Okay?

22 INTERPRETER: Okay.

23 THE COURT: If you don't understand anything I say,
24 please let me know. If you want me to explain anything in
25 more detail, please let me know. Do you understand that?

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1 INTERPRETER: Yes, that's fine.

2 THE COURT: We've now reached the stage of this trial
3 where you may present your defense. You have the right to
4 claim the protections given to you by the Fifth Amendment of
5 the United States Constitution. This Amendment states, in
6 part, that no person shall be compelled in any criminal case
7 to be a witness against himself. This means that you cannot
8 be required to testify in this case. You have the right to
9 testify on your own behalf, however, no one can make you
10 testify. This is a personal right and no one can waive this
11 right except for you. If you decide to testify you'll be
12 subject to the same rules that govern other witnesses. You
13 may be examined and cross examined on any relevant issue in
14 this case. In addition, if you have any convictions involving
15 dishonesty or false statement or for crimes punishable by
16 imprisonment for more than one year, if this court determines
17 that the probative value of admitting the evidence outweighs
18 its prejudicial effect, the Solicitor will be able to
19 introduce your record to attack your credibility. If you
20 decide to testify, this decision on your part must be freely,
21 voluntarily and intelligently made with knowledge of the
22 protections given to you by the Fifth Amendment of the United
23 States Constitution and the consequences of your decision to
24 testify. If you decide not to testify, I will instruct the
25 jurors that they cannot give the fact that you did not testify

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CARLOS ROBERTO LOPEZ - BY THE COURT

1 any consideration. They cannot consider it whatsoever. I
2 will instruct them for that there is to be absolutely no
3 prejudice to you because you did not testify. It is left
4 entirely up to you whether or not you testify. You may talk
5 with your attorney, your family and friends or anyone else but
6 the final decision is left entirely up to you. Do you
7 understand what I've explained to you?

8 INTERPRETER: Yes, I understand.

9 THE COURT: Do you have any questions about what I've
10 explained to you?

11 INTERPRETER: No, I don't have any questions.

12 THE COURT: Have you discussed with your lawyer whether
13 or not you should testify in this case?

14 MR. LOPEZ: No.

15 THE COURT: Did he say no, he has not discussed it with
16 his lawyer?

17 INTERPRETER: He said no.

18 THE COURT: Okay. Let's take a few minutes then, let him
19 discuss it with your lawyer. When you get through discussing
20 it with your lawyer, I'm going to ask you whether or not you
21 wish to testify will. Now, regardless of what your lawyer
22 says, the decision is yours to make. Your attorney can advise
23 you that the final decision is left entirely up to you. Do
24 you understand that?

25 INTERPRETER: Yes.

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1 THE COURT: All right. Five or ten minutes?

2 MR. CHRISCO: Yes, Your Honor.

3 THE COURT: All right. We'll take about a five or ten
4 minute break.

5 (RECESS - 2:10 P.M.)

6 *****OFF THE RECORD*****

7 (On the Record - 2:45 P.M.)

8 (REPORTER'S NOTE: The following takes place outside the
9 presence of the Jury.)

10 THE COURT: Mr. Lopez, have you had an opportunity to
11 discuss with your attorney whether or not -- or get advice
12 from your attorney as to whether or not you should testify in
13 this case?

14 INTERPRETER: Yes, sir.

15 THE COURT: Okay. Do you wish to testify in this case?

16 INTERPRETER: No, sir.

17 THE COURT: Is this your decision and what you want to
18 do?

19 INTERPRETER: Yes, it's my decision.

20 BY THE COURT:

21 THE COURT: All right. Mr. Chrisco, do you wish to put
22 anything else in the record?

23 MR. CHRISCO: No, Your Honor.

24 THE COURT: All right. Does the State wish to put
25 anything else on the record?

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1 MR. SPRATLIN: No, Your Honor. The State is ready to
2 proceed with close as soon as the Defense rests on the record.

3 THE COURT: All right. Y'all can be seated. Rather than
4 bringing the Jury out and having them -- I'm assuming you're
5 gonna close on the record as soon as they come out; is that
6 correct?

7 MR. CHRISCO: Yes, Your Honor.

8 THE COURT: Okay. Well, let's to it this way, let's go
9 ahead anticipating that this might be the way, I've gone ahead
10 and prepared some instructions. Let's take about a ten-minute
11 break, fifteen-minute break, let y'all look over the jury
12 charges so that you'll know what I'm gonna charge you prior to
13 you making your closing arguments. Then, we'll come back, I
14 ask if you have any challenges to that. Now, after I charge
15 the Jury, I'll give you a second opportunity to raise any
16 objections because I know sometimes it sounds different when
17 it's read than when it's printed. So, I'll give you another
18 opportunity. But we'll address some preliminary challenges,
19 if there are any. Then, when the Jury comes in, the State
20 will close, then the Defense will close last, I'll charge and
21 we'll begin deliberations. All right?

22 MR. SPRATLIN: Yes, sir, Your Honor. Do you have a jury
23 form already prepared -- I mean, a verdict form?

24 THE COURT: No, I was just gonna let them sign -- just go
25 on the back of the indictments. What is the Defendant's

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BY THE COURT

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1 position, do you want ---

2 MR. CHRISCO: Fine with me, Your Honor.

3 THE COURT: Okay. On the verdict form, I was just gonna
4 tell them to write the verdict and have the foreperson sign it
5 on the ---

6 MR. SPRATLIN: Your Honor, the State would actually
7 prefer a separate verdict form and that's all right. I'll
8 actually prepare the verdict form.

9 THE COURT: Why?

10 MR. SPRATLIN: I just, from past experience, don't like
11 jurors having the actual indictments in the back.

12 THE COURT: Well, the indictment is what it got them into
13 court, so if the Defense is willing to go to the indictment,
14 that's what will go with.

15 MR. SPRATLIN: Yes, sir. And is the indictment that was
16 amended, does that reflect the amendment on the face of the
17 indictment?

18 THE COURT: Yeah. What I did is on 2014-GS-26-535, I
19 struck through Dennis Hostetter, age, and just put the
20 initials GZ, just like it appears on the other indictment.
21 There you go. And then I initialed it.

22 MR. SPRATLIN: Yes, sir.

23 THE COURT: All right. Let's take about ten or fifteen
24 minutes, let's y'all look over those instructions, and then
25 I'll be back and we'll bring the Jury in. Okay?

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1 (RECESS - 2:26 P.M.)

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

3 (On the Record - 2:29 P.M.)

4 BY THE COURT:

5 THE COURT: All right. Anything from the State before we
6 bring the Jury in?

7 MR. SPRATLIN: No, Your Honor. No objection to the
8 charge.

9 THE COURT: Anything from the Defense?

10 MR. CHRISCO: No, Your Honor.

11 THE COURT: Any objections to the charge at this point in
12 time?

13 MR. CHRISCO: No, Your Honor.

14 THE COURT: All right. Let's bring the Jury in.

15 (REPORTER'S NOTE: Jury enters courtroom. 2:47 P.M.)

16 THE COURT: All right. Ladies and gentlemen, welcome
17 back. I remind you if you have any pagers or cell phones, if
18 you'd turn those off. Also, make sure you have your own
19 notepads.

20 All right. Mr. Chrisco, to Defense wish to present a
21 defense?

22 MR. CHRISCO: The Defense rests, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, the State
24 has rested their case, the Defense has rested their case, and
25 now is the time of the trial where the attorneys will make

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CLOSING BY SPRATLIN

1 their closing arguments to you. Now, just like their opening
2 statements, these closing arguments are not evidence in this
3 case. It is simply the attorneys' contention as to what they
4 think the evidence has shown, what they think the facts are
5 and what they think the law is. If at any time the attorneys
6 make reference to a factual matter that is different from the
7 facts as you find them to be, or if they reference the law
8 that is different from the law as I will charge you at the
9 close their arguments then you are to disregard that portion
10 of the closing argument because these closing arguments are
11 not evidence, it is simply their contention as to what the
12 case is about and what the facts are and what the law is.

13 All right. Mr. Spratlin.

14 MR. SPRATLIN: Thank you, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 CLOSING BY SPRATLIN:

18 MR. SPRATLIN: Ladies and gentlemen, on closing argument,
19 I don't expect to be that long-winded today. I started out
20 yesterday, about twenty-four hours ago now, telling you that
21 this was a crime that happened in the dark and I think all of
22 you saw that, I think, all of you heard that. And I think the
23 evidence presented has turned on the light switch and shown
24 you what happened between that Defendant and that child.

25 Now, in a couple of minutes, the Judge is going to tell

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1 you about the law of this case. I want to touch on a couple
2 of issues that he's going to tell you in a minute or likely
3 gonna tell in a minute. The first thing I want to tell you,
4 as he'll tell you, the indictments in this case are not
5 evidence. Now, they'll be back in the jury room with you to
6 -- when you decide the verdict and sign the block but nothing
7 in the indictments is evidence and nothing in the indictments
8 is the law. All the evidence came from that witness stand.
9 All the law comes from that Judge.

10 Another thing about the law the Judge is going to tell
11 you in a couple of minutes is what's called the burden of
12 proof and presumption of innocence. In a criminal case, in
13 every criminal case, from a speeding ticket to a child
14 molestation, to a murder, the defendant is presumed innocent.
15 The burden is on the State, myself and Agent Weaver and other
16 agents of State to bring forth enough evidence to convince all
17 twelve of you that the Defendant is guilty. You come in
18 presuming the Defendant is innocent until you're presented
19 enough evidence to overcome that presumption and then you
20 believe he's guilty. And I don't just have to convince you a
21 little bit, the law is very specific on that, I have to
22 convince you beyond a reasonable doubt. And that raises an
23 interesting question of what is proof beyond a reasonable
24 doubt. Well, it's the kind of thing that if you ask twelve
25 people, twelve lawyers on the street, what beyond -- what

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1 proof beyond a reasonable doubt is, you'd get twelve answers,
2 completely different, somewhat different. But the Judge is
3 gonna tell you proof beyond reasonable doubt is doubt that
4 would cause an ordinary, reasonable person to hesitate to act.
5 It's also a lack of doubt that leaves you firmly convinced of
6 the Defendant's guilt. You don't have to be convinced beyond
7 all doubt but you must be firmly convinced that he's guilty.

8 In a minute, I'm going to tell you why the evidence shows
9 you that you should be firmly convinced of his guilt. But
10 before I get to that, I want to talk about two specific
11 charges that this Defendant is faced with because he is
12 charged with two separate charges, criminal sexual conduct
13 with a minor, first degree, and criminal -- and lewd act upon
14 a minor. Criminal sexual conduct with a minor, first degree,
15 and as the Judge will go over with you in a minute, but just
16 so you can kind of follow along with my argument here, a
17 person is guilty of criminal sexual conduct with a minor in
18 the first degree if he engages in a sexual battery with the
19 victim who is less than eleven years of age.

20 Now, all evidence in this case shows you that the times
21 that we're talking about here, Minor was under the age of
22 eleven, nine to ten, all evidence. So, if the Defendant
23 committed a sexual battery upon her, he is guilty of criminal
24 sexual conduct in first degree. So, that brings us to the
25 question, What is a sexual battery? Well, a sexual battery

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1 has a definition as well. The Judge is gonna tell you in a
2 minute that sexual battery means sexual intercourse, penis and
3 vagina, cunnilingus, oral sex, fellatio, oral sex on a man,
4 anal intercourse or any intrusion, however slight, of any
5 item, fingers, objects, whatever, into the vaginal or anal
6 openings of another, if that man put his penis anywhere around
7 that woman, with that particular girl, that that man put his
8 fingers inside that girl, he's guilty of CSC first-degree with
9 a minor.

10 Now, as I told you, he is also charged with lewd act upon
11 a minor. And again, I'll just kind of go ahead and give you
12 an idea of what that is so you can tell. Lewd act upon a
13 minor or a child under the age of sixteen, it is unlawful for
14 a person, over the age of fourteen -- all the evidence in this
15 case shows that that man is over the age of fourteen. I
16 believe there was testimony from his ex-girlfriend,
17 Minor 's mom, that he was thirty-one clearly over the age
18 of fourteen -- upon or with the body or parts of a child under
19 the age of sixteen years. Again, Minor is clearly under
20 the age of sixteen. So, if he did anything in a lewd or
21 lascivious manner to Minor , anything, he's guilty of lewd
22 act upon a minor as well.

23 That's the law. That's law that you have to apply to the
24 facts. And that's the great thing about jury trials today is
25 that we tell you what the law is -- the Judge tells you what

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1 the law is, not we, the Judge. You tell us what the facts are
2 and it's common sense. As Mr. Chrisco said yesterday, when he
3 was giving his opening statement, that every one of you came
4 in here with common sense, otherwise, you wouldn't be here.
5 Your common sense is used at this point in time to determine
6 what the truth of this case is. And the most important thing
7 and in this case in particular, it's all about the
8 credibility of the witnesses. If you believe Minor he's
9 guilty. If you think she's lying, he's not. It's a simple
10 question but it's a hard question and it's a hard question
11 that you all have to answer.

12 And when you're back there deciding on credibility, I
13 want to talk to about some of the tools are useful to you in
14 making a determination on who's telling the truth and who is
15 not. The first thing I suggest you look at is what else
16 confirms or corroborates the statement of the child. One more
17 thing, while I'm thinking about it, is the indictments list
18 Minor as , that's for privacy sake. So, on the
19 indictment the victim in this case at all times is Minor ,
20 don't be deceived about that if there is any issue back there.
21 I want to make sure everything is cleared up.

22 As I was saying, one of the things you look at to
23 determine whether or not someone is being honest and truthful
24 with you is what else confirms or corroborates what they say.
25 In this case, you have it. You have testimony from the

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1 grandmother and the mother. Now, they didn't come in here and
2 they didn't tell you that they saw anything that happened
3 between GMinor and Carlos, they didn't. What they told you
4 confirms what Minor told you based on how she acted, based
5 on the fact that she was acting out sexually with another
6 child, based on the fact that she did not want to go over to
7 her mother's house, based on the fact that at one point when
8 her mom was driving over to the house she begged her mom to
9 turn around and take a back to grandmother's house. What was
10 over at her mom's house that she didn't want to go to?
11 Carlos. And now we know why she did that. Now, that light
12 switch has been turned on and we can see why Minor didn't
13 want to go over to her house. Now, we can see why she asked
14 her mom to turn around; we can see that now. Also, witness
15 statements confirm that the Defendant had an opportunity to do
16 what he did to Minor. Witness statements from the mother
17 and grandmother say that when she would leave, the mom would
18 leave the house with Minor and her three-year-old sister
19 there, they were left in his care and custody, all alone with
20 him. And again, the light switch has been turned on. We know
21 what happened when they were all alone together.

22 Another way and another tool that's useful in determining
23 credibility of witnesses, I think, is their demeanor, how they
24 answer questions, how they respond to questions, whether or
25 not you think they were trying to deceive you, whether or not

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1 you think they were trying to weasel their way out of
2 questions. Now, I'm going to caution you, you can't apply
3 adult standards with the child. Minor is sitting here
4 right now, sitting on that witness stand today or yesterday,
5 today and yesterday, excuse me -- she's twelve, she still is
6 twelve. On that video statement that y'all watched she was
7 ten going on eleven, I think she said, not quite eleven yet.
8 Did she seem like she was lying to you? Did she seem like she
9 was trying to think up answers that weren't true? Did she
10 seem like she was trying to manipulate you? Or, did she seem
11 like she was answering the questions that I asked? Did she
12 seem like she was answering to the best of her ability the
13 questions that the Defense attorney asked? Did she seem like
14 she was being honest with you? I submit she did and I submit
15 she was. But that's a tool that you can talk about back there
16 in reaching your decision about her demeanor and how she
17 answered questions, not just mine, but Mr. Chrisco's.

18 One of the most useful tools in determining who is
19 telling the truth, to me at least, is do they have a reason to
20 lie? You walk in -- and this is something each and every
21 single one of you to every day -- you walk into a Best Buy and
22 you're looking at a television and a commissioned salesperson
23 comes up and says that's a great TV, is the most expensive one
24 we've got, it's also the best one. He's got a reason to lie.
25 You might take that into account. You might think, well,

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1 yeah, you want me to buy this TV so you can make a nice little
2 commission. A customer does the same thing, walks up to you,
3 just another customer shopping at Best Buy and says I have
4 that TV in my house, it's great. You might give that a little
5 more weight. Look at why anybody would have a reason to lie
6 in this case. Does Minor have a reason to lie? Nothing
7 in the evidence shows any prior problems between her and
8 Carlos, nothing, no reason why she would make up horrible
9 stories about Carlos touching her to get him in trouble. No
10 reason other than if it was the truth. Also, look at what she
11 said. She didn't say -- if you listened to what she said, I
12 was trying to listen to it in the statement, in the video --
13 what was the testimony? I don't actually know if she ever
14 said that Carlos hurt her. So, how did it feel? It felt
15 weird. It felt strange. It felt awkward. If she was trying
16 to get Carlos in trouble, she just wanted get him, she'd tell
17 you that he was hurting her, not that he made her felt weird,
18 not the mater felt awkward, not that he made her feel strange.

19 Another tool that you use every day in determining who's
20 telling the truth is consistency. Now, Dr. Carol Rahter --
21 and we'll talk more about her in a little bit -- she told you
22 how children, when they disclose -- in her twenty years of
23 expertise dealing with over 3000 abuse cases, when they
24 disclose, they tend to disclose a lot and mix of different
25 incidences, different events. Mr. Chrisco made a big deal at

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1 opening -- in his cross examination of Minor about how she
2 said this happened in the video and then says, well right
3 after that, this happened in the same incident. She said she
4 didn't say that. I watched that video and she didn't say
5 that. One happened on Friday and one happened on Saturday,
6 different dates, not an inconsistency. We're talking about
7 different statements -- we're talking about someone telling --
8 it's something all of you are gonna experience in a minute
9 back there because all twelve of you, I'm sorry alternate, but
10 all thirteen of you, excuse me, have witnessed the exact same
11 trial, no question, no doubt about it, each if you are gonna
12 remember it slightly different and each time you say
13 something, you're gonna it slightly. It's not going to change
14 what you saw, it's not gonna change what you heard. Minor
15 didn't change what she felt. Her statements was that all that
16 inconsistent, ladies and gentlemen. If you need to go over it
17 again, you have that right. You have the right to listen to
18 her statement and testimony. You have the right to get that
19 video again if you'd like. I submit to you that it wasn't all
20 that different. I remember when the video was on, Minor
21 talks about when her mom's T-shirt, talked a lot about that on
22 the stand. Minor told you what she remembered here. She
23 didn't tell you what she said on the video. It's when someone
24 tells you the same thing two years later exactly the same way
25 that you have to be skeptical because then are they telling

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1 you what they remember, what they -- sitting on the stand,
2 trying to remember their best to what happened to them, after
3 two years of counseling, after two years of moving on past
4 this or are they trying to tell you what they saw in the
5 video? I submit to you, based on what Minor told you from
6 that witness stand, based on what you saw in the video, she
7 was up there, she was trying to tell you what happened to the
8 best of her memory. She wasn't trying to manipulate you, she
9 wasn't trying to pull the wool over your eyes, and she wasn't
10 telling you regurgitated information from a video she watched.
11 She was saying what she remembered, which is the best we can
12 ask any witness that gets on that stand.

13 Now, I want to talk a little bit more about that video.
14 Minor is a very smart girl. I think all of you saw that
15 today from the witness stand and on the video. Seems to pick
16 up a lot about stuff that's going on. She talks a whole lot
17 about being -- when she talked about her stomach growing and
18 something feeling like it was growing inside of her. Well,
19 you heard that her mom had the talk with her and she reference
20 to that in the video. I think what you witnessed there was a
21 young girl trying to process knowing somewhat where babies
22 come from and trying to process that Defendant did to her. But
23 here is the question I've got for you, Why would Minor be
24 concerned about being pregnant if the defendant had never
25 touched her? Why would that be a concern of hers?

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1 Why would she be scared there was a baby growing inside of her
2 unless there was a reason that it might be?

3 Yes, the video is not exactly the same as the testimony
4 that was presented. The video was two years ago. The video
5 was also not in a room, no offense, in front of thirteen
6 strangers, a judge, me, an officer, the Defendant, Defense
7 counsel, interpreter, and countless other people. The video
8 was in a room alone with one woman trained to talk to children
9 who let her color while she talked. It's gonna be a little
10 different than her standing on the witness stand hearing court
11 today and that's expected. That video showed you a girl who
12 was often times confused about what happened, not confused
13 about what actually occurred to her the confused about why it
14 happened. She's trying to think up reasons for Carlos, why
15 would Carlos did this to her? She tried to offer up reasons
16 on that video. She's trying to explain why her. Another
17 thing I want y'all to think about with that video is the way
18 Minor moved to when she demonstrated what Carlos did. It
19 was in a very adult manner. In fact, when she will about
20 having to grab his private part, she didn't grab like that
21 (indicating), she grabbed like that (indicating). Why?

22 Now, the credibility of the witnesses other than
23 Minor, ladies and gentlemen, I'm not gonna sit up here and
24 tell you Minor's grandmother or mother are gonna win a
25 Mother of the Year Award this year. But what I will tell you

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1 is that they were being honest and forthright to the best of
2 their ability. And they just had a vendetta out, if they had
3 something against that man and they wanted to say whatever
4 they could to get him, you sure enough would've heard that
5 they saw something but you didn't because they didn't because
6 it happened in the dark. These witnesses, ladies and
7 gentlemen, are not sophisticated enough to pull off some kind
8 of frame up which is I'm guessing is gonna be the only
9 explanation for Defense has to for this, that everybody is
10 lying on him.

11 Dr. Rahter and Agent Weaver's testimony, as I told y'all
12 earlier, that was basically there to -- their ability is not
13 even in question, in my opinion. But their testimony was
14 there to answer questions you might have. Why we won't have
15 physical evidence, delay disclosure, very common, especially
16 when they know the man, mom's boyfriend, she knew him, not a
17 stranger. You don't get DNA when you don't find out about the
18 crime till months and months later. You don't get injury or
19 trauma when you don't find out about the crime until months
20 and months later. But that doesn't mean the crime didn't
21 occur. It doesn't mean that that man didn't touch that little
22 girl because the evidence is showing you he did.

23 And that's why, ladies and gentlemen, when you go back
24 there to talk about it, think about it, discuss what you've
25 heard and discuss what you've seen. And if you find that he

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CLOSING BY CHRISCO

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1 committed sexual battery, to wit, fingers in her vagina, penis
2 in her vagina, penis in her anus, you come back and say
3 guilty. If you find that he touched her in a sexual, lewd or
4 lascivious manner, come back and find him guilty. The case is
5 in your hands, ladies and gentlemen. The light switch is on;
6 what did you see? Thank you.

7 THE COURT: Mr. Chrisko.

8 MR. CHRISCO: May it please the Court?

9 THE COURT: Yes, sir.

10 CLOSING BY MR. CHRISCO:

11 MR. CHRISCO: I told you earlier to listen to what the
12 witnesses said, you be the judge on that. The judge of the
13 law is gonna give you the law of the case. You decide what
14 the facts are. As the Judge has instructed you before, if you
15 hear -- if I say something different than what you remember,
16 disregard what I say and go with what you remember.

17 Let's state at the first. A screaming daughter runs to
18 her mother's house stating that Minor is doing something
19 with her child. She's upset enough to be screaming and,
20 according to the mother, almost out of control. Minor
21 says she's running behind. The grandmother never said
22 anything about Minor being there. When confronted, she
23 says it's Carlos Lopez. If you'll remember the testimony, she
24 said that Carlos had moved out two weeks before -- he and the
25 mother had broken up and he had moved out two weeks prior to

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CLOSING BY CHRISCO

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1 her -- on the video, she says that in the video. When asked
2 to explain -- and there were other people there at that house.
3 If you'll remember the testimony from her mother, she named
4 several names, and Minor said some of those people, whom
5 her mother said was only friends, staying there also. What --
6 she had to find someone to put the blame on. It's kind of
7 like kids in school. It's always the person that wasn't there
8 that way you can't track that person down. It's always some
9 other person. Look at the -- look at the testimony. It --
10 from what she testified to on the stand, what was on the
11 video, it was a lot of difference. Let's just take the video.
12 She described this event happening in one room and it happened
13 in another room. The interviewer kept saying is this the same
14 one; yes. The mother was there, her sister was in the
15 bedroom, she says the first time. Yet, when she testified,
16 she said the first time was on the floor in front of the
17 entertainment center. In the video, she says that when she
18 went in to ask for Band-Aids, keeping in mind no testimony of
19 any other State's witnesses was questions asked by the State
20 -- said that the Carlos Lopez spoke anything other than
21 Spanish. The officer said he could not communicate with him
22 because he could not speak English. You see the interpreter
23 that's been over there the whole time. She said her mother
24 was in the bed sleeping when she went in there. Later, she
25 said her mother was, when asked about it, her mother was

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CLOSING BY CHRISCO

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1 asleep on the couch. If you watch the video and watched in
2 here, very smart, very smart to be the age she is, very, very
3 smart. Taught herself to do art, online courses. There are
4 other things online, too, that you can look up and you can see
5 how certain things are. Did we hear either on the stand or on
6 the video, did we hear Minor describing what happened or
7 did we hear someone else describing what happened through
8 Minor ? A thirty-one-year-old man does not touch a nine-
9 year-old girl on the bottom, that's what she said. She also
10 said he felt my groin and breast. Odd words for a child to
11 say. She says on the video at ten years old. There's a lot
12 of things -- and I'm just gonna touch on a few of those.
13 There's going to be lots that I'm not even gonna get into. At
14 times, when watching the video, it's like you can see from
15 facial expressions, a story develop, great imagination, uses
16 words like awkward, literal -- I still have to think when I
17 use that language.

18 Mr. Lopez did not testify nor did he put of a defense.
19 He doesn't have to. He's not required to. The Judge is gonna
20 tell you that you can't even hold that against him. You can't
21 bring it up during your deliberations. And if you do, you
22 violated the oath that you took. You can't consider it
23 whatsoever. The State always has the burden of proving
24 someone guilty. No one has to prove that they are innocent.
25 That's the way that it should be and that's the way that it

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CLOSING BY CHRISCO

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1 is.

2 I think when you go over the facts in this case and it
3 all boils down to Minor . It's the way she told the
4 story, the many variations of the way that she told the story,
5 the many ways that she said things happened.. They couldn't
6 have happened the way that they happened. It's physically
7 impossible to go to the -- I think she was talking about
8 sitting in front of the couch and then sitting on the couch
9 and plopped down. I ask did she have on any underwear this
10 time. She didn't. The way she described it is, I think, what
11 you might -- she said that bugs and lizards were in her
12 mother's house. I think she at one point was talking about
13 putting on her mother's bedroom shoes and stomping them.
14 Maybe that's the reason she didn't want to go to her mother's
15 house. Remember on the video when the interviewer was asking
16 did he -- did she feel something from him and she said yes,
17 about like a tadpole. Think about that. Why should it feel
18 like a tadpole? If you've ever seen or read about sperm has
19 always got a -- look like a tadpole going in one direction.
20 You know -- if you don't know any better, that's what you --
21 My client is not guilty. It just doesn't make sense. These
22 are horrific crimes. What she says doesn't make sense. It's
23 not like I've asked you to look at it this way or that way,
24 look at it the way that it was. It just doesn't make sense.
25 It's -- it's all over the place. Right near the end of the

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CLOSING BY CHRISCO

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1 video she says, it all happened in one day. She says that
2 about three times. It all happened in one day that she was
3 standing up drawing on the paper, on the wall. It just
4 doesn't make sense. She testified that Mr. Lopez was watching
5 a Hispanic movie of a woman being undressed and he made her
6 watch it. On the video, the interviewer asked her a series of
7 questions relating to the same thing, a picture, movie,
8 someone taking a picture; she said no. That was two years
9 ago. Yesterday, she said yes. A lot closer in time. I could
10 stand up here and give you probably a dozen more instances but
11 you watched the video just like I did and like everyone else.
12 I'm sure you seen the inconsistencies from yesterday to the
13 video and even in the video the inconsistencies from minute-to-
14 minute.

15 I asked you to bring your common sense into the
16 courtroom. It's in the video that her bottom hurt so bad that
17 she stood behind her desk all day at school. Ask yourself
18 this question, would a teacher not ask you what was wrong that
19 you could not sit down and not be concerned that you could not
20 sit down and wouldn't send her to the school nurse to see if
21 there was anything that could be done for her? I submit to
22 you that they would have, had it happened.

23 She said in the video that she didn't tell her mom, she
24 hadn't told anyone. In the video, when the interviewer was
25 telling her the precautions that she needs to take and what

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CLOSING BY CHRISCO

1 she needs to do if this happens. Again, Minor was in a
2 chair, very bored, very, very bored. It doesn't apply to me
3 because I don't have anything to worry about.

4 Did something happen? I don't know, don't know. I know
5 this, the truth, oddly enough, sounds about the same way every
6 time you tell it. I remember growing up my momma used to say
7 it takes too much energy and waste of brain power to lie
8 because you always got to remember what you said and who you
9 said it to. So, even dumb people like me can tell the truth
10 and never have to think. Ask yourself, when you tell a true
11 story over and over and over again, is it gonna sound the
12 same? I think you'll find that it does.

13 Also said in the video that he told her this or that or
14 whatever. She then said in the video that he does not -- he
15 only speaks Spanish.

16 I said before that I thought a lot of this was telling a
17 story. I really felt that way when watching Minor saying
18 something was growing inside, saying her stomach was getting
19 bigger and her jeans wouldn't fit. It was almost like she
20 wanted to be a mother and it was a way of telling a story. I
21 don't know if you saw it the same way.

22 The Judge is gonna give you what the law is in the case.
23 You've got the hard job of going back there and determining
24 what the facts are in this case. I think, after you sit down
25 and talk about it and remember what the testimony was, that

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CHARGE TO JURY

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1 you'll come to an agreement that Carlos Lopez is not guilty,
2 is not guilty. If you looked at the evidence, then you know
3 he's not guilty.

4 Thank you.

5 CHARGE TO JURY:

6 THE COURT: All right. Ladies and gentlemen, all of the
7 evidence in this case has been presented to you. The
8 attorneys have made their closing arguments and now is the
9 time of the trial that I charge you with that law to be
10 applied in this case.

11 The indictments in this case allege several different
12 offenses against the Defendant. One indictment charges the
13 Defendant with criminal sexual conduct with a minor in the
14 first degree. The second indictment charges the Defendant
15 with committing a lewd act on a minor. Now, I remind you that
16 the fact that the Defendant was arrested, charged and indicted
17 in this case is not evidence in this case and cannot be
18 considered by you as evidence of guilt in this case. Nor does
19 the Defendant's arrest, charge or indictment create any
20 presumption or inference of guilt. These documents are simply
21 the formal written instruments which contain the charges made
22 against the defendant. They are the formal documents by which
23 this case is brought into this court. Also, each indictment
24 charges a separate and distinct offense. You must decide each
25 indictment separately on the evidence and the law applicable

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1 to it uninfluenced by your decision as to any other
2 indictment. The Defendant may be convicted or acquitted on
3 any or all of the offense charged. You will be asked to write
4 a separate verdict of guilty or not guilty for each
5 indictment.

6 Now, the Defendant has pled not guilty to these
7 indictments. That plea puts the burden on the State to prove
8 the Defendant guilty. A person charged with committing a
9 criminal offense in South Carolina is never required to prove
10 his innocence. I charge you that an important rule of the law
11 is that a defendant in a criminal trial no matter what the
12 seriousness of the charge may be will always be presumed to be
13 innocent of the crime for which the indictment was issued
14 unless guilt has been proven by evidence satisfying you of
15 that guilt beyond a reasonable doubt. This presumption of
16 innocence does not end when you begin your deliberations but
17 it accompanies the Defendant throughout the trial until you
18 reach a verdict of guilt based on evidence satisfying you of
19 that guilt beyond a reasonable doubt. The presumption of
20 innocence is like a robe of righteousness placed about the
21 shoulders of the Defendant which remains with the Defendant
22 until it has been stripped from the Defendant by evidence
23 satisfying you of the Defendant's guilt beyond a reasonable
24 doubt. The presumption of innocence is not a mere legal
25 theory, it is not just a legal phrase. It is a substantial

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1 right to which every defendant is entitled to unless you the
2 jury are satisfied from the evidence of the Defendant's guilt
3 beyond a reasonable doubt.

4 Now, what is a reasonable doubt of law? A reasonable
5 doubt is the kind of doubt that would cause a reasonable
6 person to hesitate to act. Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced that the Defendant's
8 guilt. We know very few things in this world with absolute
9 certainty and in criminal cases the law does not require proof
10 that overcomes every possible doubt. If, based on your
11 consideration of the evidence, you are firmly convinced that
12 the Defendant is guilty of the crime or crimes charged you
13 must find the Defendant guilty. If, on the other hand, you
14 think a real possibility exists that the Defendant is not
15 guilty, you must give the Defendant the benefit of that doubt
16 and find him not guilty.

17 I remind you that during this trial you and I have
18 certain duties to perform. As the Trial Judge my
19 responsibility is to preside over the trial of this case. I
20 also have the duty to rule on the admissibility of evidence
21 offered during the trial. You are to consider only the
22 competent evidence before you. If any testimony was ordered
23 stricken from the record in this case during this trial you
24 must disregard that testimony. You are to consider only the
25 testimony which has been presented from the witness stand, any

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1 exhibits which have been made a part of the record in this
2 case and any stipulations of counsel. I have the additional
3 duty to charge you the law applicable to this case. As the
4 deciding judge I am the sole judge of the law of this case.
5 Your duty as jurors is to accept and apply the law as I now
6 state it to you. If you have any idea as to what the law is
7 or what the law ought to be and your idea is different from
8 what I now tell you the law is, you must disregard your idea
9 of what the law is or ought to be because you are sworn to
10 accept the law and apply the law exactly as I state it to you.
11 In every case tried in this court before the jury, the jury is
12 the sole and exclusive judge of the facts in the case. A
13 trial judge cannot intimate, state, comment on or make any
14 statement to a trial jury about the facts in the case. Since
15 you the jury are the sole judge of the facts in this case, you
16 are not to infer from what I have said during the progress of
17 this trial in ruling upon the admissibility of evidence or
18 otherwise or anything that I say now during the course of
19 these instructions to you that I have any opinion about the
20 facts in this case. The law does not allow me to have an
21 opinion about the facts in this case. This is a matter solely
22 for you, the Jury, to determine. As jurors your duty is to
23 determine the effect, value, weight and truth of the evidence
24 presented during this trial. Necessarily, you must determine
25 the credibility of witnesses who have testified in this case.

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1 Credibility simply means believability. Your duty as jurors
2 is to analyze and evaluate the evidence and determine which
3 evidence convinces you of its truth. In determining the
4 believability of witnesses who have testified in this case,
5 you may believe one witness over several witnesses or several
6 witnesses over one witness. You may believe a part of the
7 testimony of a witness and reject the remaining part of the
8 testimony of that same witness. You may believe the testimony
9 of a witness in its entirety or reject the testimony of a
10 witness in its entirety. You may consider whether any witness
11 has exhibited to you any interest bias prejudice or other
12 motive in this case. You may also consider the appearance and
13 manner of the witness while on the witness stand.

14 Now, during this trial, you have heard testimony from a
15 child. When a witness is a child, you must determine as with
16 any witness whether that testimony is believable. In deciding
17 believability, you may consider not only matters that I've
18 already discussed with you and you may also consider the age
19 of the child, the child's ability to observe and remember
20 facts and child's ability to understand and answer questions.
21 Because young children may not fully understand what is
22 happening here, it is up to you to decide whether the child
23 understood the seriousness of appearing as a witness at this
24 criminal trial, whether the child understood the questions,
25 whether the child had a good memory and whether the child

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1 understands the difference between lying and telling the
2 truth. In addition, young children may be influenced by the
3 way the questions are asked. It is up to you to decide
4 whether the child understood the questions asked.

5 Evidence has been presented that a witness may have made
6 prior statements which are not consistent with the witnesses
7 present testimony. You may use as this evidence to decide
8 whether to believe the witness. You may also use evidence of
9 the earlier contradictory statements to determine the truth of
10 the statements. It is up to you to decide whether to believe
11 the earlier statements or the testimony given at trial. If a
12 witness is shown to have knowingly testified truthfully
13 concerning any material matter, you may consider this in
14 determining whether to trust the witnesses testimony as to
15 matters. You may reject all of the testimony of that witness
16 or give all or as part of the testimony the weight you think
17 it deserves.

18 The rules of evidence ordinarily do not permit witnesses
19 to testify to opinions or conclusions. An exception to this
20 rule exists for witnesses we call expert witnesses. A
21 witness, who by education and experience, has become an expert
22 in some art, science, profession or calling may state an
23 opinion as to relevant and material matter in which the
24 witness claims to be an expert. They may also state the
25 reasons for the opinion. You should consider any expert

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1 opinion received in evidence in this case and like any other
2 evidence give it the weight you think it deserves. If you
3 decide that the opinion of an expert witness is not based on
4 sufficient education and experience or if you conclude the
5 reasons given in support of the opinion are not sound or that
6 the opinion is outweighed by other evidence, you may disregard
7 the opinion entirely. An expert witness's testimony is to be
8 given no greater weight than that of any other witness simply
9 because the witness is an expert. Further, you are not
10 required to accept an expert's opinion even though you may not
11 be contradicted.

12 I instruct you and emphasize that the fact that the
13 Defendant did not testify is not a factor to be considered by
14 you in any way in your deliberation and in your consideration
15 on the question of the guilt or the innocence of the
16 Defendant. The Defendant's failure to testify must not be
17 considered by you in any manner whatsoever. A defendant has
18 the constitutional right to remain silent and the assertion of
19 this right must not be considered by you in your
20 deliberations. I repeat, under your oath, you are to draw no
21 conclusion whatsoever from the fact that the Defendant in this
22 case did not testify. The fact that this Defendant did not
23 testify should not even be discussed in the jury room.

24 The burden of proof, as I have stated to you, is on the
25 State to prove the Defendant's guilt. The Defendant is not

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1 required to prove his innocence. The burden of proof remains
2 on the State to prove the Defendant's guilt beyond a
3 reasonable doubt.

4 Now, in order to establish criminal liability, criminal
5 intent is required. For example, the mental state required to
6 be proven by the State for a particular crime might be
7 purpose, intent, knowledge, recklessness or criminal
8 negligence. Criminal intent must be proven by the State
9 beyond a reasonable doubt. Criminal intent is always a matter
10 that must be determined by the determined by the Jury from the
11 circumstances surrounding the situation. There is no way to
12 prove intent to a mathematical certainty. Medical science
13 cannot dissect a person's brain and determine what the person
14 had in mind. So, the law says that criminal intent may be
15 inferred from the circumstances shown to have existed. This
16 is that you make a determination of whether or not the element
17 requiring intent was present. Criminal intent may not be
18 established by direct and positive evidence but intent may be
19 established by inference in the same way as any other fact by
20 taking into consideration the acts of the parties and all of
21 the facts and circumstances of the case. Criminal intent is a
22 mental state, a conscious wrongdoing. It is up to you to
23 determine what the Defendant intended to do based on the
24 circumstances shown to have existed. Criminal intent can
25 arise from action or a failure to act. It may arise from

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1 negligence, recklessness or an indifference to duty or to
2 consequences that is considered by law to be the equivalent of
3 criminal intent.

4 The Defendant is charged with criminal sexual conduct
5 with a minor in the first degree. To convict the Defendant of
6 this crime, the State must prove beyond a reasonable doubt
7 that the Defendant engaged in a sexual battery with the
8 victim. A sexual battery is sexual intercourse, cunnilingus,
9 fellatio, anal intercourse or any intrusion however slight of
10 any part of a person's body or of any object into the genital
11 or anal openings of another person's body except when the
12 intrusion is accomplished for medically recognized treatment
13 or diagnostic purposes. The State must then prove beyond a
14 reasonable doubt that the victim was less than eleven years
15 old at the time of the sexual battery. A minor's consent,
16 willingness, indifference or ignorance, if any, as to what was
17 taking place does not in any way affect the charge of criminal
18 sexual conduct with a minor because at an unmarried woman
19 under the age of fourteen cannot legally consent to sexual
20 intercourse.

21 The Defendant is also charged with committing a lewd act
22 on a minor. To convict the Defendant of this crime, the State
23 must first prove beyond a reasonable doubt that the Defendant
24 was over the age of fourteen. Next, the State must prove that
25 the Defendant willfully and lewdly committed or attempted a

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1 lewd or lascivious act on or with the body parts or its parts
2 of a child under the age of sixteen years with the intent to
3 arouse, appeal to or gratify the lust, passions or sexual
4 desires of the Defendant or of the child. Willfully means
5 voluntarily and intentionally with the specific intent to do
6 something the law forbids. Lascivious means tending to incite
7 lust, lewd, indecent, obscene or attempting to deprave the
8 morals in respect to sexual relations.

9 Now, there are two possible verdicts which you may find
10 for each indictment in this case. No significance whatsoever
11 is to be given to the order in which I state these possible
12 verdicts to you. I simply must state one first and one
13 second. The possible verdicts for each indictment is either
14 guilty or not guilty. As I stated earlier, each indictment
15 charges a separate and distinct offense. You must decide each
16 indictment separately on the evidence and the law applicable
17 to it uninfluenced by your decision as to any other
18 indictment. The Defendant may be convicted or acquitted on
19 one or both of the offenses charged. You must write a
20 separate verdict of guilty or not guilty for each indictment.
21 Ladies and gentlemen, your verdicts must be unanimous.

22 Mr. Devens, as foreperson, when the Jury agrees on the
23 verdict, you will write the verdict underneath the verdict
24 portion on the indictment, sign your name and date the
25 indictment. Once the Jury has reached a unanimous verdict on

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1 both indictments, you would then knock on the door, notify the
2 Bailiff that you have reached a verdict and we'll bring you
3 back into the court at that time.

4 Now, you have been allowed to take notes during the trial
5 of this case. However, please remember that some people are
6 better note takers than others. Juror notes should not be
7 given any greater weight than the recollection of other jurors
8 who may or may not have taken notes. The recollections of
9 individual jurors should be considered as reliable as notes
10 taken by other jurors. Now, at this time, I'm going to excuse
11 you back to the jury room but I'm going to ask you not to
12 begin your deliberations at this time. I've got to check with
13 the attorneys to see if they have any challenges or objections
14 to the charges are any additional charges. If there are
15 additional charges and I deem that they need to be to be given
16 you, I'll bring you back into the courtroom and give you the
17 institutional or corrective charges. If there are none, then
18 we will send any exhibits and the indictments back to the jury
19 room and the Bailiff will instruct you to begin your
20 deliberations at that time. Once the Bailiff advises you you
21 can begin your deliberations you can then start your
22 deliberations but please do not start them until the Bailiff
23 directs you to do so.

24 All right. I'm going to excuse you back to the jury room
25 for just a few minutes. Thank you very much.

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BY THE COURT

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1 (REPORTER'S NOTE: Jury exits courtroom. 3:50 P.M. The
2 following takes place outside the presence of the Jury.)

3 BY THE COURT:

4 THE COURT: All right. Any exceptions or challenges to
5 the charges by the State?

6 MR. SPRATLIN: No, Your Honor.

7 THE COURT: Any by the Defense?

8 MR. CHRISCO: No, Your Honor.

9 THE COURT: All right. Let's go ahead -- to be have any
10 exhibits may go back?

11 MR. SPRATLIN: Your Honor, there was one Court's exhibit
12 that was introduced, that's a video. By stipulation of the
13 parties it was marked Court's exhibit rather than Defense or
14 State. It's a CD. They can't do anything with it if we send
15 it back anyway.

16 THE COURT: What do you want me to do with that?

17 MR. CHRISCO: I think a Court's exhibit is just that, a
18 Court's exhibit.

19 THE COURT: All right. We won't send that back. But
20 let's go ahead and take the indictments back and we can tell
21 the Jury that they can begin their deliberations.

22 MR. SPRATLIN: Your Honor, I'm not certain if we told the
23 alternate to be out of the jury room.

24 THE COURT: I'm gonna bring him out and excuse him.
25 Okay? I'm not even gonna hold him. So, we need to bring Mr.

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BY THE COURT

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1 Colletta out. Okay.

2 (REPORTER'S NOTE: Juror 77 returns to courtroom.)

3 THE COURT: Mr. Colletta?

4 JUROR 77: Yes, sir.

5 THE COURT: This is the part of the trial always take.
6 As the Alternate, since you're not part of the twelve member
7 jury, you will not be allowed to participate in the
8 deliberations. I feel bad because we make you sit through the
9 whole trial, you have to listen to all of the evidence but
10 then you don't get to make a decision in the case. You are at
11 liberty to stay and see what happens if you want to. If you
12 want to leave, you're entitled to go ahead and leave if you
13 want to. Now you will need to be back tomorrow morning at
14 9:30 in the jury panel room downstairs. Okay? So, you can
15 either go now and we'll see you back tomorrow morning at 9:30
16 or ---

17 JUROR 77: Can I sit in the back?

18 THE COURT: Yeah, if you want to sit in the back, you can
19 send them back, you can do that as well. Okay? All right.

20 JUROR 77: Thank you.

21 THE COURT: Do you have anything in the jury room?

22 JUROR 77: No.

23 THE COURT: Okay. All right. You're free to stay as
24 long as you want or whenever you get ready to leave, you don't
25 even have to ask, you can go ahead and leave at that time or

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VERDICT OF THE JURY

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1 whenever. All right. Thank you.

2 All right. Anything further from the State?

3 MR. SPRATLIN: No, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. CHRISCO: No, Your Honor.

6 THE COURT: All right. We'll stand in recess unless and
7 until we hear from the Jury.

8 MR. SPRATLIN: Yes, sir.

9 THE COURT: Thank you.

10 (RECESS - 3:53 P.M.)

11 *****OFF THE RECORD*****

12 (On the Record - 5:00 P.M.)

13 THE COURT: All right. I understand the Jury has reached
14 a verdict. Is that correct? All right. Anything from the
15 State before we bring the Jury in?

16 MR. SPRATLIN: No, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. CHRISCO: No, Your Honor.

19 THE COURT: All right. Let's go ahead and bring the Jury
20 in.

21 (REPORTER'S NOTE: Jury enters courtroom. 5:02 P.M.)

22 VERDICT OF THE JURY:

23 THE COURT: Ladies and gentlemen, welcome back.

24 Mr. Devens, I understand the Jury has reached a verdict
25 on both indictments. Is that correct?

State v. Lopez - 2012-GS-26-02470, 2014-GS-26-00535
VERDICT OF THE JURY

190

1 JUROR 98: Yes, sir, we have.

2 THE COURT: All right. Have you completed the indictment
3 by writing the verdicts on the back of the indictments?

4 JUROR 98: I have.

5 THE COURT: All right. If you'd please give that to the
6 Bailiff.

7 All right. I'll ask the Clerk to please publish the
8 verdicts.

9 CLERK: Indictment Number 2012-GS-26-2470, State of South
10 Carolina, County of Horry, versus Carolos Roberto Lopez on the
11 charge of criminal sexual conduct with minor, first degree,
12 We, the Jury, unanimously find the Defendant guilty.

13 Indictment Number 2014-GS-26-535, State of South
14 Carolina, County of Horry, versus Carolos Roberto Lopez on the
15 charge of lewd act upon a minor child, We, the Jury,
16 unanimously find the Defendant guilty. Signed by foreperson
17 Timothy Devens, Juror Number 98. Dated April 15th, 2014.

18 Ladies and gentlemen of the Jury if this is your verdict,
19 so signify by raising your right hand.

20 (REPORTER'S NOTE: Jury unanimously complies.)

21 CLERK: Thank you.

22 THE COURT: Any polling of the Jury by the Defense?

23 MR. CHRISCO: No, Your Honor.

24 THE COURT: All right.

25 THE COURT: All right. Ladies and gentlemen, I want to

State v. Lopez - 2012-GS-26-02470, 2014-GS-26-00535 191
SENTENCE OF THE COURT

1 Thank you for your service in this case. That will conclude
2 your duty as jurors on this case. Now, we do have another
3 case that we may be starting tomorrow morning. So, I'll need
4 you back in the jury panel room tomorrow morning at 9:30. And
5 I will be picking another jury for another case if it goes
6 forward. I don't know; I've got to check with some scheduling
7 with the attorneys to see about the length of the trial and
8 things of that nature. Please be back in the jury room
9 tomorrow morning at 9:30. The rest of the jury panel is
10 reporting at that time and we'll see you at that time. You're
11 free to go for the remainder of the day and I want to thank
12 you for your service in this case. Thank you very much.

13 Everybody please remain seated while the Jury is excused.

14 (REPORTER'S NOTE: Jury exits courtroom. 5:05 P.M.)

15 SENTENCE OF THE COURT:

16 THE COURT: All right. Any post-trial motions at this
17 time?

18 MR. SPRATLIN: None from the State.

19 THE COURT: Anything from the Defense?

20 MR. CHRISCO: No, Your Honor.

21 THE COURT: All right. Any reason as to why we can't go
22 forward with sentencing at this time?

23 MR. CHRISCO: No, Your Honor.

24 THE COURT: All right. Have you got the sentencing
25 sheets?

State v. Lopez - 2012-GS-26-02470, 2014-GS-26-00535
SENTENCE OF THE COURT

192

1 MR. SPRATLIN: Yes, sir, Your Honor.

2 THE COURT: All right.

3 MR. SPRATLIN: Your Honor, I have two victims who do wish
4 to be heard.

5 THE COURT: All right. All right. Mr. Chrisco,
6 anything in mitigation?

7 MR. CHRISCO: I would just ask the Court to -- we know
8 what the minimum sentence is for a CSC, we'd just ask the
9 Court to go with the minimum sentence, Your Honor.

10 THE COURT: All right. Mr. Lopez, is there anything you
11 would like to say or does anyone want to speak on your behalf?

12 INTERPRETER: I don't know, nothing.

13 THE COURT: Victims wish to speak?

14 MR. SPRATLIN: Yes, sir, Your Honor. I'd ask the Court
15 to first hear from Ms. Minor .

16 THE COURT: All right. Minor . All right. What
17 would you like to say?

18 Minor : What I'd like to say is I am glad that
19 finally he will be serving his time for what he's done to me
20 and God bless you all.

21 THE COURT: Thank you, ma'am.

22 MR. SPRATLIN: I believe Ms. Jessica Cerney, Minor 's
23 mother, also would wish to be heard by the Court briefly.

24 THE COURT: All right.

25 MS. CERNEY: I just wanted to say that, you know, that

State v. Lopez - 2012-GS-26-02470, 2014-GS-26-00535
SENTENCE OF THE COURT

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1 when you go with someone the last -- and you trust somebody,
2 the last thing you think of is that they're gonna do something
3 to your daughter while you gone, somebody that you trusted,
4 that you were thinking of making a future with. I hoped and
5 he was trying to act like a father to my children and if this
6 man could do this, I hope you put him to the full extent of
7 the law because did he not only rape a child, he raped a child
8 that he was acting like was his own. And a man that would do
9 that has no morals.

10 THE COURT: Thank you, ma'am. Anyone else?

11 MR. SPRATLIN: No, Your Honor. That concludes all
12 presentation of the State at sentencing.

13 THE COURT: All right.

14 MR. CHRISCO: I would move -- we would ask that he get
15 credit for all the time that he's served. It's been since
16 March the 20th of 2012.

17 THE COURT: All right. Since when?

18 MR. CHRISCO: March 20th, 2012.

19 THE COURT: Any prior record?

20 MR. SPRATLIN: No, Your Honor. As you heard during the
21 trial, there was no prior record of the Defendant.

22 THE COURT: All right. On the charge of criminal sexual
23 conduct with a minor in the first degree, the sentence of the
24 Court is that you be confined to the State Department of
25 Corrections for thirty-five years. On the charge of lewd act

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SENTENCE OF THE COURT

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1 on a minor, the sentence of the Court is that you be confined
2 to the State Department of Corrections for fifteen years.
3 Sentences will run concurrently. You'll be given credit for
4 any time served thus far. You are to be placed on the Central
5 Registry for Child Abuse and Neglect. Also require mandatory
6 GPS monitoring upon his release. All right.

7 I understand you said -- is there an ICE hold?

8 MR. SPRATLIN: There is, Your Honor, but my understanding
9 is he'll serve out his time.

10 THE COURT: Okay. But I'm assuming that the hold stays
11 in place indefinitely; I don't know.

12 MR. SPRATLIN: I imagine that's the case, Your Honor.
13 I'm not certain either.

14 THE COURT: All right. Well, he'll receive credit since
15 March 20th, 2012.

16 MR. CHRISCO: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MS. CERNEY: I hope you rot in hell.

19 THE COURT: All right, ma'am. Let's go ahead and ---
20 All right. Anything further from the State?

21 MR. SPRATLIN: No, Your Honor.

22 THE COURT: Anything further from the Defense?

23 MR. CHRISCO: No, Your Honor.

24 (ADJOURNED - 5:12 P.M.)

25

26

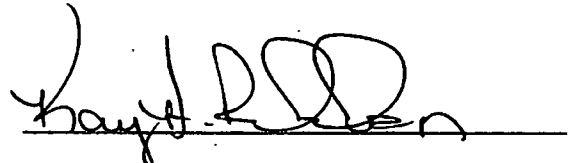
State v. Lopez - 2012-GS-26-02470, 2014-GS-26-00535
CERTIFICATE OF COURT REPORTER

195

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Carlos Lopez, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on April 14 and 15, 2014.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

June 30, 2014.

DOCKET NO. 2012-GS-26- 02470

WITNESSES

Kenneth Mossi Horry County Police Department

C

The State of South Carolina

County of Horry

Candice Lively

12H01666

COURT OF GENERAL SESSIONS

June, 2012 TERM

ARREST WARRANT NUMBER

M972226

CDR: 0385 16-03-0655(A)(1)

DOA: 4/16/2012

THE STATE

vs.

Carlos Roberto Lopez
H/ M

Myrtle Beach, SC 29577
DOB:
SSN:

ATTORNEY: Chrisco, William Edward

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR FIRST DEGREE**

ORIGINAL

J. Gregory Hembree, Solicitor

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUN 21 2012

VERDICT

GUILTY

Timothy F. Stevens

Foreperson of Petit Jury

Date: 4-15-2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

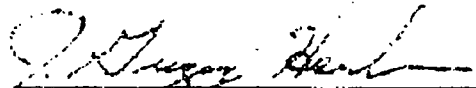
At a Court of General Sessions, convened on June 21, 2012, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Carlos Roberto Lopez did in Horry County, State of South Carolina, between December 8, 2010 and December 25, 2011, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: the defendant did engage in digital/vaginal penetration with Minor whose date of birth is _____, in violation of Section 16-3-655(A)(1). [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Kenneth Mossi Horry County Police Department

CX **The State of South Carolina**

County of Horry

Martin D. Sprattlin

12H01666

COURT OF GENERAL SESSIONS

MARCH, 2014 TERM

ARREST WARRANT NUMBER

2014GS2600535

CDR: 0103 16-15-0140

DOA: 4/16/2012

THE STATE

vs.

ACTION OF GRAND JURY

Carlos Roberto Lopez
H/ M

Myrtle Beach, SC 29577

DOB:

SSN:

Foreperson of Grand Jury
Date: MAR 20 2014 *[Signature]*

ATTORNEY: Chrisco, William Edward

VERDICT

GUILTY

Indictment for

LEWD ACT UPON A MINOR

Jimmy A. Richardson, II, Solicitor

ORIGINAL

Timothy F. Stevens
Foreperson of Petit Jury
Date: 4-15-2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of Horry County present upon their oath:

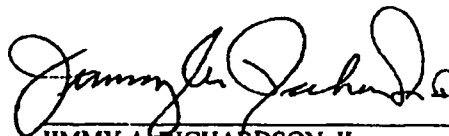
(For incident dates prior to 6/18/12; 6/18/12 and later use CSC w/ Minor 3rd Degree -CDR: 3661)

LEWD ACT ON A MINOR CHILD

CDR: 2468 16-15-0140

That Carlos Roberto Lopez, being over fourteen years of age {or state specific age}, did in Horry County on or about April 13, 2012, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: Minor ^{age} with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: ff, in violation of Section 16-15-0140, S. C. Code of Laws, 1976, as amended. (nkc)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
 FIFTEENTH CIRCUIT SOLICITOR

RECEIVED

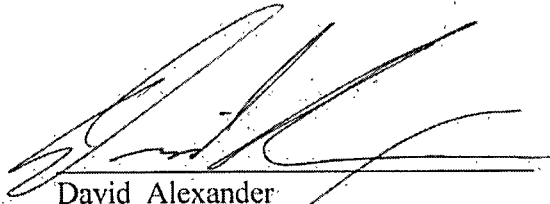
JAN 28 2015 200

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled: "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 28th, 2015



David Alexander
Appellate Defender

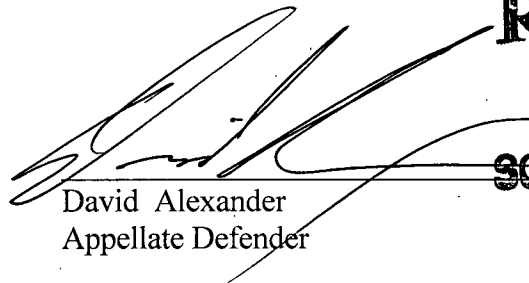
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 28th, 2015



David Alexander
Appellate Defender

RECEIVED

JAN 28 2015

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

JAN 28 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CARLOS ROBERTO LOPEZ,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Carlos Roberto Lopez this 28th day of January, 2015.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of January, 2015.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.