

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

DeAndrea G. Benjamin, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARIUS DOMONIC MACK,

APPELLANT

APPELLATE CASE NO. 2012-212105

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT.

STATE'S EXHIBIT #1 (PHOTOGRAPH)
STATE'S EXHIBIT #2 (PHOTOGRAPH)
STATE'S EXHIBIT #3 (PHOTOGRAPH)
STATE'S EXHIBIT #5 (PHOTOGRAPH)
STATE'S EXHIBIT #6 (PHOTOGRAPH)
STATE'S EXHIBIT #7 (PHOTOGRAPH)

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS
2011-GS-40-01375

3
4 State of South Carolina,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 Darius Domonic Mack,)

8 Defendant.)

9 May 14-17, 2012
Columbia, South Carolina

10
11
12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
15 jury.

16
17 A P P E A R A N C E S:

18 DEBRA BARRY, ASSISTANT SOLICITOR
19 SANDRA E. VRIESINGA, ASSISTANT SOLICITOR
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20 JAMES D. COOPER, III, ASSISTANT PUBLIC DEFENDER
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Attorneys for the Defendant

22
23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

1 MR. COOPER: Can we approach the bench?

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

5 (WHEREUPON, the jury panel enters the
6 courtroom.)

7 THE COURT: Ladies and gentlemen of the jury,
8 we're going to do a roll call. I think she is
9 missing a couple of folks.

10 Yes, ma'am.

11 THE CLERK: Jennifer Clark.

12 THE JUROR: Here.

13 THE CLERK: Timothy Pearson.

14 (WHEREUPON, there was no response.)

15 THE COURT: Can I see the attorneys for a
16 second?

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

20 (started with 45 and 44)

21 THE BAILIFF: The jury panel is present, Your
22 Honor.

23 THE COURT: All right, ladies and gentlemen of
24 the jury, good afternoon. My name is DeAndrea
25 Benjamin, and I will be presiding over the State of

1 South Carolina versus Darius Domonic Mack.

2 Before we get started, there are several
3 questions which I will need to ask you. I have the
4 indictment before me, and it reads -- an indictment
5 against Mr. Darius Domonic Mack for criminal sexual
6 conduct first degree. The indictment reads that
7 Darius Domonic Mack did, on or about October 14,
8 2010, engage in a sexual battery with MINOR

9 and the Defendant used aggravated force in
10 order to accomplish the sexual battery and/or while
11 the victim was also the victim of forcible
12 confinement, kidnapping, robbery, extortion,
13 burglary, housebreaking, or any other similar
14 offense or act in violation of Section 16-3-652,
15 South Carolina Code of Laws, 1976, as amended.
16 Signed by, the Solicitor.

17 Ladies and gentlemen of the jury, I will tell
18 you that this is the indictment, the charging
19 paper. Mr. Mack has pled not guilty to this
20 charge. And we will pick a jury in this case at
21 this time.

22 There are several questions that I must ask
23 you to determine if you can be fair and impartial
24 in this trial.

25 At this time I am going to ask the clerk to

1 law to those facts and thus render a true and just
2 verdict.

3 It is your added duty, Mr. Foreman, to preside
4 in the jury room and be the jury spokesperson here
5 in the court. It will also be your duty to write
6 the verdict, but I will give you further
7 instructions about that at the conclusion of the
8 case.

9 And in order to preserve everyone's rights, I
10 will give the parties an opportunity to object to
11 anything I have said.

12 Any exceptions or objections from the State?

13 MS. VRIESINGA: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. COOPER: I have none, Your Honor.

16 THE COURT: All right. Ladies and gentlemen,
17 we will begin the trial. We will have opening
18 statements at this time. First you will hear from
19 the State and then from the Defense on behalf of
20 the Defendant.

21 MS. VRIESINGA: May it please the Court?

22 THE COURT: Yes, ma'am.

23 OPENING STATEMENT

24 MS. VRIESINGA: Good morning. Criminal sexual
25 conduct in the first degree. We have a name for

1 that in this state. And it is called rape.

2 Rape is a crime about power and about control.
3 Rape is a crime in seclusion. And rape is a crime
4 of violence.

5 We are here today because the Defendant,
6 Mr. Darius Mack, has been charged with raping a
7 15-year-old girl, MINOR

8 On the morning of October 14th, 2010,
9 MINOR woke up like any other day, got
10 ready for school. But that morning was not like
11 any other day. And that day was not like any other
12 MINOR had had before.

13 MINOR walked to the school bus and saw
14 the Defendant, her ex-boyfriend and the father of
15 her little boy, standing there waiting for her.

16 He proceeded to follow her onto the bus,
17 followed her to school, even though he was not a
18 student there, and the testimony will show that he
19 followed her through the halls of the school on her
20 way to class that morning.

21 MINOR never made it to class that
22 morning. Instead, she was forced into a secluded
23 area between two buildings where her belt was torn
24 and her pants were pulled off her body. She was
25 pushed down to the ground. And he forcibly raped

1 her on the concrete floor. MINOR never made it
2 to class that day.

3 Now, you are going to hear from a couple of
4 witnesses. The first is going to be Ms. Doris
5 Pleasants. She is a teacher at Spring Valley High
6 School. And she was there and she heard the
7 screams and cries and calls for help from

8 MINOR She came to her aid. She saw
9 her there in the secluded area there outside the
10 classroom and she got her help.

11 Now, you are going to hear from other
12 teachers, students, administrators, investigators.
13 And all of them are going to have testimony to
14 share about this incident. They are going to tell
15 you what they saw, what they heard, and about their
16 interactions with MINOR

17 You are also going to see evidence of the
18 Defendant fleeing the scene. And you are going to
19 hear from medical examiners who spoke with MINOR
20 at the hospital after the incident.

21 Now, at the end of this trial the burden is on
22 us to prove beyond a reasonable doubt that Mr.
23 Darius Mack raped MINOR

24 Now, that burden is not beyond all doubt, any
25 doubt, it is beyond a reasonable doubt. And by the

1 end of this trial you will feel confident that the
2 Defendant is guilty of rape.

3 Now, I'm going to ask you a couple of things
4 of you as you listen to the testimony throughout
5 this trial.

6 First of all, I'm going to ask for your
7 patience. You are going to listen to a lot of
8 different witnesses. You are going to hear a lot
9 of different testimony. You are going to hear from
10 general, everyday witnesses, people that walk the
11 street just like you and I, and you are going to
12 hear from experts. And some of the testimony is
13 going to be a little difficult to understand at
14 times, but you are here as finders of facts, and
15 your job is to listen to each and every one of them
16 and to pay attention to the details of the case.

17 Now, the second thing I am going to ask you is
18 for you to use your common sense in this case. You
19 are here for a reason. And your opinion counts.

20 Out on the street you judge people on a daily
21 basis. You judge people on their credibility,
22 their believability. And all of those things come
23 into play in this case.

24 And I want you to remember why we're here
25 today. Why is MINOR here today? Why

1 would she put herself through this? Why would she
2 come into a courtroom and share the most intimate,
3 personal details of her life in front of her
4 family, her friends, in front of complete
5 strangers? Why is she here?

6 She is here because this case is important.
7 This case matters. This case is very important for
8 MINOR

9 Ultimately this case hinges on credibility.
10 And it is your job to decide who to believe in this
11 case.

12 At the end of the trial we will ask you again
13 to use your common sense and to find the Defendant
14 guilty of a crime about power, about control, of a
15 crime about violence and guilty of raping
16 MINOR

17 Thank you.

18 THE COURT: Thank you.

19 MR. PINNOCK: May it please the Court, Your
20 Honor?

21 OPENING STATEMENT

22 MS. PINNOCK: The law is your reason free from
23 passion. The law in this courtroom is your reason
24 free from your passion.

25 Now, that means different things for everybody

1 in this courtroom. As lawyers, the judge, that
2 means we have to conduct ourselves, we have to look
3 at our cases, and we have to decide on our cases,
4 how to handle them, how to argue them free from our
5 emotion. It is our mind, not our heart.

6 As jurors in this trial, in this courtroom for
7 Darius Mack, who is charged with rape, you have to
8 make a decision based not on your heart, but based
9 on your mind.

10 And if the State is not trying to play on your
11 emotions, they would not have built up getting up,
12 going to school, normal day, violently dragged into
13 a corner. That is your emotions. The issue in
14 this case is consent. You are here to judge the
15 law.

16 Now, I'm Tracy Pinnock. And along with James
17 Cooper, we represent Darius Mack. And you know why
18 he is here. He is here because on October 14th,
19 2010, he had sex with MINOR He had sex
20 with her. Nobody is saying he didn't.

21 The reason you are here is because she is
22 saying that he forced her to. That is it. That is
23 the only thing that you are here to decide. Do you
24 believe one person, do you believe MINOR
25 when she says that Darius Mack, somebody she has

1 known for at least four years, somebody who she has
2 had a relationship with, who she has a child with,
3 do you believe when she says that she was forced
4 into compliance.

5 Now, this is a hard case. Sex is not
6 something that people talk about. It is intimate.
7 It is private. You probably didn't wake up
8 yesterday morning thinking you were going to be
9 sitting here listening to me. You don't know me.
10 You don't know them. You don't know each other.
11 And you are going to have to sit here and talk
12 about one of most intimate things that happen in
13 people's lives.

14 And it doesn't matter that we're talking about
15 a 15-year-old. Darius was 17. They dated. They
16 are teenagers. They had sex. That is what we are
17 here for. So don't let that change your opinion.
18 A 15-year-old girl, he is a 17-year-old boy. And
19 nobody can change the fact they had sex.

20 You are going to hear testimony that is going
21 to make you uncomfortable. You are probably going
22 to see things that are going to make you more
23 uncomfortable. Because normal people don't have to
24 look at what we have to look at every day. It is
25 not what you sit at your dining room table at night

1 and talk about.

2 But that is why you are in this courtroom, to
3 deal with the difficulty, to deal with the
4 uncomfortableness of talking about two teenagers
5 having sex.

6 Now, I will agree with Ms. Vriesinga when she
7 says pay attention to details. The details of what
8 every witness says. When they sit up here and
9 swear on the Bible that they are going to tell you
10 the truth, the whole truth, and nothing but the
11 truth. Pay attention to the details because the
12 details make a difference.

13 You are going to judge everybody's
14 credibility. Everybody who gets on that stand you
15 judge them the same. Do they have reason to make
16 it up, do they have reason to change their stories
17 to make it fit. Is there any reason in the world
18 that what that person is saying might not have
19 happened.

20 And if you pay attention to the details, the
21 details can show you the truth.

22 Mr. Mack, he is 19. His mother is here with
23 him. He is sitting there an innocent man. He is
24 innocent. In the criminal system you are innocent
25 until the State proves you guilty beyond a

1 reasonable doubt.

2 And she said, Ms. Vriesinga said, it is not
3 beyond all date. If it was beyond all doubt they
4 are saying that you all were there and you saw
5 exactly what happened and there is no doubt in your
6 mind that what they present to you is the truth.
7 So reasonable doubt is hesitation, because at the
8 end of this case when you are sitting back there
9 discussing it, if you hesitate for a split second,
10 that is enough. If there is hesitation based on
11 the details. You have to pay attention to the
12 details. That is what we are asking you to do.

13 Now, when you hear the witnesses testify, you
14 are going to hear MINOR They are going
15 to call a nurse who examined her at the hospital.
16 They are going to call Investigator Carter, Deputy
17 Fields. When they are testifying we would like to
18 ask you to ask them one question. During the
19 testimony ask them, why not?

20 When they finish testifying, when they leave
21 the stand, ask them again, why not?

22 So there is no answer -- there is no answer to
23 that question. So, please, ask every witness on
24 that stand, why not?

25 And that question will lead you to know that

1 Darius Mack is not guilty of raping MINOR

2 You are all reasonable people. You all have
3 common sense. Hold it. Keep it close. Use it.
4 Everybody has it.

5 Everybody sitting at that table, they
6 represent the State of South Carolina. Don't let
7 them tell you what to do. Mr. Cooper and I can't
8 tell you what to do. The judge can't tell you what
9 to do. Your job -- it is your job, and your job
10 alone, to determine what the truth is. And you
11 have to do it by listening to everything that is
12 presented, all of it.

13 And, again, the facts are the facts. They had
14 sex. But it is not rape.

15 You look at the witnesses. Look at whatever
16 other stuff they want you to look at. But at the
17 end, everything else is stuff. The issue is, did
18 he force himself on her.

19 Don't be swayed by all the stuff. Don't lose
20 sight of why you are here. The issue is, did he
21 force himself.

22 And at the close of all the evidence, if you
23 ask every single one of these witnesses, why not,
24 your answer would be, he didn't rape her. They had
25 sex at school and they got caught.

1 Thank you.

2 THE COURT: Thank you.

3 Please call your first witness.

4 MS. BARRY: Thank you. The State calls Doris
5 Pleasants.

6 MS. PINNOCK: Your Honor, at this time we
7 would like to invoke the rule of sequestration.

8 THE COURT: Yes.

9 (Complies.)

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

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you are about to give in this case will
15 be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

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

19 (Witness complies.)

20 THE CLERK: State your name for the record,
21 please.

22 THE WITNESS: My name is Doris Pleasants.

23 DORIS PLEASANTS,

24 after being duly sworn, testified as follows:
25

DIRECT EXAMINATION

1
2 BY MS. BARRY:

3 Q Ms. Pleasants, where are you employed?

4 A Spring Valley High School.

5 Q And how long have you been employed at Spring
6 Valley High School?

7 A 2004.

8 Q And what are your current duties and
9 responsibilities at Spring Valley?

10 A I'm an online facilitator in everyday words used.
11 Safe Kids, kids that are behind, they take classes
12 with me and I test them. It is a class they can
13 take outside of their regular day. Or students who
14 really want to get ahead, then they take classes
15 with me. Right now I think I have like 399
16 students.

17 Q So what is your educational background regarding
18 teaching?

19 A I have a bachelors.

20 Q In education?

21 A Art.

22 Q Art.

23 A Uh-huh.

24 Q And are you a certified teacher?

25 A No, I'm not.

1 Q But you do the online courses?

2 A Right. I don't -- the courses I teach actually has
3 a teacher, a certified teacher, but I'm certified
4 to test them.

5 All students -- all their work they can do it
6 at home, but when they come in to get all their
7 tests, they have to take them with me.

8 Q And where is Spring Valley High School?

9 A It is 120 Sparkleberry Lane, which is Northeast
10 Columbia.

11 Q Do you know what county it is in?

12 A Richland.

13 Q Do you know approximately how many kids attend that
14 school?

15 A Somewhere between 2,000 and 2,100, somewhere in
16 that.

17 Q Were you working in October 2010?

18 A Yes, I was.

19 Q And specifically October 14th, 2010, do you recall
20 that day?

21 A Yes.

22 Q What time do you normally get on campus?

23 A Normally I'm there by 7:45 or 8:00 o'clock.

24 Q But on that day?

25 A But on that day I had an appointment, so I was

1 late, and that made me come in later.

2 Q And what time -- approximately what time did you
3 arrive that day at the school?

4 A I haven't the slightest idea. I'm sorry. And it
5 may be -- all the kids were in class, so it had to
6 be after 8:40, so I'd say 9:00, somewhere in that.
7 That is just really a guess.

8 Q Just a guess?

9 A Uh-huh.

10 Q Where do you park at?

11 A Okay. Then the school was having some parking --
12 they had people park -- so I parked in what is
13 called the band lot. It is by the tennis court.

14 Q And is anyone able to just enter the school at any
15 entrance point?

16 A There is some doors that are locked, but the band
17 entrance is -- I don't think it is locked, because
18 the kids are in and out with band instruments and
19 art is in that building also.

20 Q Art?

21 A Uh-huh. Actually, that is not an entrance that
22 every kid uses to come in school. Mostly people
23 that use that entrance are kids who have music,
24 art, or they are in that part of the building
25 because that is part of the old building. The

1 students mostly should enter the front desk by the
2 atrium desk, and that way they have administrators
3 there who can see who has ID on them, who is
4 actually a part of that school.

5 Q But you entered -- is that your normal entry point?

6 A It was then.

7 Q Okay.

8 A Uh-huh.

9 Q So in 2010 you entered through the band entrance?

10 A Through the band entrance.

11 Q Which is not locked?

12 A No.

13 Q And what other -- there is a -- you said there was
14 an art class, art classroom?

15 A There is music, art, the band, the choir, all of
16 them are in the old part of the school.

17 Q Is that where you work?

18 A No, I don't work that way, but it is where I park,
19 so I have to come in that door and go down and go
20 into the other part of the school.

21 Q Is there anything separating the other part of the
22 school from the band, the art, and the music
23 classes?

24 A The buildings are attached, but there is an
25 opening.

1 Q Uh-huh.

2 A That kind of like -- it is actually hid from the
3 public, but there is one part of it, you can go in
4 it and if you pass by it you won't see anything in
5 there unless you look inside of that part of the
6 school. It is kind of like an attachment, and I
7 think they left it open because they do spray paint
8 from the art, and I guess the fumes would make the
9 kids sick or something.

10 Q So that attachment, are there doors opening into
11 the school?

12 A If you come in on this end of the school, there is
13 two doors, but if you come in the art building, the
14 way I came in, there is two doors, but those two
15 doors are kind of like where you can't see inside
16 of that opening. And if you are in that opening,
17 you can't hear me opening those doors because it is
18 behind like a concrete wall, but there is like this
19 part where you can just walk into it, but if I'm
20 passing by it I won't see anybody in there unless I
21 hear a noise or something.

22 Q And on October 14th, 2010, when you opened that
23 door, tell us what, if anything, you heard.

24 A I heard some people -- well, I heard some students
25 inside of that concrete wall, but they couldn't

1 hear me, but I could hear them. And I could hear
2 somebody saying, get off of me, get off of me. And
3 that person was screaming. So -- shall I continue?

4 Q Yes.

5 A Okay. So I naturally, you know, I'm going to look
6 to see what is going on in there. So just as I
7 peep in there, I see two students in there. And
8 one of them is up against the wall. And the person
9 has his hand on her. And she is screaming.

10 Q Okay. So two students --

11 A Yes, two students.

12 Q Can you describe them?

13 A Excuse me?

14 Q Can you describe them better? Male, female?

15 A Oh, it was a male and a female. And the female was
16 up against the wall. And she was -- I could still
17 hear her. She was telling him to get off of her,
18 get off of her -- get off of me, get off of me.

19 Q I'm going to show you three photographs and ask you
20 if you recognize these three. Without telling me
21 what they are, just if you recognize them.

22 A Uh-huh. Uh-huh. I do.

23 Q And what are these three photographs?

24 A Those are pictures of that little nook that
25 separates the old part from the new part of the

1 school. And the two doors, that part is up in the
2 little hall like, and if you are in that little
3 corner, nobody can ever see you.

4 MS. BARRY: Your Honor, at this time we would
5 offer these three photographs into evidence.

6 MR. COOPER: No objection, Your Honor.

7 THE COURT: And that is without objection, 1,
8 2 and 3.

9 (WHEREUPON, State's Exhibit Nos. 1-3
10 were marked for identification and
11 received into evidence.)

12 BY MS. BARRY:

13 Q Ms. Pleasants, do you mind stepping down for a
14 moment? And watch your step.

15 (Witness steps down.)

16 Q And although these are not blown up, can you tell
17 us, when you say the building -- the area that you
18 are talking about, can you point that out for the
19 jury?

20 A Okay. This is the way I came in through these
21 doors here, this side here. But if you notice,
22 see, there is a brick wall there. And that -- all
23 of that is covered except it has no top on it. But
24 the doors are back here. So just as I'm walking,
25 right, then there is this brick wall there. And

1 inside of it is a little space, not even this size.

2 And that is where they were.

3 MS. BARRY: For the record, this is State's
4 Exhibit Number 2.

5 Q And which door did you come in from?

6 A I'm coming from this way(indicating).

7 MS. BARRY: Your Honor, I'd like permission to
8 publish these to the jury.

9 THE COURT: Any objection?

10 MR. COOPER: No objection.

11 (Exhibit published to jury.)

12 Q And looking at State's Exhibit Number 1, do you
13 recognize that also?

14 A That is the inside of it. And that door there -- I
15 don't know if that door works. I'm not sure.

16 Because -- well, that has to be the door from the
17 art building, the art part.

18 Q And is that -- what is this?

19 A I'm not really sure what that is because that is --
20 see, if I'm coming through this door, then this way
21 is this brick wall, but that side is where the art
22 kids are. And there is a window there. And those
23 kids, if they are looking down -- I don't even know
24 if they can see who is down there, but that is the
25 way they can look out.

1 Q And it may be better to show you State's Exhibit
2 Number 3.

3 A Okay. See, there is the window from the art
4 building. But it looks like it is low, but it is
5 high up. It is not right on the ground like it
6 looks there. That window -- when you are looking
7 out of that window, you are actually looking down.
8 And this is the wall and this is where I would have
9 came(indicating).

10 Q Does that refresh your memory as to what that is?

11 A Yes.

12 Q On State's Exhibit Number 1?

13 A Yes. That is just the wall to the building.

14 Q Now, when you said you saw a male and a female, the
15 male had his arm around the female's throat --

16 A He had his hand here(indicating).

17 Q Where on that picture was he?

18 A In the corner. Well, up in the corner. Let me see
19 the other one. Yes, in this corner, uh-huh.

20 Q And where was she?

21 A She was up against the -- you know, it is like this
22 picture is not really doing it justice because that
23 corner is like it is cater-cornered, you know, like
24 she was standing up against the wall and he was
25 standing in front of her.

1 And I just asked them, what are y'all doing in
2 here, because I could hear her screaming, get off
3 me, get off me. And she was crying.

4 And I looked down and her pants was -- her
5 belt was broke and he, whoever this person was, had
6 on sweats, and the sweats were here(indicating).

7 And I said, who are you?

8 And he said, I'm her brother. I came here to
9 see why people are messing with her. Everybody
10 here is messing with her.

11 And she was screaming, no, no, he is not my
12 brother, he raped me, he is not my brother.

13 And she never stopped till I -- you know, and
14 then he just took off and went to running.

15 Q Thank you.

16 (Witness returns to witness stand.)

17 Q So you said that when you came around you saw
18 that --

19 MR. COOPER: Objection. Leading.

20 MS. BARRY: I'm just going back over what she
21 testified to just a minute ago.

22 THE COURT: Rephrase the question.

23 BY MS. BARRY:

24 Q You just testified that you saw --

25 MR. COOPER: Objection. Leading.

1 BY MS. BARRY:

2 Q How were the Defendant's pants when you saw him?

3 MR. COOPER: Objection. She hasn't identified
4 this person as the Defendant.

5 THE COURT: Sustained.

6 BY MS. BARRY:

7 Q The male that was in -- that was -- had the female
8 up against the brick wall, how were his pants?

9 A Okay. They were sweats and they were down below
10 the buttock. You know, they were down.

11 Q And could you tell how the female's pants were?
12 Where were they?

13 A She had on jeans and a belt. And the belt had been
14 pulled alose because it was like hanging one side,
15 and her pants were half unzipped, and just -- they
16 weren't down, but they were, you know, unzipped,
17 and the belt had been broke.

18 Q The belt had been broke?

19 A Uh-huh.

20 Q What was her demeanor like?

21 A She was just screaming and crying and
22 sobbering[verbatim]. And I just took her in my
23 arms.

24 Q And what did he say?

25 A He said that he came to the school to get the

1 people who was messing with his sister. He said --
2 he told me that was his sister.

3 And I said, your sister?

4 And he just -- she kept screaming, he is not
5 my brother, he is not my brother, he raped me.

6 MR. COOPER: Objection. That is hearsay.

7 MS. BARRY: Your Honor, under 803(2), we would
8 be offering evidence.

9 THE COURT: Overruled.

10 BY MS. BARRY:

11 Q Go ahead.

12 A And so I said, well, what are you -- who are you?

13 And just as -- I had her in my arms. And you
14 have got to walk just a little bit to get out of
15 that area. So I got to the door.

16 And he turned around and he said, that is my
17 sister. And I said, let's -- come on, let's go.
18 And just as -- I thought he was going too, but he
19 took off and went running and ran out of the
20 school.

21 Q What, if anything, did he do with his pants?

22 A They were like sweats, so, you know, boys wear
23 those clothes where they are down, so he just
24 pulled them and kept going.

25 Q Which direction did he go in, the direction -- the

1 door that you came out of or --

2 A No. There is a door that is closer, the next door.

3 The one I came in, he didn't go out of that one.

4 We had got to the next door, and he -- I took her

5 left and he ran right. And that right door leads

6 you right out of the door. It is not -- you know,

7 maybe 15 steps or something like that, and you are

8 out of that door. And he ran towards the traffic

9 light.

10 Q Did you actually see him leave the school?

11 A I saw him hit the door, run out of the door. And

12 that is all. Because I was trying to get her

13 around to the other side to get help.

14 And those doors are hard. If somebody opened

15 that one that goes where he went out of, you could

16 hear the door open.

17 Q Did you watch him?

18 A Not really. My focus was on her.

19 Q Your focus was on her. And what, if anything, did

20 you do with her?

21 A I took her to an administrator, which was about 15

22 steps, you know, you turn the corner. And just as

23 I got there, something else was happening there, so

24 I just asked somebody to help me. And she wanted

25 to go to the bathroom, but I didn't let her go.

1 Q Why not?

2 A Well, if you get rid of the evidence, then, you
3 know -- she wanted to go to the bathroom and I just
4 told her, no, you need to wait, you know, and talk
5 to an administrator or somebody because, you know,
6 I'm not able to help you with that part.

7 Q Did you stay with her?

8 A No. After they took her from me, then one of the
9 administrators told me I could go -- I just went
10 and sit[verbatim] down and got myself together.
11 And then the administrators took it from there.

12 Q When you left her, what was her demeanor?

13 A She was still crying. And she kept saying, he
14 raped me, he raped me.

15 Q She was still saying that?

16 A Uh-huh.

17 Q Do you know MINOR

18 A No, I do not. I have never seen her before that
19 day and I had never seen her since that day.

20 Q Do you recognize her today?

21 A No, I do not.

22 Q Have you ever seen the Defendant?

23 A I don't recognize him. I do know that he looks
24 like the person that was there. But I do not know
25 him. I have never seen him before that day and I

1 have never seen him after that day.

2 MS. BARRY: Beg the Court's indulgence.

3 (Pause.)

4 MS. BARRY: That is all we have, Honor.

5 THE COURT: All right. Please answer any
6 questions the Defense may have.

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

9 CROSS-EXAMINATION

10 BY MR. COOPER:

11 Q Hi, Ms. Pleasants.

12 A Hi.

13 Q You, that -- right after this happened, you wrote a
14 letter to Resource Officer Ben Fields, didn't you?

15 A Uh-huh.

16 Q Okay.

17 A He took my statement.

18 Q Well, you wrote a letter to him, right? And you
19 actually titled it, to whom it may concern, right?

20 A Right.

21 Q Didn't you do that on your own?

22 A No, I don't think so. I'm not sure. It has been
23 so long ago, I'm not sure.

24 Q Well, he might have asked you to write down --

25 A Right. I didn't just go up and say, I'm saying

1 this. Somebody had to ask me to do it.

2 Q Yes, ma'am, you wrote it down?

3 A Right. No --

4 Q And that was on the 14th of October, the day we're
5 talking about, okay? And that was right after all
6 this happened, right?

7 A Sometime that day, yes.

8 Q Right. So, I mean, this would have been real fresh
9 in your memory when you wrote that letter, you
10 know, to tell him everything that happened, right?

11 A It would have been fresh then.

12 Q Yes. More fresh than it is now?

13 A Yes, sir.

14 Q Two years. Okay. So, you know, when you wrote
15 this letter, you -- the purpose of you writing the
16 letter was to tell him exactly what you saw and
17 exactly what happened, right?

18 A Exactly what I saw.

19 Q Yes, ma'am. Exactly what you saw?

20 A Uh-huh.

21 Q And so you put everything in that letter you
22 thought was important about what you saw that day,
23 that morning, right?

24 A At that time I did.

25 Q At that time. Right after it happened, right?

1 A Right.

2 Q So you would have put anything in the letter that
3 you thought was important for him to know, correct?

4 The same way you are going to tell the jury
5 everything you think is important now, right?

6 A That I can remember, yes.

7 Q All right. And, like you said, your memory was
8 more fresh back then, right?

9 A I'm sure it was.

10 Q Yes, ma'am. But you didn't say anything in that
11 letter to Officer Fields about anybody having their
12 hand around MINOR throat, did you?

13 A Oh, yes, I did.

14 Q You wrote in the letter, the male had the hand
15 around the throat?

16 A I may not have wrote it, but I did tell him that.

17 Q You may not have wrote it?

18 A I haven't seen what I wrote, so I don't know. And
19 that has been two years ago.

20 Q And you may not have wrote that. Well, if I showed
21 you the letter, would that help you remember
22 whether you wrote it or not?

23 A If you say it is not there, then it is not there.

24 Q Well, it is not there.

25 MS. BARRY: Your Honor, objection to that. If

1 she wants to review her statement -- I don't expect
2 her to rely on what he says.

3 THE COURT: Sustained.

4 BY MR. COOPER:

5 Q All right. Well, ma'am, I am going to show you the
6 letter since you say you can't remember. And I
7 want you to point out exactly where you indicate he
8 has got hands around the girl's throat, okay?

9 And I know it has been two years. You take
10 your time.

11 (Pause.)

12 A I didn't write it on here.

13 Q Yes, ma'am.

14 A Uh-huh.

15 Q All right. Why don't you hold on to that in case
16 we need it again for your memory.

17 Now, you were pretty familiar with Spring
18 Valley High School, right? You had been there a
19 number of years, right?

20 A That's correct.

21 Q And, so how long is that, again?

22 A 2004.

23 Q You had been there since 2004?

24 A Uh-huh.

25 Q Okay. So you know the daily routine, you know how

1 it goes at the school every day, right?

2 A Basically.

3 Q All right. And so you told Ms. Barry that there is
4 like 2,000, 2,100 kids there, right?

5 A That is correct.

6 Q So you usually get there earlier in the morning
7 than you got there October 14th?

8 A Uh-huh.

9 Q So you know that before classes start, the
10 hallways, the outside of the school are buzzing
11 with a lot of students, right? There is a lot of
12 student activity, right?

13 A Uh-huh.

14 Q The hallways are full of students, right?

15 A Right.

16 Q The areas where the lockers are concentrated are
17 full of students, right?

18 A Yes, where there are lockers, right.

19 Q The area that you described to Ms. Barry, that is
20 actually a main way that students get from the main
21 building to the fine arts building, right?

22 A Yes. There are other ways, but that is a way.

23 Q Is that a main way that they go?

24 A Yes.

25 Q Would it be typical for you to see students there

1 before class going from the main building to the
2 art building?

3 A Yes.

4 Q Okay. And you said you came in late that day
5 because you had an appointment. And you said that
6 you can't -- when you enter the hallway, you can't
7 hear students if they are in that little area. I
8 think they refer to it as an art patio, is that
9 right?

10 A I guess. I never -- I don't know.

11 Q You don't know what they refer to it?

12 A I don't know what they call it. I call it -- it is
13 just a space, an empty space.

14 Q Uh-huh. And when you come in the door the way that
15 you came in, you can't -- you can't hear people in
16 that area when you come into the door, right?

17 A No, you don't hear anybody.

18 Q All right.

19 A Unless there is noise.

20 Q Unless there is noise?

21 A Real noise where that you can hear. If somebody is
22 just standing in there and not talking, you don't
23 hear them.

24 Q If somebody is standing there not talking. But you
25 said that when you came in the door you heard what

1 you described as screaming, right?

2 A I did.

3 Q And, again, you just went over exactly what you
4 said you saw in great detail with Ms. Barry, right?

5 Right? Just a few minutes ago?

6 A Oh, yes, uh-huh.

7 Q Okay. And you stood up there and you told the jury
8 in great detail what you saw when you rounded the
9 corner, right? Correct?

10 A Correct.

11 Q And when you -- do you remember talking to Lead
12 Investigator Carter in this case?

13 A Who?

14 Q Do you remember talking to the gentleman -- this
15 gentleman right here in the green tie? Did he ever
16 talk to you?

17 A No.

18 Q He never interviewed you?

19 A No.

20 Q So he never took down all the details from you that
21 you just --

22 A If -- I don't -- I don't remember him. I don't
23 remember talking to him.

24 Q So you don't remember talking to him, so you
25 certainly don't remember him recording all the

1 details that you just told the jury, right?

2 A No.

3 Q But you have talked to Solicitor, Ms. Barry, before
4 the trial, right?

5 A Right.

6 Q And you talked to her about those details?

7 A I went over my statement.

8 Q Okay. You went over that letter that you got in
9 front of you?

10 A Well, I didn't see this -- I haven't seen this
11 since the day I wrote it.

12 Q Well, I thought you just told the jury you went
13 over it with Ms. Barry?

14 A I talked to her what I thought I said. But as far
15 as what I wrote, I have not had this in my hand
16 since then.

17 Q All right. You went over with her what you thought
18 you said?

19 A Uh-huh.

20 Q Fair enough.

21 A Her and somebody that tells me they represent that
22 young man.

23 Q Well, let me put it this way. You went over with
24 her what you thought you said. You have now told
25 the jury that you didn't say, you didn't write in

1 the statement everything that you told them, right?

2 A If I left that part -- I left that part out.

3 Q Left it out, left it out. Okay. When your memory
4 was most fresh, you left it out?

5 A But if I'm excited and nervous, I may have left it
6 out.

7 Q Okay.

8 A But later I may have remembered it.

9 Q I understand this whole -- I understand how you
10 could not, you know, understand what is going on
11 and not see what you thought you saw. Trust me.
12 If you are excited, you might not have known what
13 you saw. We understand that.

14 MS. BARRY: Your Honor, I object to him --

15 MR. COOPER: I'll move on, Your Honor.

16 THE COURT: Sustained.

17 MR. COOPER: I'll move on, Your Honor.

18 BY MR. COOPER:

19 Q Ms. Pleasants, when you came in that building, you
20 rounded that corner, you never saw -- you never saw
21 anyone having sex with MINOR did you?

22 A No. It was over when I got there.

23 Q You didn't see anybody having sex, did you?

24 A No. As I said, she said he raped her.

25 Q Later when you were asked to -- later when you were

1 asked to identify -- do you remember being shown
2 several pictures?

3 A Correct.

4 Q What is known as a photo line-up?

5 A That's right.

6 Q And you couldn't pick anybody out of that line-up,
7 could you?

8 A That is correct.

9 Q You couldn't even recognize MINOR in the
10 courtroom today, could you?

11 A That is correct.

12 Q All right.

13 MR. COOPER: Beg the Court's indulgence, Your
14 Honor.

15 (Pause.)

16 MR. COOPER: That's all I have for her, Your
17 Honor. Thank you.

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

19 REDIRECT EXAMINATION

20 BY MS. BARRY:

21 Q Ms. Pleasants, you said when you entered the door
22 the first thing that drew your attention --

23 MR. COOPER: Objection. Leading.

24 BY MS. BARRY:

25 Q You testified on cross -- what was the first thing

1 that drew your attention to this area?

2 A The screams.

3 Q And what were the screams?

4 A She was saying, get off of me, get off of me.

5 Q You turned the corner. What did you see?

6 A I saw her up against the wall with him standing in
7 front of her. And he had her pushed back up
8 against the wall. And she was trying -- she was
9 fighting. She was trying to get away.

10 MS. BARRY: Your Honor, at this time we would
11 offer Ms. Pleasants' statement into evidence.

12 MR. COOPER: Objection.

13 THE COURT: What is the objection?

14 MR. COOPER: The objection is it is hearsay
15 and it is bolstering. It is a totally prior
16 consistent -- it is a totally impermissible prior
17 consistent statement.

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

21 BY MS. BARRY:

22 Q Ms. Pleasants, I'm going to have you look over that
23 statement.

24 MS. BARRY: Beg the Court's indulgence. She
25 needs her glasses.

1 THE COURT: All right.

2 (Complies.)

3 A Okay.

4 Q Five lines down from the top, the, to whom it may
5 concern, did you say -- did you testify here today
6 anything that wasn't in that statement?

7 A Oh, up here? Or are you talking about the whole
8 thing?

9 Q That statement?

10 A No, I didn't.

11 Q The next sentence, is that what you testified to
12 today?

13 A Yes.

14 Q And if you keep on reading -- read all the way to
15 the bottom. Read all the way to the end.

16 A Do you want me to start at the very top?

17 Q No, not out loud, to yourself.

18 A Oh, I'm sorry.

19 (Pause.)

20 Q Is anything in that statement -- is there anything
21 in that statement that you did not testify to here
22 today?

23 A Well, I didn't get into this part where he -- well,
24 I did say he said, this is my sister and somebody
25 was messing with her. And he said he didn't like

1 it. He kept talking over her, so I couldn't
2 understand. I couldn't hear.

3 And he told me to go ahead, because he had
4 this.

5 And I told him, not today.

6 And then that is when he took off and went to
7 running.

8 And she said -- do you want me to read what
9 she said?

10 Q No.

11 A Okay.

12 Q I think you have already testified to what she
13 said. But you said he was talking over her?

14 A He was talking loud, you know, where she
15 couldn't -- you know, she was just crying and like
16 sobbing.

17 But he kept telling me, this is my sister.
18 I'm here to get people who is messing with her.
19 And he told me to go ahead because he got this.

20 And I told him, not today.

21 Q What did she tell you happened?

22 MR. COOPER: Objection.

23 THE COURT: What is the objection?

24 MR. COOPER: Not only is it hearsay, but it
25 goes into impermissible prior consistent

1 statements.

2 MS. BARRY: Your Honor --

3 MR. COOPER: It is hearsay and it becomes A
4 prior consistent statement bolstering another
5 witness.

6 MS. BARRY: It is excited utterance, Your
7 Honor, made fresh at the time before the declarant
8 has time to think about what has happened.

9 THE COURT: All right. It is overruled.

10 MR. COOPER: Well, Your Honor, additional
11 objection, I just want to make sure the Court
12 understands, the prior consistent statement under
13 the rule I'm objecting are 801. It is not hearsay.
14 If it doesn't fall into a hearsay exception, it
15 can't be allowed -- it cannot open the door to a
16 prior consistent bolstering statement. It is under
17 801, another witness cannot testify to what the
18 victim said.

19 THE COURT: All right. I'm going to overrule
20 the objection.

21 MS. BARRY: Thank you, Your Honor.

22 BY MS. BARRY:

23 Q And after she said, he raped me, what did he do?

24 A She just kept saying that, he raped me, he raped
25 me. She said he pushed her in there and raped her.

1 And he said, this is -- he kept saying, this
2 is my sister.

3 MR. COOPER: Objection, Your Honor. This is
4 going outside the scope of my cross-examination.

5 THE COURT: Yes, ma'am?

6 MS. BARRY: I'll move on. She has already
7 testified to it.

8 MR. COOPER: Thank you, Judge.

9 BY MS. BARRY:

10 Q Ms. Pleasants, when you met with the Solicitor's
11 Office, me and Ms. Vriesinga --

12 A Uh-huh.

13 Q -- did we show you --

14 MR. COOPER: Objection. Your Honor, we need
15 to approach for this one, I think.

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

19 BY MS. BARRY:

20 Q When you met with me and Ms. Vriesinga when we came
21 out to Spring Valley, what, if anything, did you
22 rely on when we spoke with you?

23 A My memory.

24 Q And were you able to remember the event?

25 MR. COOPER: Your Honor, objection. Hearsay.

1 It is an out-of-court statement. She is using it
2 to try to prove the truth.

3 THE COURT: What is your question again?

4 MS. BARRY: Were you able to remember the
5 event?

6 THE COURT: You are saying it is hearsay?

7 MR. COOPER: It is an out -- she is referring
8 to a statement that Ms. Pleasants would have made
9 out of court. She is using it to try to prove the
10 truth.

11 MS. BARRY: She's the one that said it.

12 MR. COOPER: So that is hearsay.

13 THE COURT: Overruled.

14 MS. BARRY: Thank you.

15 BY MS. BARRY:

16 Q Are you able to remember today what happened on
17 October 14th, 2010?

18 A Yes.

19 Q Are you nervous today?

20 A A little bit.

21 Q Were you nervous on October 14th, 2010?

22 A No. No. Actually -- I wasn't nervous when I found
23 her, but after it was over, then I got nervous.
24 After she was safe.

25 Q After she was safe?

1 A Uh-huh.

2 Q But you weren't able to pick him out of a photo
3 line-up?

4 A No.

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

6 THE COURT: All right.

7 MR. COOPER: May it please the Court?

8 THE COURT: Yes, sir?

9 RECROSS-EXAMINATION

10 BY MR. COOPER:

11 Q Ms. Pleasants, you went through with Ms. Barry --
12 it was hard to understand, but you went through
13 with Ms. Barry what you -- I think she said what
14 you didn't put in your statement, but, in any
15 event, we know that you didn't put in that letter
16 anything about anybody having their hand around
17 MINOR throat, did you?

18 A It is not on this letter, no.

19 Q All right. And we know that you don't remember
20 meeting with Investigator Carter, who is here in
21 the courtroom at all, don't we?

22 A Hum. If I met with him, it had to be two years
23 ago. I haven't met with him lately.

24 Q Well, right now you don't remember it, right? I
25 mean, right -- as you sit in the witness stand --

1 A I don't remember what?

2 Q You don't remember meeting with Investigator
3 Carter? That's what you told the jury.

4 A I don't remember it.

5 Q Uh-huh.

6 MR. COOPER: I beg the Court's indulgence for
7 a moment.

8 (Pause.)

9 MR. COOPER: Your Honor, that's all I have.
10 Thank you.

11 THE COURT: All right. You may step down,
12 ma'am.

13 (Witness steps down.)

14 THE COURT: Any objection to this witness
15 being excused?

16 MR. COOPER: None except pursuant to our --

17 THE COURT: Yes.

18 MR. COOPER: Yes, ma'am.

19 MS. BARRY: No.

20 (Witness excused.)

21 MS. BARRY: May we approach?

22 (WHEREUPON, a bench conference was held
23 in the presence of the jury but out of
24 the hearing of the jury.)

25 THE COURT: All right, ladies and gentlemen of

1 THE COURT: All right, call your next witness.

2 MS. BARRY: Thank you, Your Honor. The State

3 calls MINOR,

4 THE BAILIFF: Place your left hand on the

5 Bible, and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the

8 testimony you are about to give in this case will

9 be the truth, the whole truth, and nothing but the

10 truth, so help you God?

11 THE WITNESS: I do.

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

13 (Witness complies.)

14 THE CLERK: State your name for the record,

15 please.

16 THE WITNESS: MINOR

17 MINOR

18 being duly sworn, testified as follows:

19

20 DIRECT EXAMINATION

21 BY MS. BARRY:

22 Q MINOR where are you from?

23 A Kershaw County.

24 Q And where do you currently live?

25 A

- 1 Q And how long have you lived there?
- 2 A A good little minute.
- 3 Q A good little minute? What elementary school did
- 4 you go to?
- 5 A Pontiac.
- 6 Q Pontiac?
- 7 A Yes, ma'am.
- 8 Q What middle school?
- 9 A E.L. Wright.
- 10 Q And how old are you now?
- 11 A Seventeen.
- 12 Q What school do you go to now?
- 13 A Spring Valley.
- 14 Q Spring Valley High School?
- 15 A Yes, ma'am.
- 16 Q Where is that at?
- 17 A On Sparkleberry Road.
- 18 Q And how long have you been at Spring Valley?
- 19 A Since my ninth grade year.
- 20 Q Who do you currently live with?
- 21 A My mama and my son and my sister and my brother.
- 22 Q Anybody else live there?
- 23 A And my step-daddy.
- 24 Q So your mom, your brother, your sister, your
- 25 step-daddy, and your son?

- 1 A Uh-huh.
- 2 Q And how old is your son?
- 3 A Two.
- 4 Q He's two?
- 5 A Yes, ma'am.
- 6 Q When was he born?
- 7 A
- 8 Q What year?
- 9 A
- 10 Q Do you know the Defendant, Darius Mack?
- 11 A Yes.
- 12 Q And how long have you known him?
- 13 A For probably three to four years.
- 14 Q How do you know him?
- 15 A He's the father of my son.
- 16 Q He's the father of your son?
- 17 A Uh-huh.
- 18 Q What is his name?
- 19 A Jaquan.
- 20 Q Father of Jaquan. When did y'all meet?
- 21 A I don't remember.
- 22 Q You don't remember?
- 23 A No, ma'am.
- 24 Q Who introduced you to him?
- 25 A His mama was talking to my uncle. Well, they were

1 talking, like they are dating.

2 Q And when did you start dating him?

3 A I'm not even sure.

4 Q When did you find out you were pregnant with
5 Jaquan?

6 A When I was four months pregnant.

7 Q Do you remember when that was?

8 A No, ma'am.

9 Q When you found out you were dating at four months
10 pregnant -- I mean, when you found out you were
11 pregnant at four months, how long had you been
12 dating Jaquan?

13 A Dating Jaquan or dating him?

14 Q Was it years or weeks or months or --

15 A I'm not sure.

16 Q Did you like the Defendant?

17 A Yes, I did.

18 Q And when you found out that you were pregnant, were
19 you happy or sad?

20 A I mean, I was kind of sad because of the fact I
21 could have waited, but it had already happened and
22 I wasn't going to get rid of it, so I had to make
23 myself happy.

24 Q And how far along were you when he was born?

25 A I was almost seven months.

1 Q Was the Defendant happy?

2 A To me he seemed like he was happy.

3 Q But it was -- who was present with you when you
4 gave birth to your child?

5 A My mother.

6 Q Your mother?

7 A Yes, ma'am.

8 Q And had you and Mr. Mack stopped seeing each other?

9 A Yes, ma'am.

10 Q What is Jaquan's last name?

11 A G.

12 Q So he doesn't even have Mr. Mack's last name?

13 A No, ma'am.

14 Q So Mr. Mack was not at the birth?

15 A No, ma'am.

16 Q How old was Jaquan when -- or let me back up. Has
17 Mr. Mack been a part of Jaquan's life?

18 A No, ma'am.

19 Q Has he ever even seen his son?

20 A Probably like once or twice.

21 Q And is that something that you want for Jaquan?

22 A No, ma'am. At first I didn't, but, now, yes,
23 ma'am.

24 Q At first you didn't but now you do?

25 A (Nods affirmatively.)

- 1 Q But you are still enrolled at Spring Valley High
2 School?
- 3 A Yes, ma'am.
- 4 Q Who keeps your son during the day?
- 5 A When -- my daddy does. My step-daddy does.
- 6 Q And when you get home from school, does your mama
7 take care of your son?
- 8 A No, ma'am, it is me all the time.
- 9 Q What time do you get home from school?
- 10 A Like 4:00, 4:30.
- 11 Q And can you describe what your normal routine is
12 when you get home?
- 13 A If I don't have homework, I'm tending to Jaquan all
14 the time. I feed him, I bathe him, I do what a
15 mother should do.
- 16 Q Where does Jaquan sleep?
- 17 A With me.
- 18 Q And in the mornings, can you tell us about that?
- 19 A I get him up first, I brush his teeth, change his
20 diaper, feed him. Then I get myself ready for
21 school.
- 22 Q And then you leave for school?
- 23 A Yes, ma'am.
- 24 Q Is that hard for you to do?
- 25 A Yes, ma'am.

- 1 Q Tell us what you -- do you know what you want to do
2 when you get out of high school?
- 3 A No, ma'am, not yet.
- 4 Q Have you even thought about it?
- 5 A I have, but not so much.
- 6 Q Are you -- do you want to finish high school?
- 7 A Yes, ma'am.
- 8 Q And what grade are you in?
- 9 A Tenth.
- 10 Q So you are 17 and you are in the tenth grade?
- 11 A Uh-huh.
- 12 Q Why is that?
- 13 A First grade.
- 14 Q So prior to October 2010, do you remember whenever
15 you and Mr. Mack separated?
- 16 A When I was five months pregnant.
- 17 Q You were five months. Did he go to Spring Valley
18 High School too?
- 19 A No, ma'am.
- 20 Q Where did he go to high school?
- 21 A I think he went to Ridgeview.
- 22 Q When you got pregnant, how old were you?
- 23 A Fourteen.
- 24 Q Had you been with anyone else before that?
- 25 A No, ma'am.

- 1 Q No?
- 2 A No, ma'am.
- 3 Q Do you remember October 13th, 2010, the day before?
- 4 A Yes, ma'am.
- 5 Q Where did you and your family go that day?
- 6 A The fair.
- 7 Q The fair. And who, if anyone, did you see at the
- 8 fair?
- 9 A I seen Darius.
- 10 Q You have got to speak loudly. You saw who there?
- 11 A Darius.
- 12 Q Darius. Did you talk with him?
- 13 A No, ma'am. I really tried to pay him no attention.
- 14 Q Did he say anything to you?
- 15 A Not really.
- 16 Q When is the next time you saw Darius, the
- 17 Defendant?
- 18 A At my bus stop.
- 19 Q At your bus stop?
- 20 A Yes, ma'am.
- 21 Q And when was that?
- 22 A The next day.
- 23 Q The next day?
- 24 A Yes, ma'am.
- 25 Q Did he live in that area?

1 A No, ma'am.

2 Q Were you already at the bus stop when you saw the
3 Defendant?

4 A Yes, ma'am.

5 Q What happened when you saw the Defendant?

6 A Nothing. He wasn't talking to me. He was just
7 there. Like, he was just there. And then when he
8 had seen --

9 MS. PINNOCK: Objection. May we approach?

10 (WHEREUPON, a bench conference was held
11 in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: All right, ladies and gentlemen of
14 the jury, at this time there is a matter of law
15 that I need to take up outside of your presence.
16 I'm going to send you to the jury room for a
17 short -- a brief moment.

18 All right, thank you.

19 (WHEREUPON, the jury retires to the jury
20 room at 12:05 p.m.)

21 THE COURT: You wanted to put your objection
22 on the record?

23 MS. PINNOCK: Yes, Your Honor, thank you. May
24 it please the Court? It is my understanding at
25 this point MINOR is going to be testifying to

1 a completely unrelated incident that happened at
2 the bus stop between Mr. Mack and another student,
3 Isaiah S.

4 Your Honor, this information being presented
5 to the jury is going to confuse the issue. It has
6 absolutely nothing to do with the charge of
7 criminal sexual conduct in the first degree.

8 Your Honor, I would ask -- our objection is
9 based on Rule 403. It is going to confuse the
10 issues for the jury. And we would ask at this time
11 that you instruct the Solicitor not to pursue that
12 line of questioning.

13 And, Your Honor, I'll add also impermissible
14 character evidence.

15 MS. BARRY: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 THE COURT: Yes, ma'am?

19 MS. BARRY: Your Honor, we're not offering
20 this to prove the truth of it. Isaiah S. is here.
21 He will testify. He never pressed charges for this
22 assault. But everyone at the bus stop sees this.

23 Merely -- it -- I think it falls under res
24 gestae, that we -- the State, in order to present
25 our case in a sensible fashion where the jury won't

1 be confused as to why he got on this bus, he got on
2 the bus because he was mad. Isaiah S. went
3 running down to another bus stop and got on another
4 bus at another stop, not thinking that the
5 Defendant would be on that bus when he got on
6 there, because he knew he didn't go to that school.

7 The information that she had testified to is
8 that the Defendant thought Isaiah S. was the
9 godfather -- that she had chosen him as the
10 godfather of her child. And he was angry about
11 that.

12 And in that anger -- you know, rape is a crime
13 of violence. He then follows her onto the bus to
14 make sure he is not there with her. Gets onto the
15 bus. And they are going to show you the bus video.
16 And he doesn't do anything on the bus, except sit
17 next to her, make sure she didn't say anything.
18 But then gets off at the school. And Isaiah S.
19 sees him get off at the school too. But he never
20 even reported it. He had a busted lip. But he was
21 afraid of Mr. Mack.

22 THE COURT: All right. So are you offering --
23 I guess what I'm trying -- as far as under
24 Rule 404, what are you offering -- you are
25 offering -- are you offering it -- because I think

1 if you are trying to offer it to show that he was
2 violent, that he is a violent person, then I think
3 that is excluded under Rule 404.

4 MS. BARRY: That is not admissible. But it is
5 motive and intent. His motive was control over

6 MINOR And his motive was to eliminate
7 Isaiah S. get him out of the picture, make sure
8 he didn't get on that bus so he could follow her to
9 school.

10 I don't know whether he thought that they had
11 something going on or not. They are best friends.

12 THE COURT: All right. And as far as
13 relevance, how is the -- well, I guess I'll ask the
14 Defendants that. How does the probative value
15 outweigh the prejudicial effect to your client?
16 You are saying it is not relevant under 403?

17 MS. PINNOCK: Yes, ma'am, Your Honor. I would
18 address the 403 issue first, and then I would like
19 a chance to address what the Solicitor just said.

20 Your Honor, under 403 there is a substantial
21 danger of confusing the issues for the jury. We
22 are not here about a fight at the bus stop. We are
23 not here about Isaiah S. getting his lip busted.
24 We are not here for that. We're here for something
25 that Isaiah S. cannot even offer testimony

1 about.

2 So the entire involvement with that person,
3 what happened at the bus stop, is of no consequence
4 what happened at the high school.

5 I do believe there is a risk, a very high risk
6 of confusing the issues for the jury when they go
7 back to deliberate if this line of questioning is
8 allowed.

9 And, Your Honor, to address what the Solicitor
10 just said, trying to show that he got into a fight
11 at the bus stop, got on the bus because he was
12 angry, is trying to show action and conformity
13 therewith, which is exactly what is prohibited by
14 404. So there is nothing else that this testimony
15 would do but to try and show propensity evidence
16 that Mr. Mack was a violent person so he must have
17 done this. It is expressly prohibited by 404.

18 And motive and intent I believe is kind of a
19 stretch of the imagination. I'm not -- I don't
20 follow the logic how the fight at the bus stop can
21 show any sort of motive for alleged rape.

22 This testimony is expressly excluded by
23 Rule 404. It is character evidence. There is
24 nothing else they can be offering it for but
25 character evidence to show he is a violent person.

1 And that is what the rule prohibits.

2 THE COURT: Anything else?

3 MS. BARRY: Your Honor, it shows the state of
4 mind. It shows his motive, opportunity, intent and
5 state of mind at the time.

6 He, the very next day after seeing the
7 Defendant at the bus stop, comes to a bus stop
8 where he doesn't even live anywhere around.

9 And we're not offering this to prove whether
10 or not he did in fact beat up Isaiah S.

11 is going to say, you know, I just
12 brushed it off and went on my way. But he does see
13 him on the bus and he does see him at the school.

14 But as far as MINOR he -- his state of
15 mind is, one, that he is going to -- he is going to
16 follow her to school. He is going to eliminate
17 whoever gets in his way to get on that bus and
18 follow her to school. And, in fact, he does. He
19 eliminates Isaiah S. But he -- Isaiah S. has
20 got to get to school, so he goes running down the
21 road and gets on at another bus stop where, lo and
22 behold, the Defendant is on the bus when he gets on
23 the bus.

24 And then the Defendant apologized to him for
25 hitting him in the face. But nothing happened --

1 there were no charges pressed, and he will say
2 that.

3 We're not offering it to prove that it
4 happened. We're just offering it to show the jury
5 the full story of the nature, the events leading up
6 to this and how volatile it was.

7 THE COURT: Let me hear what she is going to
8 say. Go ahead and ask her.

9 MS. BARRY: I forgot where I was.

10 BY MS. BARRY: (JURY OUT)

11 Q Mr. Mack did not go to your school?

12 A No, ma'am.

13 Q And he was not -- he didn't live anywhere near the
14 bus stop?

15 A No, ma'am.

16 Q You saw him at the bus stop?

17 A Yes, ma'am.

18 Q And what did you see him do?

19 A Fight Isaiah. Well, Isaiah wasn't even fighting
20 back, so he just beat up Isaiah.

21 Q What did you do?

22 A I tried to pull him off of him, and I told him to
23 stop.

24 Q And did he?

25 A No, ma'am.

1 Q How did Isaiah get away?

2 A The little boy from the other bus stop came running
3 up there and pulled Darius off of him. And then
4 that is when Isaiah got up. And he walked to the
5 other bus stop with the little boy.

6 Q Did Darius say anything to you after the fight?

7 A He told me that he was sorry. And I told him that
8 he wasn't.

9 And then he was telling me that he wanted to
10 be a part of me and Jaquan's life and that he
11 was -- he kept saying he was sorry for beating up
12 Isaiah.

13 Q How long have you known Isaiah?

14 A Since the first grade.

15 Q And how would you characterize your relationship
16 with him?

17 A We're best friends.

18 Q Did Mr. Mack know that?

19 A I'm not sure.

20 MS. BARRY: That's it.

21 THE COURT: All right. Yes, ma'am?

22 MS. PINNOCK: Thank you, Your Honor. Again,
23 this is propensity evidence. The Solicitor, in her
24 own words, just argued that it was to show -- they
25 were offering this to show how volatile it was and

1 to show the nature of the offense. That is
2 character evidence. That is the definition of
3 character evidence. That is what Rule 404 exists
4 to prohibit from coming into court.

5 So, Your Honor, the res gestae argument is the
6 Solicitor is attempting to back-door admissible
7 character evidence on the record to prejudice Mr.
8 Mack in the eyes of the jury to show that he is a
9 violent person. That is what she said. That was
10 her argument to show rape is a crime of violence,
11 so we are going to show that Mr. Mack is violent.
12 That is propensity and it should be excluded.

13 MS. BARRY: No, ma'am, I am not trying to
14 back-door getting that in just to show that
15 Mr. Mack is violent. If I said that -- I think my
16 questions were very limited. I didn't get into
17 any -- he was fighting.

18 THE COURT: Yes, but I don't think that
19 anything she testified to shows motive as to why he
20 allegedly did what he did at the school.

21 So under Rule -- I mean, she even says that he
22 tells her, I'm sorry for what I did. So you are
23 saying that he was -- she has not testified that he
24 was mad or angry and that he held her down on the
25 bus or anything like that. So I don't know if it

1 goes to show -- it doesn't go to show motive and it
2 doesn't go to show motive or intent, so I'm going
3 to exclude it under 404. I don't think it is
4 admissible based on what I have heard just now.

5 MS. BARRY: Thank you.

6 MS. PINNOCK: Thank you, Your Honor.

7 THE COURT: And I'll have to hear from
8 Isaiah S.

9 MS. BARRY: I'm sorry?

10 THE COURT: We will hear from Isaiah S. when
11 you get ready to call him. We'll do it in camera,
12 proffer his testimony also.

13 MR. PINNOCK: Thank you, Your Honor.

14 THE COURT: I guess he saw him get on the bus
15 and saw him get off the bus.

16 All right, you may bring them in.

17 (WHEREUPON, the jury came into open
18 court at approximately 12:20 p.m.)

19 THE BAILIFF: The jury is seated, Your Honor.

20 THE COURT: All right. Yes, ma'am, you may
21 continue.

22 DIRECT EXAMINATION CONTINUES:

23 BY MS. BARRY:

24 Q So when you see the Defendant at the bus stop,
25 what, if anything, does he say to you?

- 1 A He didn't really speak to me.
- 2 Q He didn't speak to you?
- 3 A No, ma'am.
- 4 Q Did you speak to him?
- 5 A No, ma'am.
- 6 Q Was anyone else at your bus stop?
- 7 A Yes, ma'am.
- 8 Q And when the bus came, what happened?
- 9 A I got on the bus.
- 10 Q Who else got on the bus?
- 11 A Darius did, and Alexis.
- 12 Q Darius and Alexis?
- 13 A Yes, ma'am.
- 14 Q And who is Alexis?
- 15 A My friend.
- 16 Q Has Darius ever ridden that bus before?
- 17 A No, ma'am.
- 18 Q Who got on the bus first?
- 19 A I did.
- 20 Q And where did you sit?
- 21 A Like, not in the back, but close to the back.
- 22 Q Close to the back?
- 23 A Yes, ma'am.
- 24 Q How far behind you was Darius?
- 25 A He was sitting right next to me. When we got on

1 the bus I was sitting with Alexis and then Alexis
2 had got up and moved, and that is when he sat with
3 me.

4 Q Who sat with you?

5 A Darius.

6 Q Did you want him to sit with you?

7 A No, ma'am.

8 Q Did you tell him that?

9 A Yes, ma'am.

10 Q What did you say?

11 A I tried to get up and move and he told me that I
12 wasn't going nowhere. And he told me to sit down.

13 And that's when I told him that he is not my
14 daddy. I got real loud.

15 Then the bus stopped. And that is when he let
16 me move out the way and sat with my friend Alexis.

17 Q And who did you sit with at that point?

18 A Alexis.

19 Q How long -- I mean, can you estimate how many
20 minutes it is from your bus stop to Spring Valley?

21 A We got one more stop after that, so probably like
22 five, ten minutes.

23 Q When you get to Spring Valley, who are you sitting
24 with?

25 A Alexis.

1 Q And whereabouts on this bus are you -- where are
2 you sitting?

3 A It was like, I think he was sitting right behind us
4 and I was sitting in front of him, and then Isaiah
5 was sitting in like a seat across from us.

6 Q And you get off the bus?

7 A Yes, ma'am.

8 Q Where is Darius, the Defendant?

9 A I don't know. I got off the bus first.

10 Q Did you see him again?

11 A Yes, ma'am, after I got inside of the school.

12 Q So when you are walking into the school, who are
13 you walking with?

14 A Alexis.

15 Q And when you get inside the school -- how long had
16 you been inside the school when you saw him?

17 A I'm not even sure --

18 Q Had you ever seen him inside the school before?

19 A No, ma'am.

20 Q But you don't remember where you saw him first?

21 A I think we was in front of the lockers.

22 Q And what did he say to you?

23 A He was just telling me that he was sorry and that
24 he wanted to be a part of Jaquan life.

25 Q And what did you tell him?

1 A No.

2 Q No?

3 A Yes, ma'am.

4 Q When you leave the locker area, what if, anything,
5 does the Defendant do?

6 A Can you say that again, please?

7 Q When you leave the locker area, what does the
8 Defendant do?

9 A Follows me.

10 Q And where does he follow you to?

11 A On my way to class.

12 Q Was it just you and the Defendant?

13 A At first it was me and Alexis. Then she had went
14 to class. Then it was just me and Darius.

15 Q Did the Defendant continue to talk to you?

16 A Yes, ma'am.

17 Q And what were you saying to him?

18 A To leave me alone and that he needed to go.

19 Q Why didn't you tell someone, a teacher, the school
20 resource officer, or an administrator that he
21 wasn't supposed to be there?

22 A I was scared.

23 Q What were you scared of?

24 A He knew where I stay at. He know where I lay my
25 head at. He know which school I go to. He knows

1 my bus stop. And he knows everything he needs to
2 know.

3 Q When he got on the bus and he is sitting -- why
4 didn't you tell the bus driver?

5 A I don't know. I thought he was going to get
6 stopped because, one, he didn't have on no ID, he
7 didn't have his shirt tucked in, his pants was
8 sagging, so -- and there was principals outside, so
9 I thought once he got off the bus he was going to
10 get stopped, because that is what they usually do,
11 but he didn't get stopped.

12 Q You mean coming into the school?

13 A Yes, ma'am. Well, Mr. Davis stopped him and talked
14 to him, but I guess he didn't -- it didn't click in
15 his mind that he wasn't supposed to be on campus
16 because of the fact that he lied and said he was
17 dropping somebody off at school.

18 Q When you are walking down the hallway, you, Alexis
19 and the Defendant, did you and Alexis talk?

20 A Yes, ma'am.

21 Q Did the Defendant talk to her, to your knowledge?

22 A No, ma'am.

23 Q But then at some point she goes to her class?

24 A Yes, ma'am.

25 Q Where was your class? Where were you headed?

1. A To the art hall, because I had art first period.

2 Q What time did first period start?

3 A I think you have got to be in class by 8:45.

4 Q Were you going to make it?

5 A No, ma'am.

6 Q Do you normally make it to class on time?

7 A Sometimes. If I'm not spending too much talking in
8 the hallway.

9 Q I'll show you a series of photographs and ask you
10 if you recognize these.

11 MS. PINNOCK: Your Honor, may I?

12 (Pause.)

13 BY MS. BARRY:

14 Q Do you recognize those photographs?

15 A Yes, ma'am.

16 Q Look at all of them.

17 A Yes, ma'am.

18 MS. BARRY: Your Honor, we'd offer these four
19 photographs into evidence.

20 THE COURT: Any objection?

21 MR. PINNOCK: No, Your Honor.

22 THE COURT: That is going to be State's 4, 5,
23 6 and 7?

24 MS. BARRY: Yes, ma'am.

25 THE COURT: They will be entered without

MINOR

-- DIRECT BY MS. BARRY

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1 objection.

2 (WHEREUPON, State's Exhibit Nos. 4-7
3 were marked for identification and
4 received into evidence.)

5 BY MS. BARRY:

6 Q I am going to ask you to step down, but you need to
7 keep your voice up since there won't be a
8 microphone.

9 A Okay.

10 (Witness steps down.)

11 Q I show you what is marked as State's Exhibit Number
12 4. What is that a picture of?

13 A The front of the school. Coming in the front of
14 the school.

15 Q And who is in that photograph?

16 A Me, Alexis, and that is him right there following
17 behind us.

18 THE COURT REPORTER: I'm sorry, who?

19 Q That's who?

20 A Darius.

21 Q Tell her all three.

22 A That's me, Alexis, and that's Darius.

23 MS. BARRY: Your Honor, may I publish?

24 THE COURT: Any objection?

25 MS. PINNOCK: No, Your Honor.

1 (Exhibit published to jury.)

2 Q And State's Exhibit Number 5, what is that a photo
3 of?

4 A Alexis, me, and Darius.

5 Q And where is that taken at?

6 A In the hallway going to the lockers.

7 Q And State's Number 6, what is that photo of?

8 A That's me and Darius --

9 THE COURT REPORTER: I'm sorry, you need to
10 speak up.

11 A That's me and that is Darius.

12 Q And where were you headed?

13 A To class. No, that is the lockers.

14 Q And, finally, State's Number 7?

15 A That's Darius and that's me and that's him
16 following me to class.

17 Q And where is your class in relation to that
18 picture?

19 A Down the hallway to the left.

20 (Witness returns to witness stand.)

21 Q So while he is following you in the hallway, what
22 are you telling him?

23 A That he needed to go.

24 Q Did he?

25 A No, ma'am.

1 Q Did you want to get back together with him?

2 A No, ma'am.

3 Q After you go down the hallway to go to your class
4 in the art building, tell the jury what happened
5 next.

6 A I was getting ready to walk to class, and that is
7 when he pulled my arm. Then he told me that he
8 wanted to talk to me.

9 And I was telling him no, that I had nothing
10 else to say to him, we were done, and that was the
11 end of it.

12 I guess he didn't want to hear that. So he
13 was telling me to come over in the corner with him
14 so he could show me how much he really loved me.

15 And I was like, no. No, I got to get to
16 class. I don't want to be late.

17 So that's when he pulled me over to the corner
18 and took -- I had a soda in my hand. He took my
19 soda and he took my book bag off and he threw it.

20 And then that is when he had me in the corner.
21 And I was facing the wall and he was behind me. He
22 was trying to unbutton my pants, and I kept bending
23 down so he couldn't get to them. And that is
24 when -- at that time my belt ripped.

25 And then when he finally -- well, when he

1 ripped my belt, he turned back around and he was
2 like, stop, just let me show you how much I love
3 you.

4 And I was like, no, get off of me.

5 And then that is when he -- we were standing
6 up. We were still standing up against the wall.
7 He had me against the wall and he was still in
8 front of me.

9 And then I was telling him to leave me alone,
10 and leave me alone, and leave me alone.

11 He was like, he wanted to be there for me and
12 he going to take care of Jaquan, and all this other
13 stuff that I done heard before.

14 And so that is when he was -- I was still
15 telling him to stop, still telling him to stop
16 repeatedly. He did not want to stop.

17 And then that is when -- I don't know how we
18 ended up on the floor, but we was on the ground,
19 and that is when he was trying to pull my pants
20 down.

21 And I was just like trying to push him, fight
22 him away, but I'm only 14 and he is 17. He was way
23 bigger than me. But I was still trying.

24 And he pulled my pants halfway down. He
25 didn't have them all the way down, but he had them

1 halfway down. And he had my left leg up.

2 And I was still trying to tell him to stop and
3 telling him to stop. And I was crying. I was
4 upset. I was in shock.

5 And he was still trying, still trying.

6 I was just like, no, get off me.

7 And that is when he had covered my mouth. And
8 he told me that if I be quiet that he would lift my
9 leg down, because I couldn't breathe with my -- it
10 was all the way up to my chest.

11 And that is when he insert -- he -- I don't
12 know how far he had his pants on, but he inserted
13 his penis inside of me.

14 And I was still crying and crying and telling
15 him to stop. And he would not stop.

16 Q And you told him to?

17 A (Nods affirmatively.)

18 Q What else did you tell him?

19 A I told him that he needed to leave and he needed to
20 leave me alone and that I was going to tell on him.

21 Q And what did he say to you?

22 A He told me, don't tell. And he started crying.

23 Q How was it if your pants are halfway down that he
24 was able to do that?

25 A I don't know, but he made a way.

- 1 Q And what did that feel like?
- 2 A It hurt. It shocked me.
- 3 Q And where were you at?
- 4 A Outside at school.
- 5 Q Were you standing or sitting or --
- 6 A He had me laid down.
- 7 Q Who took his pants off?
- 8 A He did.
- 9 Q Do you remember what kind they were?
- 10 A No, ma'am.
- 11 Q Could you tell if he had ejaculated or not?
- 12 A (Nods negatively.)
- 13 Q Yes or no?
- 14 A No, ma'am.
- 15 Q While you were saying no, do you know how loud it
- 16 was?
- 17 A It was loud because the building that we -- since
- 18 it was an empty lot, it echoed.
- 19 Q And you were crying?
- 20 A Yes, ma'am.
- 21 Q You said he was crying?
- 22 A (Nods affirmatively.) Because of the fact I told
- 23 him I was going to tell on him. That is when he
- 24 started crying and told me not to tell on him.
- 25 Q Let me have you step down again.

1 (Witness steps down.)

2 Q I show you State's Number 2. Can you tell what
3 that is by looking at it?

4 A That is the corner. Where he had me at --

5 THE COURT REPORTER: I'm sorry, I can't hear.

6 A He had me behind the wall right here in the corner.

7 Q Behind that wall in the corner?

8 A Yes, ma'am.

9 Q Why don't you come here.

10 (Witness complies.)

11 Q Where did he have you at?

12 A Behind this wall in the corner.

13 Q And State's Number 3, what is that a photograph of?

14 A This is the door and this is where he had me at and
15 this is part of the building right
16 here(indicating).

17 Q And where were you laying down at?

18 A Right here(indicating).

19 Q Do you know how long this took?

20 A No, ma'am.

21 Q Did you want to have sex on the ground?

22 A No, ma'am.

23 (Witness returns to witness stand.)

24 Q In fact, MINOR after you and Mr. Mack broke up
25 when you were five months pregnant, had you had sex

1 with him since?

2 A No, ma'am.

3 Q Have you had sex with anyone since?

4 A No, ma'am.

5 Q Why?

6 A Since this incident or -- because I'm scared.

7 Q What are you scared of?

8 A I don't know.

9 MS. PINNOCK: Objection.

10 THE COURT: What is the objection?

11 MS. PINNOCK: Relevance.

12 THE COURT: Overruled.

13 BY MS. BARRY:

14 Q You don't know what you are scared of?

15 A No, ma'am.

16 Q Was this a pleasant experience for you?

17 A No, ma'am.

18 Q When you are done -- when he's done, how do you get
19 up?

20 A He tried helping me up and telling me that he was
21 sorry.

22 Q And what were you saying to him?

23 A I was telling him to leave me alone, to leave me
24 alone.

25 And he just kept telling me he was sorry, and

- 1 don't tell on him.
- 2 Q During this assault, did he injure you in any other
- 3 way?
- 4 A Yes, ma'am.
- 5 Q Where?
- 6 A I had scratches on my neck and my right arm was --
- 7 I think it was my left arm, or my right, one of
- 8 them was hurting, and my leg was hurting.
- 9 Q Any other area on your body hurting?
- 10 A My private area was hurting. It hurt real bad.
- 11 Q When you got up, he said he was sorry, and you were
- 12 telling him to leave you alone?
- 13 A Yes, ma'am.
- 14 Q Did you see anyone else come up?
- 15 A No, ma'am.
- 16 Q Did anyone else come into that area?
- 17 A Yes, ma'am.
- 18 Q Who?
- 19 A Ms. Pleasants.
- 20 Q Did you know her?
- 21 A No, ma'am.
- 22 Q Had you seen her before?
- 23 A No, ma'am.
- 24 Q And what happened?
- 25 A She was asking me what had happened. And I was

1 crying too bad to talk.

2 And that is when Darius told her that he was
3 my brother and some people was bothering me, so he
4 came up here to handle it.

5 Q So he said he was your brother?

6 A Yes, ma'am.

7 Q Had anyone at the school been bothering you?

8 A No, ma'am.

9 Q Who bothered you at the school?

10 A Nobody.

11 Q On that day?

12 A Nobody.

13 Q On October 14th?

14 A Except for Darius.

15 Q Darius?

16 A (Nods affirmatively.)

17 Q Do you see Darius in the courtroom today?

18 A Yes, ma'am.

19 Q Can you point him out for the jury?

20 A (Witness indicates.)

21 Q Can you describe what he is wearing?

22 A A shirt and some pants. I don't know what color --
23 I can't tell what color it is.

24 MS. BARRY: Let the record reflect she has
25 identified the Defendant.

1. BY MS. BARRY:

2. Q When Ms. Pleasants hears his story, what, if
3. anything, does he do, Mr. Mack?

4. A He tried to get her to leave basically. He tells
5. her that he has got this and he is going to handle
6. it and that she can go about her business.

7. Q And did she?

8. A No, ma'am.

9. Q What did you tell her?

10. A I told her what happened. I told her that he raped
11. me and that he wasn't my brother.

12. Q And where did you go from there?

13. A She took me to in front of the school, and that is
14. when she got help from her principals. And then
15. they sat me inside Deputy Fields' office to wait on
16. Deputy Fields to talk to Deputy Fields about what
17. happened.

18. Q Who is Deputy Fields?

19. A He is our resource officer at Spring Valley.

20. Q Where did the Defendant go?

21. A He ran out the back door.

22. Q Did you see him?

23. A No, ma'am, but I heard the doors open and close.

24. Q Did you see him again?

25. A After that, no, ma'am.

1 Q When you go in Deputy Fields' office, was
2 Ms. Pleasants still with you?

3 A No, ma'am.

4 Q What was your demeanor like in the office? Were
5 you calm or upset or were you --

6 A I was upset, in shock. I was crying. I just
7 couldn't believe it.

8 Q At some point was someone called to come get you at
9 school?

10 A Yes, ma'am.

11 Q Who was that?

12 A My mother.

13 Q And where did you go from there?

14 A They took me to the -- a back room inside of
15 guidance.

16 Q Why?

17 A To write my statement.

18 Q And then when you left the school, where did you
19 go?

20 A We went to Providence to see if they could do a
21 rape kit, but Providence can't do rape kits, so my
22 mama had to take me to Richland.

23 Q Richland Hospital?

24 A Yes, ma'am.

25 Q And what happened then?

- 1 A I talked to a couple of policemen and a couple of
2 nurses. And I had a rape kit done on me later on
3 that day. And they gave me some pills to take.
- 4 Q They gave you what?
- 5 A Pills to take.
- 6 Q How long did that rape kit take, do you remember?
- 7 A No, ma'am.
- 8 Q Was that a pleasant experience?
- 9 A No, ma'am.
- 10 Q You talked to some police officers?
- 11 A Yes, ma'am.
- 12 Q And who else did you talk to?
- 13 A The lady who did my rape kit, and a couple of more
14 nurses.
- 15 Q When you talked to those people, what were you
16 telling them?
- 17 A Everything that happened.
- 18 Q MINOR did you try to fight Darius off of you
19 when you were on the ground?
- 20 A Yes, ma'am.
- 21 Q Did you try to fight him when you were up against
22 the wall?
- 23 A Yes, ma'am.
- 24 Q Were you successful?
- 25 A No, ma'am.

1 Q Did you want to have sex with him?

2 A No, ma'am.

3 Q And, again, the man that raped you is who?

4 A The father of my son.

5 Q What is his name?

6 A Darius Mack.

7 Q And where is he?

8 A (Witness indicating.)

9 Q Thank you.

10 THE COURT: All right. Let me see you a
11 minute.

12 (WHEREUPON, a bench conference was held
13 in the presence of the jury but out of
14 the hearing of the jury.)

15 MS. PINNOCK: May it please the Court, Your
16 Honor?

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. PINNOCK:

20 Q How are you doing, MINOR

21 MINOR I'm going to start talking to you
22 first about the ride on the bus, okay?

23 A Uh-huh.

24 Q Now, you said that the date on this was October 14,
25 2010, right?

- 1 A Yes, ma'am.
- 2 Q It was just getting cool outside?
- 3 A Yes, ma'am.
- 4 Q So you were wearing a pair of jeans, a shirt, and a
- 5 sweatshirt, light jacket, right?
- 6 A Yes, ma'am.
- 7 Q And Darius was wearing a T-shirt, white T-shirt,
- 8 and a pair of jeans?
- 9 A I guess.
- 10 Q You don't remember?
- 11 A No, ma'am.
- 12 Q Okay. Now, you said when you got on the bus, you
- 13 originally started sitting with Alexis?
- 14 A If I remember right, yes, ma'am.
- 15 Q Okay. And then at some point Alexis gets up and
- 16 goes to speak to somebody else?
- 17 A Yes, ma'am.
- 18 Q And that is when Darius comes to sit with you?
- 19 A Yes, ma'am.
- 20 Q You said you yelled at him?
- 21 A Yes. I told him that he wasn't my daddy because he
- 22 told me to sit down, that I wasn't going nowhere.
- 23 Q Okay. I am going to ask you to take a look at
- 24 something for me.
- 25 A Uh-huh.

1 Q While they are setting that up for me, you remember
2 you gave a statement to Investigator Carter?
3 A Yes, ma'am.
4 Q On October 15, 2010?
5 A Yes, ma'am.
6 Q Okay. And he asked you some of the same questions
7 Ms. Barry asked you?
8 A Yes, ma'am.
9 Q And you told him what happened?
10 A Yes, ma'am.
11 Q All right. You also said that you gave a statement
12 at your school on the 14th?
13 A Yes, ma'am. Well, I didn't get to finish it.
14 Q Who did you give that statement to?
15 A Whoever I was talking to. I don't remember.
16 Q Did you write it down?
17 A Yes, ma'am, but, as I said, I didn't get finished.
18 Q Was it Deputy Fields?
19 A I'm not sure.
20 Q But you remember writing a statement at your
21 school?
22 A I got halfway done and then I didn't finish it.
23 Q Why didn't you finish it?
24 A Because we had a Code Red and it had turned off all
25 the lights.

1 Q Okay.

2 A And then after the Code Red was done, that's when
3 my mama came.

4 Q All right. So you started writing a statement on
5 the 14th, you didn't get to finish it, but you do
6 remember giving a statement to Investigator Carter
7 on the 15th, correct?

8 A Yes, ma'am.

9 Q And, again, he asked you some of the same questions
10 that Ms. Barry just asked you?

11 A Yes, ma'am.

12 Q And you met with Ms. Barry a few times leading up
13 to today, right?

14 A Yes, ma'am.

15 Q The latest being on Sunday?

16 A Yes, ma'am.

17 Q Preparing for your testimony today?

18 A Yes, ma'am.

19 Q Was that your bus driver that day?

20 A Yes, ma'am.

21 Q Okay. That is you, Alexis? That is your stop?

22 A Yes, ma'am.

23 Q All right. And that is Darius right there wearing
24 jeans?

25 A Yes, ma'am.

1 Q Okay. All right. So everybody gets on the bus?

2 A Yes, ma'am.

3 Q And it is your testimony, again, that you get on
4 the bus, you sit down, Alexis sits with you, or you
5 sit with Alexis, Alexis gets up, then Darius moves
6 to sit with you?

7 A Yes, ma'am.

8 Q Didn't you tell Investigator Carter that he was
9 pushing you around, that's why you couldn't get out
10 of the seat?

11 A Yes, ma'am.

12 Q That's what you told him?

13 A I remember that, yes, ma'am.

14 Q Okay. Didn't you tell Investigator Carter that you
15 screamed, you are not my daddy, and then everybody
16 on the bus turned around, looked at you, and at
17 that point that's why he lets you out of the seat?

18 A Yes, ma'am.

19 Q All right.

20 MS. BARRY: Your Honor, I have an objection.

21 Can we approach?

22 (WHEREUPON, a bench conference was held
23 in the presence of the jury but out of
24 the hearing of the jury.)

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

1 Defense would offer the school bus video into
2 evidence.

3 THE COURT: That would be Defendant's
4 Number 2. Any objection?

5 MS. BARRY: No, ma'am.

6 THE COURT: All right, it will be entered
7 without objection.

8 MS. PINNOCK: Thank you, Your Honor.

9 (WHEREUPON, Defendant's Exhibit No. 2
10 was marked for identification and
11 received into evidence.)

12 BY MS. PINNOCK:

13 Q Now, MINOR this is the video of your school bus
14 ride to school on October 14th.

15 A Uh-huh.

16 (Video playing.)

17 Q Is that you and Alexis sitting back there?

18 A Yes, ma'am.

19 Q Is Darius sitting in front of you?

20 A Yes, ma'am.

21 Q Okay. This is the second stop you talked about?

22 There is one stop between your stop and school?

23 A Yes, ma'am.

24 Q At this point you can still see you in the back.

25 That would be Darius changing seats?

- 1 A Yes, ma'am.
- 2 Q Okay. At this point y'all are pulling up to the
- 3 school, right?
- 4 A Probably on the way, yes, ma'am.
- 5 Q That would be Darius getting off the bus?
- 6 A Yes ma'am.
- 7 Q That's him exiting the bus. Y'all pull up to
- 8 school at this point, right?
- 9 A Yes, ma'am.
- 10 Q Okay. It will start back up in just a second.
- 11 (Pause.)
- 12 Q And then here comes -- you are coming from the very
- 13 back of the bus, right? That's you or --
- 14 A Yes, ma'am.
- 15 Q Okay. And at this point you are at the school,
- 16 right?
- 17 A Yes, ma'am.
- 18 Q And you told Investigator Carter he was pushing
- 19 you?
- 20 A Yes, ma'am.
- 21 Q And you were screaming?
- 22 A Yes, sir.
- 23 Q And people on the bus were turning around looking
- 24 to see why you were screaming?
- 25 A Yes, ma'am.

- 1 Q You just watched the video, right?
- 2 A Yes, ma'am.
- 3 Q Did that happen?
- 4 A Well, it happened.
- 5 Q It is not on the video?
- 6 A Well, it happened.
- 7 Q That was the video from your bus ride?
- 8 A Okay. Well, it happened.
- 9 Q Okay. But that was the video from your bus ride
- 10 that morning, right?
- 11 A Okay.
- 12 Q Okay. And when you got off the bus, you testified
- 13 a few minutes ago that you don't know where Darius
- 14 went because you got off first?
- 15 A Okay. Yes, and I see that now that I didn't get
- 16 off first.
- 17 Q You didn't get off first?
- 18 A Okay.
- 19 Q Okay. So he got off your bus in front of you at
- 20 your school, right?
- 21 A (Nods affirmatively.)
- 22 Q And when you get off the bus -- how was your bus
- 23 set up? Just a regular yellow school bus, right?
- 24 A Yes.
- 25 Q One door opens, you walk up the stairs, there is

- 1 the bus driver?
- 2 A Yes.
- 3 Q We saw her?
- 4 A Yes.
- 5 Q She didn't get off the bus?
- 6 A No.
- 7 Q She then ignored anything that was going on, she
- 8 was driving, making stops, picking up students,
- 9 right?
- 10 A Uh-huh.
- 11 Q So when you get on the bus originally at your
- 12 stop --
- 13 A Uh-huh.
- 14 Q -- you get on, you walk right past her?
- 15 A Uh-huh.
- 16 Q Alexis gets on, walked right past her?
- 17 A Uh-huh.
- 18 Q At some point Isaiah gets on, walks right past her?
- 19 A Uh-huh.
- 20 Q Darius gets on?
- 21 A Uh-huh.
- 22 Q Walked right past her?
- 23 A (Nods affirmatively.)
- 24 Q You didn't say anything?
- 25 A Okay.

1 Q Right?

2 A Right.

3 Q Okay. So the whole time you are on the bus and
4 Darius is following you around and you are so
5 terrified of him, you didn't say anything?

6 A Uh-huh.

7 Q Right?

8 A Yes.

9 Q You sat there and rode the bus to school?

10 A Uh-huh.

11 Q Right?

12 A (Nods affirmatively.)

13 Q Okay. Now, when you got to your school, you
14 testified a few minutes ago, again, that you don't
15 know where he went because you got off first and
16 you walked in the school with Alexis?

17 A Uh-huh.

18 Q Right? All right. But then you went back and said
19 that he spoke to an administrator, Mr. Davis.

20 A He did. I remember him talking to Mr. Davis.

21 Q You remember seeing that now?

22 A Uh-huh. No, I didn't see it, I heard it.

23 Q You heard it?

24 A Uh-huh.

25 Q But you didn't see it?

- 1 A I walked right past it.
- 2 Q There were 2,000 people at your school and you
- 3 heard a conversation between Darius and Bruce
- 4 Davis?
- 5 A Uh-huh.
- 6 Q Everybody is coming to school to go to class?
- 7 A They definitely were standing outside of school.
- 8 Q But you didn't see them?
- 9 A No. I heard -- I walked right past him and I heard
- 10 them talking. And he stopped him and asked him
- 11 what he was doing here. And he said he was
- 12 dropping somebody off at school.
- 13 Q Okay. But you didn't know where he went?
- 14 A Okay.
- 15 Q That's what you said, right?
- 16 A Right, that's what I said.
- 17 Q And you have already talked about State's Exhibit
- 18 4. What is that a picture of?
- 19 A Me.
- 20 Q Walking in the front door?
- 21 A Yes.
- 22 Q With Alexis?
- 23 A Yes.
- 24 Q And Darius?
- 25 A Yes.

1 Q Right behind you?

2 A Yes.

3 Q But the last time -- the first time you saw him
4 inside the school was at your locker? That is what
5 you testified to, right?

6 A Yes, ma'am.

7 Q He was right beside as you walk in the front door?

8 A Okay.

9 Q But you didn't know where he went?

10 A Okay. I messed up. It was two years ago.

11 Q So you get to the locker?

12 A Don't --

13 Q You get to the locker, right?

14 A Okay.

15 Q There is a sea of kids in there?

16 A Uh-huh.

17 Q Everybody is in their locker. It is the freshman
18 locker area. Everybody is getting ready for class,
19 right?

20 A Uh-huh.

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

22 (Pause.)

23 BY MS. PINNOCK:

24 Q Can you look at this? Pretty much how your locker
25 area looked on that day?

1 A Uh-huh.

2 Q You have been through these with the Solicitor,
3 right?

4 A Yes.

5 MS. PINNOCK: Your Honor, at this time we
6 would like to offer this photograph of the locker
7 area as Defendant's 2.

8 THE COURT: Any objection?

9 MS. BARRY: No, ma'am.

10 THE COURT REPORTER: This is actually 3
11 because I marked that as ID.

12 MS. PINNOCK: Oh, I'm sorry, Number 3.

13 (WHEREUPON, Defendant's Exhibit No. 3
14 was marked for identification and
15 received into evidence.)

16 BY MS. PINNOCK:

17 Q And all these children, all these students --

18 A Uh-huh.

19 Q Freshman locker area, everybody is getting ready
20 for class?

21 A Uh-huh.

22 Q He is there with you?

23 A Uh-huh.

24 Q You say you are scared of him?

25 A Uh-huh.

1 Q You wanted him to go away?

2 A Uh-huh.

3 Q You don't stay anything to anybody?

4 A Yes, I did.

5 Q You did?

6 A Yes.

7 Q Who did you say something to?

8 A To a lot of people. What they going to do? He is
9 a 17-year-old boy. We all little kids. He is way
10 bigger than everybody that was even around me.

11 Q Okay. And the administrators blew you a
12 three-minute whistle at your school, right?

13 A Yes.

14 Q So there was an adult around?

15 A Yes.

16 Q And the people you were talking to were your
17 friends?

18 A Uh-huh.

19 Q I want to back up just a second. I'm sorry, do you
20 still have the picture of the front door?

21 A Uh-huh.

22 Q What is this right here?

23 A That's the main door that I come in the front.

24 Q There is a desk?

25 A Uh-huh. Coming in the front. Uh-huh.

- 1 Q The front door?
- 2 A Uh-huh.
- 3 Q Does an administrator sit there?
- 4 A I don't know what she is. She is not an
- 5 administrator, though.
- 6 Q You see two adults at that desk?
- 7 A Uh-huh.
- 8 Q And Darius is following you?
- 9 A Uh-huh.
- 10 Q And bothering you?
- 11 A Uh-huh.
- 12 Q Threatening you?
- 13 A No. Did I say he was threatening me?
- 14 Q Well, you felt threatened?
- 15 A No.
- 16 Q Were you scared?
- 17 A Huh-uh.
- 18 Q You didn't say anything?
- 19 A No.
- 20 Q Now, you are on your way to your classroom. You
- 21 say you have to -- you leave the locker area. You
- 22 are heading to the fine arts building?
- 23 A Uh-huh.
- 24 Q And in order to get there you have to go through,
- 25 we will call it a breezeway?

1 A Yes.

2 Q All right. And you had spoken with Ms. Barry about
3 these already. This art patio, State's Number 3,
4 that is where -- that is what you call an empty
5 lot, right?

6 A Uh-huh.

7 THE COURT REPORTER: I'm sorry, you need to
8 say yes or no.

9 A Yes.

10 Q It is not a parking lot?

11 A No, ma'am.

12 Q It is not even really outside, it is enclosed in
13 the building?

14 A It is not what?

15 Q It is not outside?

16 A It is outside.

17 Q Is there an open area to get to the parking lot?

18 A Oh, well, then, no, it is not outside.

19 Q It is enclosed?

20 A Uh-huh.

21 Q Okay. So the only access -- there is no roof?

22 A No, ma'am.

23 Q So this is what you call an empty lot. So we can,
24 for argument's sake, talk about it as the art
25 patio, where they go and do art projects, right?

1 A Uh-huh.

2 Q There is no door?

3 A Huh-uh.

4 THE COURT: Ma'am, I am going to get you to
5 say yes or no.

6 THE WITNESS: Okay.

7 THE COURT: So the court reporter can take
8 down everything you are saying. Okay?

9 BY MS. PINNOCK:

10 Q There is no door?

11 A A door? Don't you see that door right there?

12 Q Is there a door leading out to the patio,

13 MINOR

14 A Yes, ma'am.

15 Q There is?

16 A Yes, ma'am.

17 Q Once you are in the breezeway there is a door?

18 A There are two. No, once you out there, no --

19 Q There is no door leading out to the patio,

20 Minor That is what I'm asking you. Is there a
21 door?

22 A Is there a door where?

23 Q Is there a door leading into the patio?

24 A When you come out, yes, another door to go inside
25 the building, yes.

- 1 Q Out of the building? You walk out the door of the
2 building, you are in the breezeway, right?
- 3 A Yes.
- 4 Q Main building. You walk out the door?
- 5 A Uh-huh.
- 6 Q Look to the right.
- 7 A Uh-huh.
- 8 Q The patio.
- 9 A Uh-huh.
- 10 Q Is there a door?
- 11 A A door -- like when you begin inside the school,
12 yes.
- 13 Q Is there a door?
- 14 A That door doesn't work, so, I mean, it doesn't
15 matter if it is a door right there or not.
- 16 Q All right. We have got pictures, MINOR
- 17 A Okay.
- 18 Q If you go to the right there is a patio, right?
- 19 A Yes.
- 20 Q And you said at this time everybody is changing
21 classes?
- 22 A Yes.
- 23 Q And he grabs your arm, grabs your jacket, and
24 forces you into the corner?
- 25 A Yes, ma'am.

1 Q What corner? This one?

2 A Yes, ma'am.

3 Q That corner?

4 A Yes, ma'am.

5 Q Right? What are these?

6 A A window.

7 Q Windows. Because that is windows next to the art
8 building?

9 A Yes, ma'am.

10 MS. PINNOCK: Beg the Court's indulgence. I'm
11 not an artist.

12 (Pause.)

13 BY MS. PINNOCK:

14 Q All right, MINOR We are going to say this
15 side is the main building, right?

16 A Uh-huh.

17 Q This one is the art building, right?

18 A Yes, ma'am.

19 Q This would be the patio?

20 A Okay.

21 Q If you are coming out of the main building, right?

22 A Okay.

23 Q There is a door here?

24 A Yes, ma'am.

25 Q There is a door here?

- 1 A No, ma'am. There is only one door right there.
- 2 Q There is only one door?
- 3 A Uh-huh.
- 4 Q There is windows here?
- 5 A Yes, ma'am.
- 6 Q And you are saying you were in that corner?
- 7 A Yes, ma'am.
- 8 Q Where? In the corner?
- 9 A Yes, ma'am.
- 10 Q Pushed up in the corner?
- 11 A Yes, ma'am.
- 12 Q When he put you on the ground, where were you
- 13 laying?
- 14 A Right --
- 15 Q Right here?
- 16 A Yes, ma'am.
- 17 Q Feet facing this way?
- 18 A Yes, ma'am.
- 19 Q You're sure?
- 20 A Yes, ma'am.
- 21 Q And when he got you on the ground, there were still
- 22 students walking around?
- 23 A No, ma'am.
- 24 Q No?
- 25 A No.

1 Q You say everybody was in classes?

2 A Okay. Don't you know you have five minutes to get
3 to class?

4 Q You said you had to be in class by like 8:45,
5 correct?

6 A Uh-huh. And, okay, if I wasn't late, then, yes.

7 Q So there was nobody walking around?

8 A The bell had done already rang, so of course not.

9 Q Nobody walking around?

10 A No, not if the bell rung.

11 Q Did you scream?

12 A Yes, I did.

13 Q You did?

14 A Yes.

15 Q When?

16 A What you mean when? When it was going on. When
17 you want me to scream?

18 Q All right. Well, let's back up. Let's work
19 through what you said originally, before today,
20 before. Let's go through this step by step. All
21 right?

22 You are heading to the fine arts building from
23 the main building, so you are coming out from that
24 side of our drawing, right? Yes?

25 A Okay.

1 Q He grabs you, pulls you into the patio, you tell
2 him no, right?

3 A Uh-huh. Yes, ma'am.

4 Q Is that what you said?

5 A Yes, ma'am.

6 Q And then you say he turned you to face the wall?

7 A Yes, ma'am.

8 Q Okay. You testified with Ms. Barry that he pulled
9 your book bag off?

10 A He did.

11 Q And threw it?

12 A He did.

13 Q Then turned you towards the wall?

14 A Well, I was already turned towards the wall, so
15 when he -- he took it off. He was like trying to
16 pick up my book bag, and I was bending down. My
17 book bag was already off and my soda was already
18 out my hand. I was leaned over like this. Yes,
19 ma'am.

20 Q So when you are facing the wall you don't have your
21 book bag on?

22 A No, ma'am.

23 Q All right. And then, like you just say, you are
24 fumbling with the button on your pants, you are
25 bending over so he can't get it undone, and at some

1 point he gets it open?

2 A Yes, ma'am.

3 Q Right? And then he lays you down on the ground?

4 A Yes, ma'am. I don't know how we got on the ground,
5 but, yes, ma'am, we was on the ground.

6 Q Feet facing -- if we are standing in the corner,
7 feet facing that way?

8 A Yes, ma'am.

9 Q And then he pulled your pants halfway down?

10 A Yes, ma'am.

11 Q That is what you testified?

12 A Well, my pants were already down. Well, they was
13 almost down, yes, ma'am.

14 Q He pulled them to your thighs?

15 A Yes, ma'am.

16 Q While you were on the ground?

17 A Yes, ma'am.

18 Q Or before. Before you were on the ground he pulled
19 them down to your thighs and lays you down on the
20 ground? And then while your pants were down --

21 A Well, they wasn't all the way down. Once he got me
22 down to ground he was able to get them down better
23 than --

24 Q Now he got them down further?

25 A Uh-huh. But it was still like at my thighs. They

1 wasn't all the way down.

2 Q Okay. So your pants are at your thighs, you are
3 laying on the ground, he stopped, pulls his pants
4 down?

5 A Uh-huh. Well, I was already on the ground.

6 Q I'm sorry?

7 A I was already on the ground and he was on top of
8 me.

9 Q He was on top of you as he stopped to pull his
10 pants down?

11 A Yes, ma'am.

12 Q His jeans?

13 A Yes, ma'am.

14 Q Okay. So he stopped, you are on the ground on your
15 back, he stopped, pulls his pants down, and then
16 your testimony is he sexually assaults you?

17 A Yes, ma'am.

18 Q He rapes you?

19 A Yes, ma'am.

20 Q And then he just stops?

21 A Yes, ma'am. Once he seen me crying, then he
22 started crying. And he knew -- he told me not to
23 tell, and I told him I was going to tell anyway.

24 Then that is when he stopped, yes, ma'am.

25 Q So he stopped, then you get up, right?

- 1 A Yes, ma'am.
- 2 Q You stand there and you pull your pants up?
- 3 A I was walking -- he was still standing in the
- 4 corner and I was walking away. Well, I was going
- 5 to get my book bag and my soda.
- 6 Q You told Investigator Carter, MINOR that you
- 7 stood up to pull your pants up, he goes to get the
- 8 soda and put it in your book bag, and you tell him
- 9 to stop?
- 10 A Oh, yes.
- 11 Q Which one is it?
- 12 A That's right.
- 13 Q He goes to get your soda?
- 14 A Yes, ma'am.
- 15 Q After he rapes you he wants to put your soda in
- 16 your book bag for you?
- 17 A Exactly, so I wouldn't tell on him.
- 18 Q So you stand there, you pull your pants up after
- 19 you have been raped?
- 20 A Yes, ma'am. What --
- 21 Q You don't say anything?
- 22 A Well, I was crying. What you want me to say?
- 23 Q You weren't screaming?
- 24 A What -- it was done.
- 25 Q You didn't run away?

- 1 A It was done. What am I going to scream for?
- 2 Q You didn't run away?
- 3 A It was done. If they didn't --
- 4 Q You are standing there --
- 5 A It already happened. What I am going to scream
- 6 for?
- 7 Q You are standing there, you are pulling your pants
- 8 up, and then you start walking away, right? Right?
- 9 A Okay.
- 10 Q Okay. And that is when you see Ms. Doris
- 11 Pleasants?
- 12 A Uh-huh.
- 13 Q You were already walking away?
- 14 A No, we definitely was still in the same spot.
- 15 Q What same spot?
- 16 A The spot that it happened at.
- 17 Q So you weren't walking?
- 18 A Oh, my God. I was walking around in circles to try
- 19 to pull myself together before she found me. And I
- 20 was still crying when she found me.
- 21 Q Okay. But you weren't against the wall?
- 22 A No.
- 23 Q How many students go to your school? Would you
- 24 agree over 2,000?
- 25 A I don't know. I don't keep count of students. I

- 1 keep count on myself.
- 2 Q A lot?
- 3 A I don't care about anybody else.
- 4 Q You agree it is a lot?
- 5 A Yes.
- 6 Q It is a big school?
- 7 A Yes.
- 8 Q One of the biggest in Richland 2?
- 9 A Okay.
- 10 Q You're not the only person who has class in the art
- 11 building in the morning, are you?
- 12 A No.
- 13 Q How many people were in your class?
- 14 A I don't know.
- 15 Q On average?
- 16 A I don't know.
- 17 Q But you weren't the only one there?
- 18 A No.
- 19 Q How many classrooms are in the art building?
- 20 A I don't know.
- 21 Q Yours was not the only one?
- 22 A No.

23 MS. BARRY: Your Honor, she has already asked
24 and she does not know how many classrooms.

25 THE COURT: All right. Let's move on.

1 BY MS. PINNOCK:

2 Q You weren't the only one going to the art building
3 that day?

4 A No.

5 Q You weren't the only one walking back in that tight
6 area?

7 A No.

8 Q In that breezeway? No? You walk through there
9 every day?

10 A Yes, ma'am.

11 Q And, again, it is between the main building and the
12 art building? This?

13 A Yes.

14 Q And those are windows?

15 A Yes.

16 Q In the art building?

17 A Yes.

18 Q Do you have class in that room?

19 A No.

20 Q Have you ever been in that room?

21 A No.

22 Q Those are definitely windows that go to a
23 classroom?

24 A I guess.

25 Q You didn't scream?

1 A Is you going to ask me this question one more time
2 and I just told you yes.

3 Q You just --

4 THE COURT REPORTER: I'm sorry, I couldn't
5 hear. Both of y'all were talking at the same time.

6 MS. PINNOCK: I apologize.

7 THE COURT: Ask the question and then, ma'am,
8 you answer the question. But let's move on, all
9 right?

10 MS. PINNOCK: Yes, ma'am.

11 BY MS. PINNOCK:

12 Q You didn't scream?

13 A Yes, ma'am, I did.

14 Q You did?

15 A Yes.

16 Q Nobody heard you?

17 A I guess not. Nobody came out to help me.

18 Q You didn't push him away?

19 A Okay. I tried.

20 Q You didn't run away?

21 A How was I going to run? Where was I going to go?

22 Q You didn't run away?

23 A Where was I going to go? With my pants down so
24 everybody can see what -- no. You just as crazy as
25 him.

MINOR

-- REDIRECT BY MS. BARRY

253

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

2 THE COURT: All right. Hold on.

3 (Pause.)

4 BY MS. PINNOCK:

5 Q And, MINOR you have known Mr. Mack for a
6 number of years, right?

7 A Okay.

8 Q Right?

9 A Yes.

10 Q You have a child together?

11 A Yes.

12 Q And he obviously knows where you live?

13 A Yes.

14 Q He knows where you go to school?

15 A Yes.

16 Q He knows who your friends are?

17 A Yes.

18 Q Because y'all dated, right?

19 A Yes.

20 Q Thank you.

21 THE COURT: Yes, ma'am.

22 REDIRECT EXAMINATION

23 BY MS. BARRY:

24 Q MINOR when you got on the bus, when you went
25 past the driver, did you know that the Defendant

1 was behind you?

2 A No, ma'am.

3 Q And you walked to the back of the bus?

4 A Yes, ma'am.

5 Q When you were walking to the back of the bus to
6 take your seat, did you know the Defendant was on
7 the bus?

8 A Yes, ma'am.

9 Q How did you know that?

10 A Because I seen him walk on the bus and sit down.

11 Q But when you took your seat, did you know he was
12 there?

13 A No, ma'am.

14 Q When you took your seat, who was sitting beside
15 you?

16 A Alexis.

17 Q And when you walk into school -- and on the
18 pictures he is there?

19 A Uh-huh.

20 Q What do you tell your friends about the Defendant?

21 A I told them that he was here and I didn't want him
22 here.

23 Q Why didn't you tell somebody, an administrator or a
24 teacher?

25 A I don't know.

MINOR

-- REDIRECT BY MS. BARRY

255

1 Q Why were you scared that he was following you?

2 A Because I just seen him do something that he
3 shouldn't have did at the bus stop, so --

4 MS. PINNOCK: Objection. Your Honor has
5 already ruled on this.

6 THE COURT: Sustained.

7 MS. PINNOCK: Thank you.

8 BY MS. BARRY:

9 Q What were you trying to do when you are walking to
10 class?

11 A Just trying to get to class. Have a normal day.

12 Q And in that classroom right there, can you see out
13 those windows?

14 A I haven't never been in that room, but I don't
15 think you can.

16 Q Are they tall? High up?

17 A Yes, ma'am.

18 MS. BARRY: Beg the Court's indulgence.

19 (Pause.)

20 BY MS. BARRY:

21 Q Those windows, could you touch them with your hand?

22 A No, ma'am.

23 Q And when you screamed, did anyone come?

24 A No, ma'am.

25 Q Ever?

1 A No, ma'am.

2 Q Did anyone ever come?

3 A When this happened? While it was happening? No,
4 ma'am.

5 Q After?

6 A Yes, ma'am.

7 Q And who was that?

8 A A teacher.

9 Q The one that testified?

10 A Yes, ma'am.

11 MS. BARRY: That's all I have.

12 MR. PINNOCK: Very briefly.

13 THE COURT: Yes, ma'am.

14 MS. PINNOCK: Thank you.

15 RECROSS-EXAMINATION

16 BY MS. PINNOCK:

17 Q MINOR State's Exhibit 6 shows you walking
18 through the hall with Darius?

19 A Uh-huh.

20 Q You are smiling at him?

21 A I'm not smiling at him.

22 Q You are not smiling at him?

23 A No. I knew you were going to say that, but, no,
24 I'm not smiling at him.

25 Q You weren't going to say that because the Solicitor

1 asked you about it, didn't she?

2 A No. That is none of your business.

3 Q She asked you about it on Sunday when preparing for
4 your testimony for this trial?

5 A Is that any of your business?

6 Q You talked about it and she asked you about it,
7 right?

8 A But is it any of your business?

9 THE COURT: Hold on. Hold on. Hold on one
10 second. What is the question again?

11 MS. PINNOCK: Preparing for the testimony at
12 trial, Your Honor, if she was asked about her
13 smiling in the picture.

14 THE COURT: All right. Ma'am, you have to
15 answer the question, yes or no.

16 A We didn't talk about that Sunday.

17 Q You talked about it previously. You spoke to her
18 either two or three times in the week prior to this
19 one, right?

20 A No, I only talked to her one time -- two times,
21 yes.

22 Q Two times?

23 A Yes.

24 Q She asked you about the picture?

25 A Yes.

1 Q She asked you why you looked like you were smiling?

2 A Yes.

3 Q So you knew I was going to ask?

4 A Yes.

5 Q You were walking in the hallway with Darius.

6 State's Exhibit 7. You are walking. You are not
7 walking like you are scared?

8 A Okay.

9 Q You are just walking?

10 A Okay.

11 Q And Number 5 you are walking, other students in the
12 hallway?

13 A Uh-huh.

14 Q You are not running away?

15 A Uh-huh.

16 Q You are not pushing him? You are not saying, get
17 away from me? You are just walking?

18 A Okay.

19 Q Over 2,000 students at your school, MINOR and
20 you didn't tell anybody? Is that right?

21 A No, that is not right, but, okay.

22 Q You told somebody he was following you? Other than
23 your friends?

24 A All right, then --

25 Q Other than your friends?

1 A No.

2 MS. PINNOCK: Thank you, Your Honor.

3 THE COURT: All right. Ma'am, you may step
4 down.

5 (Witness steps down.)

6 THE COURT: All right, ladies and gentlemen of
7 the jury, it is about 20 after 1:00. This is a
8 good time to take a break for lunch. We will take
9 a break and start back around 2:30.

10 All right. Thank you. Remember, you are not
11 to discuss the case with anyone over lunch, not
12 even your fellow jurors.

13 Thank you. Have a good lunch.

14 (WHEREUPON, the jury is excused for
15 lunch at 1:20 p.m.)

16 THE COURT: All right, we'll start back at
17 2:30.

18 (Lunch Recess.)

19 THE COURT: Are we ready to bring them in?

20 MS. BARRY: The State is ready.

21 MS. PINNOCK: The Defense is ready.

22 THE COURT: All right. You can bring them in.

23 (WHEREUPON, the jury came into open
24 court at approximately 2:30 p.m.)

25 THE BAILIFF: The jury is seated, Your Honor.

1 THE COURT: Okay, thank you.

2 Yes, ma'am, call your next witness.

3 MS. BARRY: Thank you, Your Honor. The State
4 calls LaShonda Green.

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

7 (Witness complies.)

8 THE CLERK: Do you swear or affirm the
9 testimony you are about to give in this case will
10 be the truth, the whole truth, and nothing but the
11 truth, so help you God?

12 THE WITNESS: Yes, ma'am.

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

14 (Witness complies.)

15 THE CLERK: State your name for the record,
16 please.

17 THE WITNESS: LaShonda Green.

18 LASHONDA GREEN,
19 after being duly sworn, testified as follows:
20

21 DIRECT EXAMINATION

22 BY MS. BARRY:

23 Q Ms. Green, do you know the Defendant?

24 A Yes, ma'am, I do.

25 Q And how do you know the Defendant?

1 A His wife -- his mom is married to my brother. My
2 sister's stepson.

3 Q For how long have you known the Defendant?

4 A I think about six years. It might be longer, but I
5 think it is about six.

6 Q Were you aware that your daughter at some point
7 started dating him?

8 A No, ma'am, I didn't.

9 Q When did you become aware of that?

10 A When I found out she was pregnant.

11 Q And how did you find out she was pregnant?

12 A His mother called me and told me that I needed to
13 take her to the doctor to get tested because -- I
14 mean, not tested -- yes, for a pregnancy test
15 because Darius told his grandmama and the grandmama
16 told her and so she told me.

17 And when I got off from work, I got a
18 pregnancy test and I let her pee on the stick, and
19 then after that I took her to Doctor's Care.

20 Q And was it confirmed?

21 A Yes, it was confirmed.

22 Q Where do you work at?

23 A Pine Grove School with kids with autism.

24 Q How long have you been there?

25 A I have been there 15 years.

1 Q You obviously have children of your own?

2 A Yes, ma'am, I do.

3 Q One of them being --

4 A Yes, ma'am. And I have a son and another daughter.

5 Q And how old are they?

6 A Fifteen and 12.

7 Q And where do you live?

8 A I live on

9 Q Who lives there with you?

10 A It is me, my husband, and my three kids, and my
11 grandson.

12 Q And how old is your grandson?

13 A He's two.

14 Q Who takes care of your grandson?

15 A My husband watch him during the day, and when I get
16 off I'll get him until MINOR comes home from
17 school. And after MINOR gets home from school,
18 it is her responsibility.

19 If she is studying or something, I will watch
20 her -- watch him until she finishes studying or,
21 you know, doing homework, but other than that it is
22 her responsibility.

23 Q After the baby was born -- well, prior to the baby
24 being born, was MINOR and the Defendant, were
25 they still dating?

1 A Not to my knowledge.

2 Q And has he ever visited your grandson?

3 A I remember maybe once or twice, but I remember when
4 he brought his grandparents to the house to see
5 Jaquan.

6 Q Have the grandparents come back to visit?

7 A No, ma'am.

8 MR. COOPER: Objection. Relevance.

9 MS. BARRY: It is, Your Honor. I'll get
10 there.

11 THE COURT: All right. Overruled. Go ahead.

12 BY MS. BARRY:

13 Q Is there any bad blood between the families?

14 A No, ma'am.

15 MR. COOPER: Objection.

16 THE COURT: What is the objection?

17 MR. COOPER: I withdraw it.

18 BY MS. BARRY:

19 Q What was your answer?

20 A No, ma'am.

21 Q And although they have not visited the grandson, is
22 that something that you would allow?

23 A Yes, ma'am, I would.

24 MR. COOPER: Objection. It is not relevant to
25 what the issue is in this case, Your Honor.

1 THE COURT: Let me see you all one second.

2 (WHEREUPON, a bench conference was held

3 in the presence of the jury but out of

4 the hearing of the jury.)

5 THE COURT: Overruled.

6 MS. BARRY: Thank you.

7 BY MS. BARRY:

8 Q So if they want to visit, they can?

9 A Yes, ma'am.

10 Q Do you recall one day in October, specifically
11 October 14th, 2010, when you were called to the
12 school?

13 A Yes, ma'am.

14 Q And when you got there, where did you have to take
15 your daughter?

16 A First I think it was Providence Northeast and then
17 to Richland Memorial Hospital.

18 Q And what purpose was that?

19 A Because they said that she was raped.

20 MR. COOPER: Objection. It is hearsay.

21 THE COURT: Sustained.

22 BY MS. BARRY:

23 Q Did she have -- what procedure did she have at the
24 hospital?

25 A Well, I didn't go back there with her. I stayed in

1 the -- I think -- guess it was a conference room.

2 I stayed in there, and they took her back, and they
3 did a rape kit on her. That is what was told to me
4 when she came back in the room.

5 Q So you took her to the hospital?

6 A Yes, ma'am, I did.

7 Q Now, after this occurred, after this date, what if
8 any changes did you notice in your daughter's
9 behavior?

10 A Her defense mode --

11 MR. COOPER: Objection. It is not relevant.
12 Objection. Relevance.

13 THE COURT: Ma'am? Relevance?

14 MS. BARRY: I think she can testify as to --
15 (WHEREUPON, a bench conference was held
16 in the presence of the jury but out of
17 the hearing of the jury.)

18 THE COURT: Overruled.

19 BY MS. BARRY:

20 Q After this assault took place, what if any changes
21 did you notice in your daughter's behavior?

22 A Her defense mode. I mean, any little thing that
23 you would say to her or anything that would happen,
24 she was like -- she would get very upset and she
25 couldn't handle anything. She didn't really want

1 to be around anybody. She stayed in her room a
2 lot. It was a lot. It was a lot for me also, I
3 meant, to deal with her. And I had a lot of other
4 stuff going on, you know, with my mother and stuff.
5 I know this don't have anything to do with her,
6 but --

7 Q Well, let's just talk about your daughter.

8 A But it was hard for me to deal with. And I really,
9 until today I didn't know the facts of everything
10 that went on because I didn't know how to talk to
11 her about what went on. It is a lot.

12 MS. BARRY: That's all I have.

13 THE COURT: All right. Please answer any
14 questions that Mr. Cooper may have.

15 MR. COOPER: Beg the Court's indulgence, Your
16 Honor.

17 (Pause.)

18 MR. COOPER: Your Honor, I don't have any
19 questions for this witness.

20 THE COURT: All right, ma'am, you may step
21 down.

22 (Witness steps down.)

23 THE COURT: All right. Call your next
24 witness.

25 MS. VRIESINGA: The State calls Alexis L.

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

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Have a seat in the witness box.

(Witness complies.)

THE CLERK: And state your name for the record. Spell your last name, please.

THE WITNESS: My name is Alexis L.

THE COURT: All right. And if you can just pull your chair up to that microphone. And if you can speak loud. The court reporter is taking down everything that you are saying, okay?

THE WITNESS: Okay.

THE COURT: Thank you. Yes, ma'am?

Alexis L.

after being duly sworn, testified as follows:

DIRECT EXAMINATION

1 BY MS. VRIESINGA:

2 Q Hey, Alexis.

3 A Hey.

4 Q Where do you currently go to school?

5 A Spring Valley.

6 Q Spring Valley? Okay. What grade are you in?

7 A Tenth.

8 Q Tenth grade? How do you know MINOR

9 A We're friends.

10 Q Friends? How long have you been friends for?

11 A Since fifth grade.

12 Q Fifth grade?

13 A (Nods affirmatively.)

14 Q Okay. You have classes together?

15 A No.

16 Q No. So you've known her from school, though?

17 A Uh-huh.

18 Q Do you hang out outside of school?

19 A Not any more.

20 Q Okay. So you have known her since fifth grade?

21 A Yes.

22 Q Do you remember the morning of October 14th, 2010?

23 A Kind of.

24 Q Okay. What did you do that morning?

25 A I just got up, walked to the bus stop.

1 Q Do you usually take the bus to school?

2 A I used to.

3 Q You don't take it any more?

4 A Huh-uh.

5 Q Did you take the bus that morning?

6 A Yes.

7 Q Okay. What did you see at the bus stop that day?

8 MS. PINNOCK: Objection, Your Honor.

9 (WHEREUPON, a bench conference was held

10 in the presence of the jury but out of

11 the hearing of the jury.)

12 BY MS. VRIESINGA:

13 Q Okay, I'm going to rephrase my question a little

14 bit. Who did you see at the bus stop that day?

15 A It was me, ^{MINOR} Isaiah, and Darius.

16 Q So you got on the bus. And who did you sit with on

17 the bus?

18 A Myself.

19 Q You didn't sit with anyone else?

20 A (Nods negatively.)

21 Q You got off at the school?

22 A (Nods affirmatively.)

23 Q What was your first class that day?

24 A Math.

25 Q Math? Did you walk with anyone to class?

1 A I walked by myself.

2 Q Okay. Did you walk by yourself the whole way?

3 A To class? Yes.

4 Q Uh-huh. Did you stop at your locker?

5 A Yes.

6 Q Okay. Did you see MINOR that morning walking to
7 class?

8 A Yes.

9 Q You did. Did you talk to her at all?

10 A Before I got to class.

11 Q Okay. Did you see Darius that morning?

12 A Yes.

13 Q Okay. Did he say anything to you?

14 A No.

15 Q Okay. All right. Did you see Darius say anything
16 to MINOR

17 A No.

18 Q No. Okay. But you did see him walking with her?

19 A Uh-huh.

20 Q And you said you went straight to class, correct?

21 A Yes.

22 MS. VRIESINGA: Beg the Court's indulgence.

23 (Pause.)

24 BY MS. VRIESINGA:

25 Q Did MINOR seem happy that Darius was walking with

1 her?

2 A No.

3 Q No, she didn't. How do you know that?

4 A Because I can tell her expression.

5 Q What was her expression like?

6 A Like she didn't want to be bothered with him.

7 Q Did she -- she didn't say anything to him, though?

8 A I remember her saying like, leave.

9 MS. VRIESINGA: No further questions, Your
10 Honor.

11 THE COURT: All right. Please answer any
12 questions that Ms. Pinnock may have.

13 MS. PINNOCK: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. PINNOCK:

16 Q Is it ?

17 A (Nods affirmatively.)

18 Q Alexis L. , you said you have been friends with
19 MINOR since fifth grade?

20 A Yes.

21 Q Thank you.

22 THE COURT: All right, anything? Anything
23 else from this witness?

24 MS. VRIESINGA: Nothing further.

25 THE COURT: Ma'am, you may step down.

1 (Witness steps down.)

2 THE COURT: Any objection to this witness
3 being excused?

4 MS. PINNOCK: No, Your Honor.

5 THE COURT: All right, ma'am, you are free to
6 leave.

7 (Witness excused.)

8 THE COURT: Call your next witness.

9 MS. VRIESINGA: The State calls Portia S.

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

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you are about to give in this case will
15 be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: Yes.

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

19 (Witness complies.)

20 THE CLERK: State your name for the record,
21 please.

22 THE WITNESS: Portia S.

23

24

25

after being duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MS. VRIESINGA:

3 Q Hey, Portia.

4 A Hey.

5 Q Portia, where do you go to school?

6 A Spring Valley.

7 Q Spring Valley High. And what grade are you in?

8 A Senior.

9 Q Senior. Okay. Do you remember the morning of
10 October 14th, 2010?

11 A Yes.

12 Q You do. Did you have class that morning first
13 thing?

14 A Yes.

15 Q Okay. What classes did you have?

16 A I had an online class, so I had to go to the
17 library.

18 Q Okay. So you are walking towards the library?

19 A Yes.

20 Q Okay. What, if anything, did you see on your walk
21 to class?

22 THE BAILIFF: They can't hear her, Your Honor.

23 THE COURT: All right, ma'am, if you can speak
24 up a little bit so the jurors can hear you, all
25 right?

1 THE WITNESS: Okay.

2 BY MS. VRIESINGA:

3 Q What, if anything, did you see that morning on your
4 walk to class?

5 A Before I was walking -- I was walking to the -- by
6 the art patio, and I was talking to my friend. So
7 we seen a boy and a girl, and they was like making
8 out, or whatever. So we just kept on talking and
9 went on.

10 And then the bell rung, so I was on my way
11 back to class. And I seen the same boy and girl,
12 but this time the girl was there, but she was like
13 crying and telling him to get off.

14 By that time he had turned around and he
15 looked at me, and then he started mumbling, but I
16 couldn't hear what he said.

17 So then when he looked, I left and went back
18 to class.

19 Q How long did you see his face for?

20 A Probably a couple of seconds.

21 Q Okay. Would you be able to recognize him today?

22 A No, not really.

23 Q Okay. Would you be able to recognize the girl?

24 A Yes.

25 Q Okay. Is she in the courtroom here today?

1 A Yes.

2 Q Okay. What is her name?

3 A MINOR

4 Q And when the boy looked up, what did he do after
5 that?

6 A When he looked up, I just left when he --

7 Q So you left first?

8 A Yes.

9 Q When you saw her face, what did it look like?

10 A Couldn't really see it really because she was
11 like -- she was kind of over really, like her head
12 was down.

13 Q Okay. So describe how he was positioned.

14 A He was like over her.

15 Q Okay. And what did you hear again?

16 A She was like crying, telling him to get off of her.

17 Q Portia, I'm going to show you a couple of pictures.
18 I just want you to tell me if you recognize them,
19 not what they are, but if you recognize them.

20 A Yes.

21 MS. VRIESINGA: This is State's Exhibit 1 that
22 I'm showing her.

23 Q You do recognize it?

24 A (Nods affirmatively.)

25 Q Okay. For the record, State's Exhibit 2, do you

1 recognize that?

2 A Yes.

3 Q This is State's Exhibit 3. Do you recognize that?

4 A Yes.

5 Q Okay. What is this?

6 A Just a wall. It is a patio.

7 Q Okay. Do you know where this is on Spring Valley
8 campus?

9 A Yes, that is where my photography class is at.

10 THE COURT REPORTER: I'm sorry, I can't hear.

11 A I said, my photography class is in that door.

12 Q Okay. Do you want to show me where it is?

13 A It is past this, but that is the door.

14 Q That is door right there? Okay. To your
15 photography class. Okay.

16 A Yes.

17 Q Okay, what about this picture? What is that a
18 picture of?

19 A That is the corner.

20 Q Okay. Do you remember the Defendant or the -- or
21 MINOR being in that corner?

22 A Yes.

23 Q Okay. Do you remember how they were positioned in
24 that corner?

25 A They was in the corner standing up.

1 Q Okay.

2 A And he was over --

3 THE COURT REPORTER: I'm sorry, I just cannot
4 hear.

5 A I said, he was in the corner and they were standing
6 up.

7 Q They were standing up. Now, the first time you saw
8 them, how were they positioned?

9 A They were positioned the same way, but it was
10 just -- it looked like they was making out.

11 Q Okay. And so when you saw them the second time,
12 they were still standing up?

13 A Yes.

14 Q And this is just from another angle. Can you
15 explain where that is?

16 A Yes, this is where you are coming down the hallway.

17 Q All right.

18 MS. VRIESINGA: Beg the Court's indulgence.

19 (Pause.)

20 BY MS. VRIESINGA:

21 Q Just a couple more things to clarify. The second
22 time you saw them, what, if anything, did you hear?

23 A The second time?

24 Q Uh-huh.

25 MR. COOPER: Objection. This was asked and

1 answered already.

2 THE COURT: Overruled.

3 A The second time I just heard her crying, saying get
4 off, telling him to get off her.

5 MS. VRIESINGA: All right. No further
6 questions.

7 THE COURT: Please answer any questions that
8 Mr. Cooper has.

9 MR. COOPER: Thank you, Your Honor. May it
10 please the Court?

11 CROSS-EXAMINATION

12 BY MR. COOPER:

13 Q Hello, Portia S. How are you doing? You were
14 friends with MINOR correct?

15 A Somewhat, yes.

16 Q I mean, somewhat. Did y'all talk occasionally?

17 A Every once in a while.

18 Q You knew who she was?

19 A Yes.

20 Q You liked her, correct?

21 A Yes.

22 Q And you told the jury, you used the phrase making
23 out. You know what making out is, right?

24 A Yes.

25 Q Making out is not just a peck on the cheek, is it?

- 1 A No.
- 2 Q Making out is not just a kiss on the lips, is it?
- 3 A No.
- 4 Q Making out is like full on kissing somebody, right?
- 5 A Yes.
- 6 Q And that is what you saw, making out, right? That
- 7 is what you just told the Solicitor?
- 8 A (Nods affirmatively.) Yes.
- 9 Q Now, you testified that you were just -- oh, I
- 10 meant to ask you about this. You gave a written
- 11 statement in this case, right, to Deputy Fields?
- 12 A Yes.
- 13 Q You've been looking at that while you have been
- 14 testifying, right?
- 15 A I --
- 16 Q Do you have that with you right there?
- 17 A I have it, yes.
- 18 Q Yes. Okay. And you, that day, when you came to
- 19 the breezeway, you were just walking to class,
- 20 right?
- 21 A Yes.
- 22 Q And you testified that as you were just walking to
- 23 class, as you were just coming down that breezeway,
- 24 that is when you noticed the two people making out,
- 25 right?

1 A Yes.

2 Q They weren't being overly noisy, were they, the
3 first time you saw them?

4 A No.

5 Q And but you still saw them as you were walking down
6 the breezeway?

7 A Yes.

8 Q Okay. The second time you saw them -- you told
9 Ms. Vriesinga the second time you saw them when you
10 heard the crying, they were still standing up,
11 right?

12 A Yes.

13 Q And after the second time you saw them, you didn't
14 go alert the teacher about anything immediately,
15 did you?

16 A No.

17 Q You didn't go alert any administrator about
18 anything, did you?

19 A No.

20 Q Didn't you just go to class?

21 A Yes.

22 Q All right. Thank you, ma'am.

23 MR. COOPER: That's all I have.

24 REDIRECT EXAMINATION

25 BY MS. VRIESINGA:

1 Q Portia, do you know for a fact that they were
2 making out?

3 A No.

4 Q No. Okay. Why did you think they were making out?

5 A Because that is the area people go to go make out
6 and --

7 THE COURT REPORTER: I'm sorry, could you
8 repeat that?

9 A I said, that is the area people go to make out and
10 stuff and, you know, do whatever.

11 Q But when you saw them --

12 A They just looked like that.

13 Q Okay. All right, thank you.

14 MR. COOPER: Nothing further.

15 THE COURT: All right, ma'am, you may step
16 down.

17 (Witness steps down.)

18 THE COURT: Any objection to this witness
19 being excused?

20 MS. VRIESINGA: No.

21 MR. COOPER: None, Your Honor.

22 (Witness excused.)

23 THE COURT: Call your next witness.

24 MS. BARRY: The State calls Bruce Davis.

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you swear or affirm the
4 testimony you are about to give in this case will
5 be the truth, the whole truth, and nothing but the
6 truth, so help you God?

7 THE WITNESS: I do.

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

9 (Witness complies.)

10 THE CLERK: State your name for the record,
11 please.

12 THE WITNESS: My name is Bruce Davis.

13 BRUCE
14 DAVIS,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BARRY:

18 Q Mr. Davis, where are you employed?

19 A Spring Valley High School.

20 Q How long have you been at Spring Valley High
21 School?

22 A This is my third year.

23 Q What are your duties and responsibilities at Spring
24 Valley?

25 A Well, I am one of the administrators at the school.

1 I handle discipline, teacher observations, just
2 about everything. We have duties, bus duty, car
3 duties, that type stuff as well.

4 Q How many administrators are there at Spring Valley?

5 A Ten, including assistant principals and the
6 principal.

7 Q So eight normal people and then two assistant
8 principals and a principal?

9 A Well, we have four assistant principals, four
10 administrative principals, and then we have another
11 administrative, but she's not at the school at this
12 moment. She is an assistant principal at the new
13 school that is going to open this summer, but she's
14 going off campus.

15 Q So ten total?

16 A Ten total.

17 Q And are you aware of how many students are
18 currently enrolled or were enrolled in 2010 at
19 Spring Valley?

20 A Close to 2,200.

21 Q So ten administrators?

22 A Yes.

23 Q In charge of 2,200?

24 A 2,200 students, yes.

25 Q How long have you been in the education field?

1 A This is my seventh year.

2 Q Can you give us your educational background?

3 A Well, my educational background -- you are talking
4 about my personal -- my career?

5 Q Yes?

6 A Yes. Well, I have a B.S. degree in business from
7 South Carolina State College. I have a masters in
8 education administration from Columbia
9 International University. I have a masters in
10 Special Ed from USC. And I'm currently working on
11 an educational specialist from South Carolina
12 State.

13 Q Prior to your employment at Spring Valley, where
14 did you work?

15 A The Employment Security Commission. I was a
16 statistical analyst.

17 Q Did you work at any other schools other than Spring
18 Valley?

19 A Yes, before Spring Valley I worked at Kelly Mill
20 Middle School as a Special Ed teacher.

21 Q Kelly Mill?

22 A Kelly Mill Middle, yes.

23 Q Are you -- do you know Mr. Mack?

24 A Yes, I do.

25 Q Darius Mack?

1 A Yes. Darius actually played football for me at
2 Kelly Mill Middle School.

3 Q So you were a coach?

4 A I was a head football coach, yes.

5 Q Approximately how long have you known Darius Mack?

6 A Well, at that time, I think he was actually new to
7 the school that particular year, and I, you know,
8 we talked that year. And he joined the football
9 team. And partway through the football team, if I
10 can recall, he left the football team. He had to
11 be removed from the football team. So but I still
12 stayed in contact with him helping him with grades
13 and that -- you know, grades, discipline, and that
14 type stuff in the school.

15 Q Can you describe to the jury when school is
16 beginning to start the procedures that are -- the
17 2,200 is a lot of students.

18 A Yes.

19 Q And what are the procedures for the administrators?

20 A Well, for the administrators, we actually -- the
21 school -- we start allowing kids to come in the
22 building at 8:00 o'clock. We are placed in
23 strategic places in the school. My duties, at that
24 particular time I was at the car drop-off area, but
25 we have administrators in the -- inside the

1 building and as, you know, as soon as you enter the
2 building you should see two or three administrators
3 there. And every floor that we have in the school
4 we have an administrator. And also in the
5 cafeteria.

6 So we have them placed around the school. And
7 a couple of us, we actually have the duty of
8 directing traffic. Like I said, I worked at the
9 car drop-off area directing the traffic at that
10 area. And we have another administrator at the
11 entrance of the school, and he directs traffic at
12 that particular spot, along with district security.

13 Q And are the doors to the building monitored?

14 A The front -- the front entrance, we have
15 administrators there, plus we have the kiosk where
16 we have a young lady sitting to sign in visitors.

17 The only other entrance in the school -- well,
18 we have a couple of different areas where the kids
19 in the band can come in and we have a cafeteria
20 where the kids get off the bus they can actually
21 enter in that area as well, but to say that it is
22 monitored, monitored where we stop kids from coming
23 in, that is not -- you know, it is not that secure,
24 no. So someone can actually enter the building at
25 that particular point.

1 Q Do you recall October 14, 2010?

2 A Yes, ma'am, I do.

3 Q And that particular morning, did you come into
4 contact with the Defendant?

5 A I did. On that particular morning I was directing
6 traffic out front in the car drop-off lane. And
7 Mr. Mack walked up behind me and he said, hey,
8 coach, how you doing.

9 And so I turned around and say, hey, Darius,
10 how are you doing. I said, what are you here for?

11 And he stated -- I said, you are here to sign
12 up for school? Because I knew he is not a student
13 at our school.

14 And he said, no, I'm just dropping someone
15 off.

16 So I told Mr. Mack, I said, Darius, you need
17 to go inside and you have to get a sticker if you
18 are going to enter the school.

19 And then from that point on he walked in that
20 direction. And after that point I don't -- you
21 know, then I heard about what happened afterwards.

22 Q But after that point, that is the last time you saw
23 him?

24 A The last time I saw him, yes.

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

1 (Pause.)

2 Q That's all I have, Mr. Davis. Please answer any
3 questions Defense counsel has.

4 MR. COOPER: May it please the Court, Your
5 Honor.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. COOPER:

9 Q Hello, Mr. Davis. How are you?

10 A Great. How are you?

11 Q Good. Thank you. You just went over with
12 Ms. Barry the fact that there are about 2,200
13 students at Spring Valley High School, right?

14 A Yes.

15 Q That is a lot for a high school, right? I mean --

16 A Yes, we are --

17 Q It is a big school?

18 A That is one of the bigger schools, yes.

19 Q And in the mornings before the bell rings, which is
20 the time of day you were describing --

21 A Right.

22 Q -- there are students all over the outside of the
23 school, right, coming in the school?

24 A Basically we have kids coming from one direction,
25 the bus loop. And if they are parked in the

1 parking lot, they will be coming right across
2 the -- you know, into the front area.

3 My position is almost right in front of the
4 walkway to the front of the school. So any kid
5 that comes up in there, you know, you'll see them
6 or, you know, they'll pass in that area, except for
7 kids that are going to the cafeteria and some that
8 are going into the band area.

9 Q So you have kids coming in the front of the school,
10 you have kids going back to the band area, you have
11 kids going to the cafeteria, so it is kind of
12 chaotic in the mornings, would you say?

13 A It is, yes.

14 Q Okay. And when you, just from being an
15 administrator there, before the bell rings, y'all
16 actually, when it is time for everybody -- all the
17 kids to go to class, y'all actually blow a whistle,
18 don't you?

19 A No.

20 Q You don't? On the inside you don't blow a
21 three-minute whistle?

22 A No.

23 Q Never heard of that?

24 A No.

25 Q Okay. Well, when you know from the mornings at the

1 school that around the locker areas there is a lot
2 of kids that congregate around there before class,
3 right?

4 A Right.

5 Q And there is kids congregating always before class,
6 right?

7 A Yes.

8 Q And there is kids that congregate around the
9 outside of the school before class, correct?

10 A Not necessarily. You know, the back of the school,
11 just the front entrance we have kids out there in
12 the front, front of the school. And like I said,
13 on those two areas, band and cafeteria.

14 Q Well, on the inside of the school, in the hallways
15 and around the lockers, right before class, there
16 is students everywhere, aren't there?

17 A Right.

18 MR. COOPER: I don't have anything further,
19 Your Honor. Thank you.

20 THE COURT: All right. Anything else?

21 MS. BARRY: No, ma'am.

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

23 (Witness steps down.)

24 MS. BARRY: May he be excused?

25 THE COURT: Any objection to this witness

1 the hearing of the jury.)

2 THE BAILIFF: The jurors are all present, Your
3 Honor.

4 THE COURT: All right, ladies and gentlemen,
5 good morning. And, once again, I apologize for
6 having you all sit back there and wait. We were
7 handling some matters of law that I must handle
8 outside of your presence.

9 My understanding is that the State is prepared
10 to call their next witness.

11 MS. BARRY: The State calls Deputy Ben Fields.

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

14 (Witness complies.)

15 THE CLERK: Do you swear or affirm the
16 testimony you shall give in this case will be the
17 truth, the whole truth, and nothing but the truth,
18 so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please have a seat in
21 the witness stand, and state your full name for the
22 record.

23 THE WITNESS: Deputy Ben Fields. Richland
24 County Sheriff's Department.

25 BEN FIELDS,

1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. BARRY:

4 Q Deputy Fields, where are you currently employed?

5 A Richland County Sheriff's Department.

6 Q And how long have you been at the Sheriff's
7 Department?

8 A About eight and a half years.

9 Q Are you from South Carolina?

10 A I'm not. I'm actually originally from
11 Pennsylvania.

12 Q So what brought you to South Carolina?

13 A My family moved down here. My dad took a job down
14 here. My sister came down here to go to school,
15 and my brother moved to Florida. So I had no
16 family left in Pennsylvania, so I came here to
17 college.

18 Q And began working when?

19 A 2004, I believe.

20 Q What did you do in 2004?

21 A When I came to the Sheriff's Department you mean?

22 Q Uh-huh.

23 A I started out here at the courthouse. And then
24 from there I went to the academy. And then worked
25 the street, Two Notch area, for probably about two

1 and a half years. And then worked Bluff Road area
2 for about a little over a year. And then became a
3 school resource officer for the Sheriff's
4 Department.

5 Q When you became a school resource officer, what
6 made you decide to do that?

7 A Actually it was a situation where one of my buddies
8 in the Sheriff's Department kind of encouraged me
9 to put in for it. And basically I just submitted a
10 letter. You have got to go to a board and then you
11 have got to be picked. And so basically that's
12 what I did. And the sheriff decided to put me in
13 the school.

14 Q And how long have you been in the -- what school
15 did you go to first?

16 A I went to E.L. Wright Middle School first. I was
17 there for two years. And then after that they put
18 me in Spring Valley High School. And I'm there now
19 and have been there for three years. This is my
20 third year at Spring Valley High School.

21 Q Do you enjoy being a resource officer?

22 A I do.

23 Q And why?

24 A I think it is a different -- you get to connect
25 with kids in a different way when you work the

1 street. Basically on a regular basis you are
2 dealing with everybody's problems, you are going
3 from call to call, so you don't have an opportunity
4 to build relationships. When you get into the
5 school, you are dealing with kids on a level where
6 you can really talk to them, try to help them, try
7 to help them make better decisions so they don't
8 end up in jail or on the street somewhere. You
9 have an opportunity to influence them in a much
10 different way than you would on the street.

11 Q And tell the jury what your duties are at the
12 school.

13 A Okay. I serve obviously as a deputy sheriff at the
14 school. And that would mean any law enforcement
15 issues that come up I would deal with. The SRO
16 includes so much stuff. I mean, you are dealing
17 with stuff. The kid has an issue -- let's say
18 someone wants to fight them. They may come tell
19 you about it. You have an opportunity to squash
20 that situation. If there is an abuse situation at
21 home, they would come tell you about it. If they
22 are having problems, you know, they may come to you
23 because they are having problems with a teacher in
24 class just to talk to you about it.

25 I also serve as the JV head basketball coach,

1 assistant varsity coach, and assistant on the
2 football -- as a football coach as well.

3 Q Do you enjoy those extra duties?

4 A Yes. They are good.

5 Q Approximately how many students are at Spring
6 Valley?

7 A I believe this year started off with a little over
8 2,200 kids, students overall.

9 Q And how many deputies are assigned to Spring Valley
10 High School?

11 A My first year there it was only me, but then they
12 assigned a second SRO to all the Richland 2 high
13 schools, so now there is two at all the Richland 2
14 high schools, there is two at Spring Valley High
15 School.

16 Q And part of your duties in the morning, what would
17 they be? What is your morning? Can you kind of go
18 through your day and explain, what do you do?

19 A Typically -- you know, I have an office at the
20 school and usually the kids start getting there
21 about 8:00 o'clock in the morning. Buses start
22 coming in. Parents start dropping people off.
23 School starts at 8:40. So as an SRO basically I
24 would get there and just kind of walk through the
25 hallways. Be visible. Be available. If there is

1 any issues with, you know, kids getting off the bus
2 or parents, a lot of times you will have parents
3 waiting on you because they have issues at home and
4 things like that. So just being there, being
5 available, being visible.

6 At that point in time -- the bell rings at
7 8:40, but between 8:00 o'clock and 8:40, the
8 hallways are pretty much filled up with kids going
9 to class, getting where they need to be.

10 And once kids are in class, I actually go and
11 I speak to classes on a regular basis about things
12 likes bullying, you know, Facebook stuff, Twitter
13 stuff, all the stuff that basically creates
14 problems between students, and things like that.

15 Q How would you describe the 8:00 o'clock to 8:40
16 hour?

17 A Controlled chaos is a nice way to put it. I mean,
18 like I say, you have kids -- we have three floors
19 at Spring Valley. And the school is huge. But we
20 have three floors. There is lockers on every
21 floor. There is lockers from the front to back.
22 And they have a cafeteria area where the kids can
23 be in the morning. They can be in the art area in
24 the morning time. So it is very spread out
25 throughout the school. And they hang -- they

1 pretty much hang out. They eat breakfast there. A
2 lot of them will eat breakfast while they are
3 standing around the lockers, and things like that.
4 So basically just a lot of kids and a lot going on.

5 Q And are the doors to the outside -- how are they
6 kept? Are they secured?

7 A In the morning time between 8:00 and 8:40, there
8 is -- obviously the front of the school is open.
9 The school to the cafeteria area is open. And it
10 doesn't really help y'all out that much unless you
11 know the layout of Spring Valley, but it is very
12 spread out. There is other doors open where kids
13 can come in in the morning time if they are walking
14 to school. Some of the kids park their cars off
15 campus so they are walking onto campus. So there
16 is different doors in the morning time that are
17 open so it is very wide open in the morning time.
18 And a lot of those doors would get locked. After
19 the 8:40 bell those doors would get locked. Not
20 all of them, obviously, but some of them. The
21 front doors would still be open.

22 Q So if somebody came on campus, say they were
23 dropping someone off --

24 A Uh-huh..

25 Q -- what would the protocol be?

1 A The typical protocol with that -- and, again, in
2 the high schools it is very normal for people to
3 come and go all day, whether it is parents, whether
4 it is new students, whether people enrolling, or
5 whatever the case may be, on a regular basis people
6 come and go from the school. And so it is not
7 unusual at all for a person who is not a student
8 there to come onto campus, make contact. Sometimes
9 it is with me. And if I don't see an ID -- all the
10 kids have to have a student ID on, and if I see a
11 kid I don't recognize that does not have an ID, I
12 will address that kid. And sometimes it is
13 actually a student there that just doesn't have
14 their ID. That is how many kids we have there.
15 And if they are not, ask them what they are doing
16 on campus.

17 And they might say, I have to go to guidance,
18 I'm enrolling here. It might be a situation where
19 they have a brother or sister they are picking up.

20 So there is a lot of things on a regular basis
21 people come and go. And so we would give them
22 clear directions on where they need to go, and they
23 would do that, and we would go on about our
24 business.

25 We don't follow them around after we tell them

1 what to do. It is not a prison. But we just make
2 it very clear to them that, this is where you need
3 to be, get yourself a name tag, so that way we
4 don't have people just wandering around campus
5 doing, you know, whatever they feel like doing.

6 Q Is it possible for someone to come into the
7 building without a name tag? Without a pass?

8 A Yes, it is. You know, we have had situations
9 before where students from other schools -- we have
10 had, you know, siblings show up with kids that want
11 to confront issues that maybe their sister or
12 brother is having with another student to try to
13 have a confrontation on campus. That has happened
14 before. But, yes, I mean, we have a lady sits at
15 the front desk to try to monitor that, but it is
16 simply hard to control all of that. And you have
17 people who are visible in the hallways, but, again
18 it is, unfortunately, very easy for these people to
19 get on school campus and not check in properly with
20 the proper name tag.

21 Q And are you aware that that very type of incident
22 occurred on October 14, 2010?

23 A I am aware, yes, ma'am.

24 Q And how were you made aware of that?

25 A Again, typically I get there by 8:00 o'clock in the

1 morning. Probably about 8:40 or so I was notified
2 by an administrator -- I had a walkie-talkie where
3 all the administrators have them, as well as the
4 SRO's at the school, and that is how we would get
5 in contact with each other.

6 So I was called by an administrator to meet
7 them by my office. When I got down to the office,
8 MINOR MINOR was standing there, as
9 well as Ms. Pleasants, who was a teacher at the
10 school. And MINOR was visibly upset. She was
11 crying. An administrator was there as well.

12 And so I brought them into my office at that
13 point in time and tried to figure out what was
14 going on or what had happened that morning.

15 Q And after you brought them into your office and
16 talked with them to figure out what happened, were
17 you able to develop a suspect in this case?

18 A Yes. Basically what happened is, I brought her in,
19 MINOR in my office and asked her, you
20 know, what was going on.

21 She was having a hard time communicating at
22 that point in time. She was visibly upset. She
23 was crying. So of course I gave her a second to
24 try to calm down.

25 Ms. Pleasants, who was a teacher with her,

1 explained to me what she had encountered, that a
2 young man was on campus she didn't recognize and
3 that they were in a secluded --

4 MS. PINNOCK: Objection.

5 THE COURT: What is the objection?

6 MS. PINNOCK: Hearsay, Your Honor.

7 THE COURT: Rephrase the question.

8 BY MS. BARRY:

9 Q Without saying what any of them said, what
10 information -- what type of crime had occurred?

11 A Once MINOR calmed down, she explained to me
12 that she had been raped by the Defendant, Mr. Mack.

13 Q And what, if anything, did you do at that point?

14 A Well, typical protocol in that situation where I
15 would be the responding officer, okay, it would be
16 like if I was on the street and responded to a
17 call. What we do is ascertain or get as much
18 information as we can from the victim in the
19 situation. You know, what happened, you know, how
20 did this thing start. We go through it piece by
21 piece to try to figure out what took place. And we
22 get as many details as we possibly can.

23 In a situation -- in a rape situation what
24 happens is I would take the initial report after
25 interview the victim, and then I would contact an

1 investigator right away, obviously, because it is a
2 very serious case.

3 The other thing we do is we make sure we give
4 clear direction to the victim -- obtain how old the
5 victim is. In this case, I believe the victim was
6 15 at the time. We would call a parent on the
7 phone and make sure that victim got to the hospital
8 immediately, whether it was by ambulance or if the
9 parent wanted to take them, and make sure that a
10 rape kit was done on the victim to get any evidence
11 that was needed.

12 And at that point in time I would take the
13 initial report, turn it over to an investigator,
14 and then try to find out of course any witnesses
15 that were involved, and things like that, and then
16 turn that kind of stuff over to the investigator as
17 well.

18 Q And did you do that in this case?

19 A I did. In the schools we have the luxury of taking
20 more time with cases like this than we would on the
21 street.

22 And so I did, I interviewed MINOR on two
23 different times in this situation trying to get the
24 initial story of what happened and then of course
25 making sure that the Defendant was no longer on

1 campus.

2 And we actually that particular day, after
3 this incident took place, I called the
4 administrators. They spread out through the school
5 to make sure that this individual was not -- the
6 Defendant was not on campus anymore.

7 And then we also got on the cameras to check
8 maybe if the Defendant had ran off campus or left
9 campus. We went into what we call a Code Red,
10 which is an intruder alert where the school does go
11 on lockdown. Classrooms are looked. Lights go
12 out. That, again, normal protocol if you have an
13 intruder on campus until we could figure out more
14 of what happened to make sure there wasn't any
15 other victims in this situation and to make sure
16 the Defendant was no longer on campus or until he
17 was in custody.

18 Q And was MINOR able to tell you who the
19 assailant was?

20 A Yes. MINOR --

21 MS. PINNOCK: Objection.

22 BY MS. BARRY:

23 Q Just yes or no, was she able to tell you who the
24 assailant was?

25 A Yes.

1 THE COURT: All right.

2 Q After she did that, what did you do?

3 A At that point in time I obtained a picture of the
4 Defendant in this case and showed that picture to
5 administration to let them know who we were looking
6 for.

7 Q And why do you do that?

8 A Well, to make sure that if they come across the
9 Defendant, they certainly would call me. Or if
10 they -- to make sure the Defendant was no longer on
11 campus, and at this point in time to make sure that
12 no one else was harmed in the situation, to make
13 sure the school was safe and the Defendant had
14 left.

15 Q After that is done, what did you do?

16 A All this happened very quickly. My first goal, of
17 course, in this situation before writing a report
18 was to find out and make sure that the Defendant
19 was off campus.

20 Once that took place, I was able to bring
21 MINOR back in, interview her in a more
22 detailed way, kind of start at the beginning of
23 that day of what happened and what took place, find
24 out more details to the story, and then I took the
25 report. And her mother came and got her and took

1 her to the hospital to get the rape kit done.

2 Q When you say you talked to her and go in a little
3 more detail, did she write down her -- anything?

4 A No, I did not take a statement from MINOR
5 She told me what happened and I wrote down what she
6 had told me in the police report.

7 Q Do you create a police report?

8 A I created a police report, yes, ma'am.

9 Q And then you turn it over to the investigator?

10 A Yes, ma'am.

11 Q But after you are able to tell who the assailant is
12 based on her description and her identification, is
13 there something in the school that would aid you in
14 looking at what had occurred that morning?

15 A Yes. We have cameras placed throughout the school.
16 And so obviously at that point in time what I would
17 do to help the investigator as well as to -- for
18 the case purposes, I looked at the camera and was
19 able to obtain through picture and through the
20 victim pointing out the Defendant on video coming
21 into the school, going back to the freshman locker
22 area where MINOR locker was, walking through
23 the hallways with MINOR to the location where
24 the victim and the Defendant ended up, where the
25 incident took place.

1 Q Were there other videos that you watched other than
2 that?

3 A The school video?

4 Q Right?

5 A Yes, I watched the whole school video as far as
6 him -- that, and then him running from the school
7 off the property. Also the bus video, but, you
8 know, the bus video did not show a whole lot, but I
9 looked at the bus video because of some of
10 the things that she said to me, some of the
11 statements she gave to me as far as what happened
12 on the bus.

13 Q And you had an opportunity to watch the video from
14 the school?

15 A Yes, I have, several times, yes, ma'am.

16 MS. BARRY: Your Honor, we would offer the
17 school surveillance video into evidence.

18 THE COURT: Any objection?

19 MS. PINNOCK: No objection.

20 THE COURT: That is State's Number 8, without
21 objection.

22 MS. PINNOCK: Your Honor, I might need to
23 mention, this is not the video of the school that
24 the deputy has testified about, so if this is going
25 into evidence we would object to that, because that

1 is not the video.

2 THE COURT: All right. Is that the right
3 video?

4 MS. PINNOCK: Your Honor, this is not the
5 video.

6 THE COURT: All right. Ladies and gentlemen
7 of the jury, we are going to get the right video
8 set up and bring you all back in. I am going to
9 send you out for a short break.

10 Thank you.

11 (WHEREUPON, the jury retires to the jury
12 room at 10:17 a.m.)

13 THE COURT: All right, which video -- do we
14 have the right video?

15 MS. BARRY: We were watching it yesterday. We
16 are trying to narrow it -- he watched it. We are
17 trying to narrow it down, and now it is gone, so -

18 THE COURT: All right, we will take about five
19 minutes. You can step down.

20 (Witness steps down.)

21 (WHEREUPON, a break was taken.)

22 THE COURT: All right, do we have the right
23 video?

24 MS. BARRY: I apologize. We have now
25 transferred it to a --

1 THE COURT: Let's bring the jurors in first.

2 THE BAILIFF: Are you ready for the jury, Your
3 Honor?

4 THE COURT: Yes, sir.

5 (WHEREUPON, the jury came into open
6 court at approximately 10:35 a.m.)

7 THE BAILIFF: The jurors are all present, Your
8 Honor.

9 THE COURT: All right. Yes, ma'am, you may
10 continue.

11 MS. BARRY: Thank you, Your Honor.

12 DIRECT EXAMINATION CONTINUES

13 BY MS. BARRY:

14 Q When we left off, Deputy Fields, you had an
15 opportunity to view this video, the videos that are
16 on a -- they were on a CD?

17 A Yes, ma'am, I have had the opportunity to view it
18 several times, yes, ma'am.

19 Q And what are those videos?

20 A It would be the video surveillance of Spring Valley
21 High School on the date of 10/14/2010 of the
22 Defendant, Mr. Mack, coming into the school, as
23 well as the victim, MINOR on video as
24 well.

25 And what it does is takes you a series through

1 where he came in, where he went to, where he ended
2 up, and then where he went off campus -- the
3 Defendant, that is.

4 Q I'm sorry.

5 A I'm sorry, go ahead.

6 Q Is that a fair representation -- is this video a
7 fair representation of what happened?

8 A Yes, of the Defendant coming into the school, yes,
9 ma'am, it is.

10 MS. BARRY: And at this time, Your Honor, we
11 would offer it into evidence.

12 THE COURT: Any objection?

13 MS. PINNOCK: No objection, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, State's Exhibit No. 8 was
16 marked for identification and received
17 into evidence.)

18 MS. BARRY: Your Honor, permission to publish?

19 THE COURT: Any objection?

20 MS. PINNOCK: No objection.

21 THE COURT: Yes, ma'am.

22 (Exhibit published to jury.)

23 MS. BARRY: Your Honor, Deputy Fields is going
24 to come down and operate this.

25 (Witness steps down.)

1 BY MS. BARRY:

2 Q And, Deputy Fields, since you are familiar with the
3 camera system at Spring Valley High School, can you
4 describe to the jury what we are actually looking
5 at as far as --

6 A Sure.

7 Q -- each frame? Now, on this disk are there things
8 on there that -- are there angles that don't relate
9 to this case?

10 A Yes. What I'll do -- it is a -- and you'll see
11 when I pull it up, so just bear with me for a
12 minute. Each one I pull up is going to have
13 several different screens on it. I am going to
14 click on a screen and we will focus on that screen
15 because there is screens that are relevant to what
16 we are looking at here, so what I will do is pull
17 each screen up and explain what it is and where in
18 the school that it is.

19 Right here, this particular screen here is the
20 front of the school. Okay? This is where kids
21 would enter in the morning time. This is one area
22 where they would enter in the morning time.

23 They come through the front door here and head
24 back to the locker area.

25 Out front is where the cars are where the

1 parents drop their kids off. And right here in
2 this picture, this would be the Defendant here,
3 Mr. Mack, and the victim, MINOR in this
4 picture here walking into the school. Okay?

5 Now what I'm going to do is I'm going to go to
6 another screen -- and, again, just bear with me
7 momentarily here.

8 All right, now what it does is it is going to
9 pull up a bunch of different screens here, but I'm
10 going to click on one particular screen.

11 And what this will show -- let it play for a
12 minute here.

13 (Pause.)

14 All right, I am going to stop it here in a
15 minute, in a second. Okay.

16 And what this is, this is your victim,
17 MINOR there. And this is the
18 Defendant, Mr. Darius Mack, here. Okay?

19 And what they are doing is they are heading
20 back from the front of the school, which is up
21 here, they are coming back to the freshman locker
22 area, which I'll pull up next.

23 (Pause.)

24 Again, bear with me. I have to shut each one
25 down each time and then reopen a new one.

1 (Pause.)

2 All right. Again, your Defendant here,
3 Mr. Mack. Your victim, MINOR And they would
4 be heading back into this area here, along this
5 way, which, again, is considered at Spring Valley
6 High School a freshman locker area. Okay?

7 And at this point in time, it is 8:14 in the
8 morning, which, again, the bell rings to be in
9 class at 8:40. This place in here gets really
10 filled up. There is an administrator posted back
11 here, again, in this location over here off the
12 screen.

13 All right, again bear with me here.

14 (Pause.)

15 All right, this area here, if you travel
16 straight down this hallway in this direction, okay,
17 and go to the last door where that door is opening
18 right there -- excuse me -- as soon as you go in
19 that doorway there, this is the Fine Arts Building
20 right here.

21 So they walk from the freshman locker area to
22 the Fine Arts Building here. And I will point it
23 out here momentarily when they walk through. And
24 as soon as you go through this door again that is
25 about to open would be the location where the

1 alleged incident took place.

2 All right, so bear with me here for just for a
3 moment.

4 (Pause.)

5 Okay. Again, coming down this hallway here,
6 the Defendant, Mr. Mack, in the white T-shirt here,
7 and the victim, MINOR as shown there.

8 All right. At this point in time it is 8:35.
9 8:35. Okay? And then bear with me. One more
10 camera here to pull up. I am going to show you two
11 different things on this particular camera.

12 Q Let me stop you right there.

13 A Yes, ma'am.

14 Q After they go through that doorway, are there any
15 more videos as far as from that point past that
16 doorway?

17 A No. And once you go through the opening door --
18 and if you need me to pull it back up I can -- but
19 the opening door where you go through, once you go
20 in there, there is a secluded location right there
21 on the outside. It is not a good spot. There is
22 no other way to describe it. It is just not a very
23 good spot. There is no cameras there. And, again,
24 it is an outside area in the school there, and
25 there is no cameras. So obviously there is no

1 administrators or teachers in the area as well.

2 (Pause.)

3 All right. There is going to be three
4 different screens that I pull up on this one, and
5 two of which will show the Defendant running and
6 one of him leaving campus. So let me make sure I
7 show that in the right order.

8 (Pause.)

9 I'm sorry, it takes a while for all the
10 cameras to come up. I am waiting on Camera Five
11 and Six.

12 (Pause.)

13 All right. Let me just stop for a minute and
14 explain this. What this is right here, when you go
15 through these doorways here, the area where the
16 alleged incident took place is going to be right
17 there off to your left when you walk through these
18 doorways here. Okay?

19 And I am going to speed it up a little bit.

20 (Pause.)

21 This is Ms. Pleasants right here. She would
22 be one of the witnesses in this case or the teacher
23 that brought the victim, MINOR to my
24 office. And she is about to walk through these
25 doorways here. Again, the alleged incident took

1 place to left right here when she walked through
2 the doorway.

3 (Pause.)

4 All right, this would be the Defendant,
5 Mr. Mack, here, obviously running up the hallway
6 there. I will pull another angle up to show you.
7 Okay?

8 Again, bear with me here. It takes a little
9 time for some of these to come up.

10 Again, here, this would be the other side of
11 that hallway. Mr. Mack is running up the hallway
12 there.

13 (Pause.)

14 All right. What you'll see here, again, is
15 the Defendant, Mr. Mack, coming out of the hallway
16 that he ran up. And this is to the outside, which
17 would lead off campus. So he is out the doorway.
18 Okay?

19 And what I will do is I will show you one more
20 screen that would show him leaving campus. And,
21 again, obviously I'm going by -- at this point in
22 time as far as seeing his face from this distance,
23 I'm going by the description of his T-shirt and his
24 jeans that would be relevant. But that would be
25 him there by the car, which, again, would be

1 consistent with him leaving campus, again,
2 consistent with what clothes he was wearing that
3 day of him leaving campus.

4 And that would be all the video.

5 Q Thank you. You may retake the stand.

6 (Witness returns to stand.)

7 Q Deputy Fields, you said that you had an opportunity
8 to interview her twice?

9 A Yes, ma'am, I did.

10 Q And you later had an opportunity to view the video
11 at the school and then again today. Was there
12 anything in her statement that was inconsistent
13 with what you saw on the video?

14 MS. PINNOCK: Objection.

15 THE COURT: What is the objection?

16 MS. PINNOCK: Your Honor, I object to hearsay.

17 THE COURT: All right.

18 MS. BARRY: It is a yes or no answer.

19 THE COURT: Repeat the question.

20 MS. BARRY: Was there anything inconsistent
21 with what she had told him when he interviewed her
22 with what is on this video.

23 MS. PINNOCK: And, Your Honor, it is also
24 bolstering the statement.

25 THE COURT: Sustained.

1 MS. BARRY: That's all I have, Your Honor.

2 THE COURT: Please answer any questions that
3 Ms. Pinnock may have.

4 MS. PINNOCK: Thank you, Your Honor. May it
5 please the Court?

6 CROSS-EXAMINATION

7 BY MS. PINNOCK:

8 Q Good morning.

9 A Good morning.

10 Q Deputy Fields, you said that there is over 2000
11 students at Spring Valley?

12 A Yes, about 2,200.

13 Q Okay. In 2010, around the same number?

14 A Yes, around that same number.

15 Q Large school. First thing in the morning there is
16 a sea of students, right?

17 A Yes, ma'am.

18 Q Okay. And you said that administrators are
19 positioned around the building. You walk around so
20 you are seen, you are available to people, right?

21 A Yes, ma'am.

22 Q Okay. I think you called it controlled chaos?

23 A Yes. In a lot of ways that is what it is.

24 Q Now, we watched the video. Did you get the still
25 photos? Have you seen the still photos from the

1 video?

2 A I have, yes, ma'am.

3 Q Okay. And what is already in evidence as State's
4 Exhibit 4, 5, 6 and 7, those are the still shots
5 taken from the videos that you were able to
6 collect?

7 A Yes, ma'am.

8 Q Okay. I'm sorry. And Defense Exhibit 3?

9 A That would be the freshman locker area. I don't
10 see the victim or the Defendant in that picture,
11 but, yes, that would be consistent with the
12 freshman locker area, yes, ma'am.

13 Q As far as the freshman locker area, you said that
14 there is an administrator stationed in that area?

15 A Yes, ma'am.

16 Q Every day?

17 A It should be most days. If for some reason that
18 administrator has somewhere to be, in other words,
19 let's say an administrator is not on campus that
20 day, they would get somebody else to fill in for
21 them, whether it be a teacher or whoever to fill in
22 for them.

23 Q All right. But there should be some --

24 A There should be some type of authority there.

25 Q -- some authority figure?

1 A Yes, ma'am.

2 Q So on October 14th, 2010, there would have been
3 somebody there, either administrator or somebody
4 else?

5 A I would think so, yes.

6 Q Okay. And you said you spoke to MINOR twice?

7 A I did, yes, ma'am.

8 Q But you never took a written statement from her?

9 A No, ma'am. I left it up to the investigator who
10 had the case --

11 Q Okay.

12 A -- to do that. But that is pretty normal -- that
13 is normal protocol for us in that situation.

14 Q All right. You interviewed witnesses?

15 A I got witness statements. I got three -- I got
16 three witness statements, individual written
17 statements from three witnesses.

18 Q All right. And now we watched -- we just watched
19 the video. It shows Mr. Mack walking through the
20 hall right beside MINOR

21 A Yes, ma'am.

22 Q It shows him walking in the building right behind
23 MINOR

24 A Yes, ma'am.

25 Q You never see her trying to push him away?

1 A No, ma'am, not by the video.

2 Q You never see her try and get away?

3 A No, ma'am.

4 Q They are walking. At some point they are talking
5 to each other and walking in the hallway?

6 A It appears that they were talking to each other,
7 yes, ma'am.

8 Q Okay. And the video that shows him going -- well,
9 shows him and MINOR heading out of the main
10 building, on this that was either coming out of
11 this door? Main building? Art building?

12 A Uh-huh.

13 Q They would be exiting this door?

14 A You never exit the building to go into the art
15 building, so they would have never exited.

16 What you would do is you would walk -- I'm not
17 an artist, so I won't pretend to draw.

18 Q I drew this. The main building here, art building
19 was here, here is the patio, this would be the
20 breezeway.

21 A I mean, I -- the breezeway is where the alleged
22 incident took place, is that what you are saying?

23 Q Yes, between the two buildings.

24 A Yes, that would be quite a distance from the actual
25 main building where the three floors are. I'm

1 sorry, maybe I'm confused, that's all. I mean,
2 I --

3 Q Okay. When you exit the main building, there is
4 that green door that we saw that on the video?

5 A Okay, you are saying that leads outside, like
6 outside like the --

7 Q The art patio and to the Fine Arts Building.

8 A All right. I guess what I'm getting at is I am a
9 little confused by the question, I think. So just
10 if you can be more clear. And I'm not -- the
11 reason I'm saying that, because from the -- all
12 right, from the freshman locker area that they
13 walked to class -- and maybe I'm not understanding
14 the question -- they never would go outside. Does
15 that make sense? In other words, the Fine Arts
16 Building as well as the main building are
17 connected, so they never went outside in order to
18 enter the Fine Arts Building together, if that is
19 what you are asking. That never happened. They
20 stayed inside the whole time.

21 Q This is where the alleged incident happened, right?
22 That is the art patio?

23 A Yes, ma'am. That's correct.

24 Q Okay. You have to exit, physically exit the main
25 building, walk through a little --

1 A I see what you are saying. I'm sorry.

2 Q -- a little walkway --

3 A Yes.

4 Q -- to get to that building, right?

5 A That's correct, yes. I've got you now, yes.

6 Q Okay. And on the video we see multiple people
7 going in and out of that door?

8 A Yes, ma'am.

9 Q When you see Ms. Pleasants exit that door, right
10 before Darius runs through --

11 A Yes, ma'am.

12 Q -- you see multiple students walking through that
13 door?

14 A Yes, ma'am.

15 Q And that is normal when people are going to class?

16 A Right. The classrooms would be on either side. Of
17 course, the classrooms are on one side of the main
18 hallway there when kids are coming through where
19 the Defendant ran, there is classrooms there, and
20 then people would get to classes through the other
21 building where you come in the doorway that I
22 showed. And I don't want to be confusing, but, I
23 mean, yes. People go through there on a regular
24 basis.

25 Q So there is foot traffic both ways?

1 A Yes.

2 Q Right before Doris Pleasants walked through that
3 door, students were coming there?

4 A On a regular basis students go through there, yes,
5 ma'am.

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

7 (Pause.)

8 MS. PINNOCK: Thank you, Your Honor. Nothing
9 further.

10 MS. BARRY: Nothing further.

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

12 (Witness steps down.)

13 THE COURT: All right, call your next witness.

14 MS. BARRY: The State calls Donna DeBrew.

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

16 THE COURT: Yes.

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

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

22 (Witness complies.)

23 THE CLERK: Do you swear or affirm the
24 testimony you are about to give in this case will
25 be the truth, the whole truth, and nothing but the

1 truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Have a seat in the
4 witness stand, and state your full name for the
5 record.

6 THE WITNESS: My name is Donna DeBrew. I'm a
7 forensic nurse examiner.

8 DONNA DEBREW,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BARRY:

12 Q Ms. DeBrew, where are you currently employed?

13 A I am currently employed with Palmetto Health. I
14 work as a forensic nurse examiner. And I also work
15 labor and delivery at Baptist.

16 Q And you work as a SANE nurse?

17 A Yes, ma'am.

18 Q What are your duties and responsibilities -- well,
19 tell us what a SANE nurse is.

20 A A SANE nurse, or a forensic nurse examiner, they
21 have a new term for it, we take calls every week.
22 Our hours fluctuate anywhere from 36 on. But we're
23 basically on-call 24/7.

24 When the hospital calls us when the victim
25 arrives with a sexual assault, domestic violence,

1 we go to the hospital and we take care of that
2 patient as far as collecting evidence, medical
3 treatment, and collecting a story or history to
4 guide us through evidence collection.

5 We work closely with law enforcement and with
6 medical staff at the hospital to take care of the
7 patient.

8 Q And can you give the jury your educational
9 background?

10 A Yes. I have a nursing degree. I'm a registered
11 nurse. I have attended college in North Carolina
12 and here in South Carolina. I've been a nurse for
13 23 years. I have been a sexual assault nurse for
14 about two and a half years.

15 Q And during those two and a half years, how often --
16 how many times have you performed exams,
17 approximately?

18 A In about two and a half years, I'm close to 200
19 cases, about maybe 180 or 90 cases.

20 Q Is there special training as far as being certified
21 as a sexual assault nurse examiner?

22 A Yes, ma'am. We have to take a course for training
23 in adult and pediatrics, which is around a week.
24 We go to the clinic and we do over 40 pelvic exams.
25 We have to do around ten acute cases before we're

1 allowed to do cases on our own. We went to SLED
2 for training. We rode with law enforcement. We
3 have been to multiple trainings over the last two
4 years -- been to more trainings in this field than
5 my whole 23 years as a nurse.

6 We learn about evidence collection, how to
7 take a patient story and let it guide you as far as
8 collection of evidence.

9 We have been through several photography
10 courses. Court time. We've done many hours of
11 court time to learn the system and how everything
12 works.

13 Q And why is it important for you to do these
14 trainings?

15 A It is important so we learn to collect information
16 properly as far as from what the patient tells us
17 and how we collect our evidence to maintain a chain
18 of custody because you don't want to break that
19 chain of custody. It goes straight from me to law
20 enforcement, and then they lock their kit up at
21 SLED or their office so we maintain a chain of
22 custody. But you want to, I guess, be able to be
23 as accurate as you can as far as injuries,
24 collection of the evidence, make sure that we chart
25 properly.

1 The more training the better. So that helps
2 us, guides us.

3 Q Sure. Are you required to do the training?

4 A Yes.

5 Q And maintain?

6 A Uh-huh. We are certified as an adult -- sexual
7 assault nurse examiner for adults. And I received
8 that certification in 2010, in October of 2010.

9 Q Have you previously been qualified as an expert in
10 adult sexual assault and nurse examiner?

11 A Yes, ma'am.

12 Q As a sexual assault nurse examiner?

13 A Yes.

14 MS. BARRY: Your Honor, at this time we would
15 offer Ms. DeBrew as an expert in the field of adult
16 sexual assault nurse examiner examination.

17 THE COURT: Any objection?

18 MS. PINNOCK: Just a few questions, Your
19 Honor.

20 THE COURT: Yes, ma'am.

21 VOIR DIRE EXAMINATION

22 BY MS. PINNOCK:

23 Q How are you doing, Ms. DeBrew?

24 A Good morning.

25 Q You said you were -- you got your certification to

1 be a SANE in 2010?

2 A Well, yes, ma'am. We started training in January
3 of 2010, and I took the adult certification in
4 October of 2010.

5 Q Okay. And you testified that you have been
6 qualified as an expert before?

7 A Yes, ma'am.

8 Q How many times?

9 A Once.

10 Q Once?

11 A Uh-huh.

12 Q And that was when?

13 A In Kershaw. I believe it was back in November.
14 I'm not sure of the exact date.

15 Q Okay. So 2010?

16 A No, 2011.

17 Q 2011?

18 A Uh-huh.

19 Q Okay. When you get your certification, how is your
20 work reviewed? Is it peer review?

21 A Yes. We do have peer review through the nurses
22 that work with us.

23 Q Uh-huh.

24 A We look at each other's photos, review the chart
25 records, see how we can work to make things better

1 or improve.

2 Q Okay. And that is just from the State? There is
3 no national certification that is available at this
4 point, right?

5 A Well, we belong to a national organization, the
6 IFN.

7 Q Uh-huh.

8 A And nurses all over the United States, we become
9 certified as a SANE A, SANE Adult, and SANE P,
10 which is pediatrics.

11 Q Okay?

12 A But I'm not sure if it extends to a national
13 certification.

14 Q Okay. And you said you do the continuing
15 education?

16 A Yes, ma'am.

17 Q When -- how many have you done since you have been
18 certified?

19 A I can't even remember. I just returned from
20 Missouri last week. I would say at least 20 plus.
21 I'm not sure of that exact number.

22 Q And when you do certification, I guess they update
23 you on any new studies -- any new study that comes
24 up you get updated on it and you have discussions
25 on it and people tell you if something has changed?

1 A Uh-huh.

2 Q And your training is in the collection of forensic
3 evidence, right?

4 A Yes, ma'am.

5 Q That is what a SANE does, sexual assault nurse
6 examiner?

7 A Yes.

8 Q You collect forensic evidence?

9 A We collect evidence and we also care for the
10 patient with the help of the physician in the
11 hospital.

12 Q Okay. And part of that care is, again, collecting
13 evidence for future prosecution?

14 A Yes.

15 Q And you turn everything you have over to law
16 enforcement?

17 A We turn every -- we maintain a chain of custody and
18 turn it over to law enforcement.

19 Q Okay. You don't diagnose people?

20 A No, ma'am.

21 Q You don't -- you don't prescribe any medication?

22 A No. As a nurse, I am not allowed to diagnose. We
23 do give medications in the prevention of sexually
24 transmitted diseases, prevention of pregnancy, that
25 kind of thing. But our main focus is to make sure

1 the patient is well and cared for and that we
2 collect whatever evidence that we can at that time.

3 Q Okay.

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

5 (Pause.)

6 MS. PINNOCK: Thank you, Your Honor. I have
7 no further questions.

8 As far as certification, Your Honor, I would
9 not object to Ms. DeBrew being qualified as an
10 expert in the collection of evidence and the
11 administering of the exam.

12 Any testimony beyond that, we would object to.

13 MS. BARRY: We're offering her as an adult
14 sexual assault nurse examiner.

15 THE COURT: Are you objecting to her being
16 offered as an adult sexual assault nurse examiner?

17 MS. PINNOCK: Your Honor, I hate to ask you to
18 do this. I think we do need to address this
19 outside the presence of the jury.

20 THE COURT: All right, ladies and gentlemen of
21 the jury, I'm going to send you all out for a short
22 minute.

23 All right, thank you.

24 (WHEREUPON, the jury retires to the jury
25 room at 11:10 a.m.)

1 THE COURT: All right, what is your objection?

2 MS. PINNOCK: Yes, ma'am, Your Honor. We --
3 as far as her being qualified, again, I have no
4 problem with her being qualified in the -- as a
5 sexual assault examiner within the narrow scope of
6 collecting evidence, which is what a SANE does,
7 collection of forensic evidence. She does not
8 diagnose. She cannot describe anything.

9 The involvement with this case is the
10 collection of forensic evidence. And then
11 consulting with physician is, you know, more care
12 is required.

13 But what our objection is on is that if the
14 Solicitor is trying to elicit any testimony as to
15 causation, any sort of diagnosis, or any opinion
16 outside of the -- outside of if she did the exam
17 right, what she did, and what observation she
18 found. Anything about conclusion, diagnosis, or
19 causation we would object to.

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

21 MS. BARRY: Your Honor, as an expert she is
22 allowed to give her opinion as to the findings that
23 she observed on the victim hours after the assault.

24 She took pictures of those, just like she in
25 qualification says she is trained to do that. She

1 is trained to collect evidence. She is, as an
2 expert, allowed to give her opinion as to what
3 these injuries represent, what she saw. Is this
4 normal? No. But as I have told Ms. Pinnock --
5 and, again, Your Honor, I have given her cell phone
6 to Ms. Pinnock. But I summarized what she would
7 testify to to Ms. Pinnock and Mr. Cooper, that she
8 will say it can be -- these injuries can be from
9 consensual sex, but they can also be from
10 non-consensual sex.

11 And based on the story that she was given from
12 the victim, because she said that was important to
13 elicit the information from the victim, and it is
14 consistent with what she sees, the scratches and
15 the abrasions on her vagina.

16 THE COURT: And how is that outside -- if she
17 is qualified as an expert, how is that outside of
18 what an expert does in giving their opinion? It
19 goes to the weight of the evidence.

20 MS. PINNOCK: Your Honor, an expert --
21 obviously an expert can testify and give an opinion
22 about what their expertise is in.

23 I asked Ms. DeBrew if she diagnosed people.
24 She said no. Her training is in the collection of
25 evidence. Her training is not in causation.

1 And I just believe -- I mean, it is really
2 doesn't make a difference what Ms. Barry told us
3 she is going to say. This is why we come to court.
4 We argue about things. She informed us of what she
5 is going to say. I disagreed with it at that point
6 that is the testimony she is going to try to elicit
7 out of the witness.

8 I believe under the rules she would be
9 testifying outside of the scope of what she is
10 trained in. She can be qualified. We are not
11 objecting to her being qualified. But anything
12 that goes to causation is outside the realm of
13 collecting evidence.

14 The causation is what the jury is for. They
15 are the ones who decide if the observations made by
16 the nurse support MINOR testimony. She
17 would be making a legal conclusion at this point if
18 she testified as to what the cause of something
19 was.

20 I believe that as a sexual assault nurse
21 examiner she can only testify to what she saw and
22 what she did in the collection of the evidence.

23 And, Your Honor, at this point I think I
24 should also bring up -- well, I will let her
25 address that if she wants and then I'll bring up

1 another point.

2 THE COURT: Any response?

3 MS. BARRY: Thank you, Your Honor.

4 THE COURT: I mean, I think she can testify
5 that it is consistent. I mean, you are saying that
6 she is going to say it could be consensual or it
7 could be -- that what she observed can be from an
8 assault.

9 What I think Ms. Pinnock is saying is that she
10 can't -- you don't think that she can testify that
11 based on the scratches on her neck she can draw a
12 conclusion that -- and what she told them is that
13 she can draw a conclusion that she was sexually
14 assaulted.

15 MS. PINNOCK: Right.

16 THE COURT: That is the part that you have
17 concern about?

18 MS. PINNOCK: The causation of it.

19 MS. BARRY: She was told, is it consistent
20 with what the victim told you, that she had
21 scratches on her neck. It is for the jury to
22 decide whether or not --

23 THE COURT: Well, she can testify that she had
24 scratches on her neck.

25 MS. BARRY: We have pictures of that. We

1 intend to --

2 THE COURT: I know. But the issue is can she
3 conclude that there was a sexual assault because
4 the victim --

5 MS. BARRY: Oh, I mean, she -- that that alone
6 would -- no. That -- you're right. She is
7 documenting the exam -- and I will go through it
8 with the jury. It is head to toe. She takes
9 pictures of anything that may be relevant, any
10 scratch, any part of her body that she sees an
11 injury, whether or not it had anything to do with a
12 sexual assault or not. But the victim told her he
13 grabbed her by the throat. She took a picture of
14 the injury. That is what we're intending to elicit
15 from her. And as an expert, she has a little bit
16 more knowledge -- well, a lot more knowledge than
17 the average juror, that thus making her an expert
18 allowing her to give her opinion on what she saw,
19 was it consistent with what the victim said. It is
20 for them to decide whether or not this was
21 consensual or non-consensual.

22 THE COURT: I understand what you are saying,
23 but are you going to ask her to come to a
24 conclusion that she was sexually assaulted?

25 MS. BARRY: No.

1 THE COURT: Okay. Okay. That is what her
2 objection is, I believe.

3 MS. PINNOCK: Yes, ma'am. Either a direct
4 question like that, or I believe Ms. Barry actually
5 mentioned it before, she would -- she is going to
6 say that it is consistent with sexual assault.
7 That has the same effect as asking her --

8 THE COURT: Well, she can testify to it being
9 consistent, but, I mean --

10 MS. BARRY: But then on cross-examination they
11 are allowed --

12 THE COURT: But, yes, you all are able to
13 cross-examine her and say can she say for sure that
14 this lady -- and she can't say -- I'm guessing she
15 can't say that unless she was there.

16 MS. PINNOCK: No, ma'am.

17 THE COURT: But I don't think that is outside
18 the range of what an expert is supposed to do --
19 is supposed to testify to. And also I am going to
20 give in the charge that, you know, they can believe
21 her or not believe her. It goes to the weight of
22 the evidence as to whether or not they believe what
23 she is saying or give credit to what she is saying.
24 But I think she can testify as to whether or not it
25 is consistent -- in her experience if it is

1 consistent with, are scratches on the neck
2 consistent with somebody holding you by the neck.
3 But I don't think she can give a conclusion as --
4 that this lady was sexually assaulted based on what
5 she saw, because I don't know if she can do that.
6 I'm not sure if she -- well, I know she can't do
7 it, and I don't know if she needs to answer that
8 question here today.

9 All right.

10 MS. PINNOCK: Yes, ma'am. One more thing
11 before the jury comes back as far as the direct
12 goes. I'm assuming based on the argument that
13 Ms. Barry just made she is going to be asking
14 Ms. DeBrew about what MINOR told her
15 during the exam.

16 We would object at this point to any mention
17 of what MINOR said in the narrative. It is a
18 violation of Rule 801, Your Honor, because
19 Ms. DeBrew would be limited to time and place of
20 the assault, not the details.

21 So if there is going to be any questioning
22 about the narrative that is in the report that was
23 reported by MINOR to Ms. DeBrew at the
24 hospital, we are going to go ahead and object to
25 that. It is improper bolstering of the witness's

1 testimony. It is specifically addressed in Rule
2 801 what she can and cannot talk about.

3 Your Honor, if we can go ahead and address
4 that now so we don't have to send the jury out
5 later.

6 THE COURT: Yes, ma'am.

7 MS. BARRY: Your Honor, we would be intending
8 to offer that evidence under 803(4), that any
9 statement given to her by the victim is an
10 exception to hearsay for the purposes of medical
11 diagnosis and treatment describing the sexual
12 assault. Anything, past medical history, she gets
13 everything from her. Any pain.

14 It is important for Ms. DeBrew to get this
15 information so that when she does her examination,
16 when she takes the pictures, to see whether or not
17 it is consistent with what she is saying.

18 Sometimes they have patients that come in that
19 give a story and then they examine them and there
20 are no -- they can't find anything that is
21 consistent with the statements that they are given.
22 But she is allowed under 803(4) as to medical
23 diagnosis.

24 MS. PINNOCK: Your Honor, if I may address
25 that briefly.

1 THE COURT: Yes, ma'am.

2 MS. PINNOCK: Your Honor, I would agree that
3 803(4) applies to the hearsay exception. The
4 problem is 801(d)(1) is dealing with statements
5 which are not hearsay. So the hearsay exceptions
6 do not apply to statements that are not hearsay.
7 It specifically addresses it. The title of 801(d)
8 is, statements which are not hearsay. So 803 does
9 not apply.

10 801(d)(1)(d) specifically addresses sexual
11 assault cases and what expert witnesses can testify
12 to. They are limited to time and place.

13 And, Your Honor, the issue has been litigated.
14 One case I will point you to is State v. Smith, 386
15 S.C. 562. It is a 2010 case where the Court says
16 that under Rule 801(d)(1) of the South Carolina
17 Rules of Evidence, corroborative witness testimony
18 is limited to time and place of the alleged
19 assault. The corroborative testimony cannot
20 include details or particulars.

21 This has been litigated. It is not hearsay,
22 so the hearsay exceptions do not apply. It is
23 improper bolstering if she is allowed to go into
24 the details. She is limited to time and place
25 only. She can talk about what she observed, she

1 can talk about what she documented, but she cannot
2 testify to what MINOR told her about the
3 assault under the rules.

4 MS. BARRY: Your Honor, time and place,
5 that -- when she testifies about time and place,
6 that in itself is not hearsay, but the rest of it
7 is the exception to hearsay under 803(4), 803(3),
8 803(2), and 803(1). All of those apply.

9 THE COURT: What is it that you are trying to
10 ask her?

11 MS. BARRY: What did the victim tell you
12 happened. And it is important for her to gather
13 that information so that she knows what she is
14 dealing with. It is a medical -- her medical
15 treatment. She is not here to -- or she doesn't do
16 exams to come to court and say, he did it. That is
17 not her purpose. Was she assaulted. She doesn't
18 even know that. But the evidence that she collects
19 is consistent with her story from the victim. She
20 doesn't know if she is telling the truth, but it
21 matches exactly what she says.

22 MS. PINNOCK: And, Your Honor, I will cite two
23 other cases. We have already described Smith v.
24 State. I am also going to refer you to Dawkins v.
25 State, 346 S.C. 151. It is a 2001 case.

1 The Court said, in criminal sexual conduct
2 cases, testimony from other witnesses regarding the
3 victim's identification of the perpetrator does not
4 fall within the hearsay exception applied in such
5 cases to allow limited hearsay evidence to
6 corroborate the victim's testimony.

7 Also, Your Honor, is *Watson v. State*, 370 S.C.
8 68. It is a 2006 case.

9 For purposes of the exception to the rule
10 against hearsay allowing limited corroborative
11 testimony in criminal sexual conduct cases, when
12 the victim testifies, the corroborative testimony
13 is restricted to the victim's complaint of the time
14 and place of the sexual assault. Any other details
15 or particulars, including the perpetrator's
16 identity, must be excluded.

17 And they cite the Rule of Evidence 801(d)(1).

18 THE COURT: Is that in reference to an expert?

19 MS. PINNOCK: Any witness, Your Honor. It
20 does not specify if it is one witness versus
21 another witness. Any witness.

22 THE COURT: The ones that I have read thus
23 far, it was not the nurse. So the exception under
24 the hearsay rule would not apply in those cases.

25 Under the first one you cited it was four

1 witnesses, but it was not the expert.

2 So I will be glad to hear from Ms. Barry. Are
3 you familiar with those cases?

4 MS. BARRY: I am not, Your Honor. But, again,
5 for medical treatment, it is not -- it is an
6 exception to hearsay. Anything that she tells her
7 is -- time and place is not even hearsay. Anything
8 else that you tell your neighbor is hearsay. But
9 the exception here is for medical purposes. Her
10 treatment. And that is exactly what 803(4) is.

11 And these other cases don't -- they are not
12 medical people. There wasn't an exception to allow
13 that testimony in.

14 An expert relies on the statements that she
15 gives in forming her opinion of what happened. And
16 it is admissible even if it would otherwise be
17 inadmissible hearsay..

18 THE COURT: I am going to ask you to proffer
19 the testimony.

20 MS. BARRY: To this specific --

21 THE COURT: Yes.

22 PROFFERED EXAMINATION

23 BY MS. BARRY: (JURY OUT)

24 Q Ms. DeBrew, did you have an occasion to meet the
25 victim in this case, MINOR

1 A Yes.

2 Q And when you first met with her, what did you first
3 do?

4 A I received a call from the hospital. I arrived at
5 the hospital. I met the patient. And we sat down
6 in our interview room and I talked to her about
7 what happened to her as far as, start from the
8 beginning and tell me what happened to you.

9 And she told me in her own words. We put
10 things in quotations because we type exactly what
11 they tell us.

12 Q When you are sitting in this room, do you wait
13 later to type it, or do you do it at that same
14 time?

15 A At that time.

16 Q At that time?

17 A Uh-huh. We go through -- we have a front page that
18 lists her address, those -- that type of
19 information. Then we go to her medical history,
20 last period, if she has ever been pregnant, that
21 type of -- if she is on medication or allergic to
22 anything. And then we get to a page where we ask
23 exactly what happened. And then from that we get
24 more details as far as, were you assaulted
25 vaginally, orally, anally, rectally. And we go

1 through each box of that. Was anything wet, did
2 you notice anything on your clothing, did the
3 person that did this to you, did they ejaculate.
4 It gets very, very detailed. So and then the
5 clothing that she is wearing we also collect to
6 help preserve any evidence that might be on her
7 clothing.

8 So from that point, once we get all that
9 information, then we go to an exam room.

10 Q So let me stop you there. Before you get up and go
11 to the exam room, why is all that information
12 important to you?

13 A It guides me to know what happened, how to collect
14 evidence, whether I need to collect from her mouth,
15 from her vagina, from somewhere on her body. We
16 look with a UV light. If there is fluid or semen
17 it will fluoresce under the light. So it guides us
18 so we can do that head to toe assessment. If there
19 is any injuries at all, we photograph, we measure,
20 and we document those also. But it guides me to
21 collect what evidence as far as swabs that I
22 collect from those areas.

23 Q And in your narrative, what did MINOR tell
24 you?

25 A I would have to look back directly at it, but from

1 my memory, I did read over the chart, she told me
2 that she had been assaulted at school. But to tell
3 you the exact details, I'd have to read it.

4 MS. BARRY: Your Honor, I can give her the
5 exact page and ask her if that refreshes her
6 memory.

7 BY MS. BARRY:

8 Q Just read that page.

9 A On this page we do ask the date, about the time
10 that it happened, where it happened. And this is
11 in the patient's own words.

12 This morning when I was walking to the bus I
13 saw him.

14 And I put in parentheses, Darius, because I
15 asked her who was him.

16 I saw Darius at the bus. My friend said, what
17 are you doing up here? And he said, to beat up
18 Isaiah, who is my best friend.

19 And I may not be pronouncing these names
20 right.

21 Ismalia[verbatim] asked to be my baby's
22 godfather, and he started beating up
23 Ismalia[verbatim] and jacking him up. My friend
24 had been telling him everything I had been saying.
25 And on the bus he sat beside me and would not move.

1 I was kicking him and telling him to move. He
2 finally let me go by.

3 When we got to school he kept saying, talk to
4 me. And I wouldn't talk to me.

5 I think I meant to write, talk to him.

6 He saw my cousins and some people I know. He
7 wanted me to go on the side of the building in an
8 empty pod. It was going to the art building. He,
9 Darius, pushed me in the corner and he jacked me up
10 with my shirt and I got scratches on my chest. He
11 took off my book bag and he took off my pants --
12 took my pants off. But I got them back up. And he
13 pulled them off again and turned me around against
14 the wall. He finally got my pants all the way
15 down. My face was against the wall. He broke my
16 belt. He laid me down.

17 And I said, get off me, get off me.

18 When people would come by, he would cover my
19 mouth. He said, don't tell anybody because I don't
20 want to go to jail. I don't want to get in
21 trouble.

22 He like -- he like -- he had pulling his pants
23 down. He had put his wank wank in and he said,
24 like, I love you and I don't want to lose you.

25 I said, I am going to going to tell.

1 Then a teacher came by, and I was crying, and
2 she said, what happened.

3 He, Darius, said he was my brother and he
4 tried to say nothing happened.

5 The teacher made him leave. And then I told
6 her what happened. And she took me to the office
7 and I wrote a statement about what happened.

8 They called the police and they called a Code
9 Blue to make sure he was not on campus. Then they
10 called my mom and let her come in.

11 Q In that statement that you read out, along with the
12 other information that you received from her as far
13 as the injuries that she sustained, there is a
14 whole checklist, is that true?

15 A Yes.

16 Q And do you use that for medical purposes?

17 A Medically it does help because if she does have
18 injuries, if they were severe enough, I would find
19 a physician, have him come back. They do a medical
20 clearing, make sure her heart and lungs are clear.
21 As far as her pain, if she needs medication, those
22 kinds of things. If anything needs to be repaired
23 or more serious injuries, like a broken arm or
24 something like that, the physician would take care
25 over again after all I had completed the patient's

1 care. We want to make sure there is nothing at the
2 moment that would be life threatening or serious
3 injuries for the patient; because once I see the
4 patient, I take complete care of that patient. And
5 the doctor does clear the patient, but we finish
6 the treatment as far as collection of evidence,
7 giving the medication, giving the discharge
8 instructions.

9 Q So it is not just for finding physical evidence?

10 A No.

11 Q Or evidence collection?

12 A It is for the overall treatment of that patient to
13 make sure that we take care of their physical needs
14 and also for evidence collection.

15 THE COURT: All right. Regarding the
16 statement, the case of State v. Burroughs, 4192
17 S.E.2d 408, it is very clear. It actually goes
18 into the testimony of a nurse. The only statements
19 that are admissible are statements that are for the
20 purpose of medical diagnosis or treatment.

21 Statements regarding the testimony she gave
22 regarding what happened at the bus stop, what he
23 said afterwards about, don't tell, and, I still
24 love you, are, under this case, are not admissible.

25 She can testify to what she told her happened

1 regarding the sexual assault, and that is it. That
2 is all. She can't say all of that stuff she talked
3 about at the beginning about her friend, what the
4 friend said.

5 And in this case right here, the Court says
6 that it was improper bolstering when she even
7 talked about -- in that case the nurse said, he
8 asked me to give him a hug before the incident, and
9 the Court said, that is improper bolstering.

10 So she is limited to the time, the date. Now,
11 I think under 803 she can -- the time and place,
12 the injuries, anything that has anything to do with
13 the medical diagnosis or treatment. But as far as
14 any conversation or anything that happened prior
15 to -- at the bus stop or what he said to her, that
16 would be improper bolstering.

17 MS. BARRY: So just to be safe, she can say
18 that he sexually -- I was sexually assaulted at
19 school.

20 THE COURT: She can say -- the school is time
21 and place, but anything after that would be
22 hearsay.

23 And then once you get into the hearsay under
24 the exception, she can talk about any statements
25 given regarding medical diagnosis or treatment, but

1 she can't talk about all of the other stuff
2 surrounding that.

3 MS. BARRY: But as far as, you know going
4 into, I was pushed up against the wall, held up --

5 THE COURT: That goes to medical treatment and
6 diagnosis..

7 MS. BARRY: Well, we might as well take up the
8 pictures.

9 MS. PINNOCK: I'm sorry. I just need to put
10 something on the record regarding your -- this
11 holding.

12 She will be testifying over our objection. I
13 will add also from the State v. Smith, I mean,
14 Smith v. State, I'm sorry, a 2010 case. It is
15 addressed about forensic interviewer testimony.
16 And this was a PCR case, but the Court did address
17 it, stated that the forensic interviewer's
18 testimony was substantially exceeded -- I'm sorry,
19 the testimony substantially exceeded the
20 limitations of time and place set forth in Rule
21 801(d)(1)(d).

22 That was part of the PCR that was filed. The
23 Court agreed that because there is no objection on
24 that it was ineffective assistance of counsel, but
25 the Court did say that it exceeded the time and

1 place testimony that is allowed under the rule for
2 forensic interviewers. So that case --

3 THE COURT: And I guess I'm not clear what you
4 are saying. I am limiting her to the time, the
5 place, and anything that has to do with the
6 treatment, diagnosis, or the treatment of it, but
7 that's it.

8 MS. PINNOCK: Yes, ma'am. And our objection
9 is that the hearsay exceptions do not apply because
10 the statement is not hearsay. There is a prior
11 consistent statement of a witness, so 803 does not
12 apply. There is no -- our objection is not
13 hearsay. It is improper bolstering.

14 We're not saying that what is in this report
15 is hearsay. That is not our objection. The 803
16 and 804 would not apply to this witness's testimony
17 because the statement she would be making falls
18 under 801 as a prior consistent statement.

19 Your Honor, I will add also that it is our
20 position that the purpose of that rule is to not
21 add credibility to MINOR through somebody who
22 is qualified as an expert witness, because
23 Ms. DeBrew pretty much would in a nutshell be
24 vouching for what she said. If she is allowed --
25 having been allowed to testify if what she found

1 was consistent with sexual assault or not, it is
2 adding credibility to MINOR through an expert
3 witness. That is why we believe it is expressly
4 addressed in the rule. And, again, 803 does not
5 apply. That is our argument. The statement is not
6 hearsay, so the exception to the hearsay cannot
7 apply to it.

8 THE COURT: So what is it that you are saying,
9 Ms. Pinnock, that she should be able to testify to?

10 MS. PINNOCK: She -- we would not have a
11 problem with her saying that she learned about
12 where it is alleged, she learned what was alleged,
13 and what she observed. That is what she was called
14 there to do, was to talk to MINOR find out
15 what she was reporting, and then make observations
16 and document those observations.

17 She wasn't called to say if she believed her
18 or not, which is what the Solicitor is ultimately
19 trying to get her to say. It is consistent with
20 what she said. And in their case it is, so it has
21 to be sexual assault. That is giving more --

22 THE COURT: I think you've got two arguments
23 going on here. One of them is about whether or not
24 she can ask the question -- one is -- I thought the
25 first argument was that she couldn't get into the

1 details of the statement.

2 MS. PINNOCK: Yes.

3 THE COURT: And then there is also the
4 argument that, is it -- if she asks the question,
5 is this consistent with what the victim told you.
6 That would be a separate argument. So let's deal
7 with the first one, whether or not she can testify
8 to the details of the statement or is she limited
9 to time and place. Right?

10 MS. PINNOCK: Yes.

11 THE COURT: I just want to make sure I'm clear
12 as to what you -- all right. And she is saying
13 that this is -- she said it is not hearsay, but it
14 is not admissible under 801.

15 MS. BARRY: I'm sorry, I thought you already
16 ruled that she could testify.

17 THE COURT: We are trying to figure out what
18 it is that she is going to say..

19 MS. BARRY: Well, she will say that -- we will
20 limit it to that she was sexually assaulted at the
21 high school on October -- that earlier that day
22 that she was -- and the circumstances around it --
23 that she was held up by her throat and forced to
24 the ground, her pants were pulled down. I just had
25 it -- I mean, just what she -- I mean, the injury,

1 that she was sexually assaulted, and the
2 circumstances around that. Not anything what he
3 said, not anything that -- about the bus stop.
4 Just at Spring Valley I was sexually assaulted, he
5 drug me in a corner, held me up, whatever she
6 remembers.

7 MS. PINNOCK: Your Honor, it is not what
8 she --

9 THE COURT: And that is what she is objecting
10 to because that is going to go into beyond the --
11 that is going to go into bolstering her testimony.

12 MS. BARRY: How so?

13 THE COURT: Because she is saying, he drug me
14 in a corner, he pushed me -- and that is exactly
15 what the witness has already testified to.

16 MS. BARRY: Your Honor, but she as -- for
17 medical purposes for a rape --

18 THE COURT: How does that relate to her
19 treatment of her? Her treatment is based on the
20 sexual assault.

21 MS. BARRY: Because she is grabbed by the neck
22 and so she takes pictures of the scratches. And
23 then she is pushed onto the ground and his penis is
24 forced inside of her, and that is where the
25 injuries occurred.

1 The only reason she is at the hospital, she is
2 getting medical treatment for this, in addition to
3 any evidence collection.

4 THE COURT: Just one second.

5 (Pause.)

6 THE COURT: All right, there is a more recent
7 case of State v. McCurley. It also says that any
8 testimony -- and, once again, it talks about -- and
9 this one talks about an expert in forensic
10 interviewing. And it says that -- in this case it
11 said, the Court erred in permitting an expert and
12 forensic interviewer to give testimony that
13 bolstered the credibility of the victim. And it
14 talks about the interviewer going into, I believe,
15 specific detail.

16 In this case that I have before me, it states
17 pretty clearly that it is improper for her to go
18 into -- and it is a 2010 case -- it is improper for
19 her to go into the actual assault. Can she say the
20 scratches on her neck? Yes. Can she say she had
21 bruising, and she can say those are consistent with
22 someone who has been sexually assaulted, but she
23 cannot go into the details of it, is what the case
24 law says.

25 MS. BARRY: But the forensic interviewer is

1 not -- the purpose of her exam is not medical
2 treatment. That is an investigatory tool used by
3 law enforcement. This is not -- even though she
4 may be have a PhD, they are not doctors. They are
5 not nurses. They are -- the only reason she is at
6 the hospital is to get medical treatment. That is
7 exactly what 803(4) says.

8 THE COURT: And I understand that, but the
9 case law says she cannot go into the details of
10 what the victim told her. She can talk about what
11 she saw. She can talk about the bruising. And she
12 can say whether or not it is consistent with what
13 the victim told her, but she can't get into the
14 actual statements of the victim because it says it
15 is bolstering.

16 MS. BARRY: If we limit it to, he pushed me in
17 a corner, jacked me up by my shirt, and I got
18 scratches on my chest.

19 THE COURT: The victim has already testified
20 to that. And it would be -- according to this, it
21 would be improper bolstering based on the fact that
22 the victim has already testified to it and she
23 would be basically repeating what the victim told
24 her.

25 MS. BARRY: Does it cite 803(4)?

1 THE COURT: Actually it cites 801 and says
2 that it is not hearsay.

3 All right, so that is what -- she can testify
4 to what she saw. If it was consistent with the
5 statement -- she can testify that the victim gave
6 her a statement, she just can't get into the
7 details of the statement, is what the case law is
8 saying, she cannot get into the details of the
9 statement.

10 MS. BARRY: Should we take up the pictures as
11 well at this time?

12 THE COURT: Ma'am?

13 MS. BARRY: Should we take up the pictures?

14 THE COURT: All right, I think I ruled that
15 you all could -- that they would be admissible, but
16 you could not admit all 40 or 50 of them, whatever
17 you said you had. You have an objection to that?

18 MS. PINNOCK: Yes, Your Honor.

19 THE COURT: All right. Can I take a look at
20 them?

21 MS. BARRY: Uh-huh.

22 THE COURT: And these are the pictures she
23 took in connection with her examination?

24 MS. BARRY: Right.

25 THE COURT: And what was your objection again?

1 MS. PINNOCK: Your Honor, they are not
2 relevant to prove the facts at issue. Nobody is
3 saying that there was not sexual intercourse. I
4 don't believe it makes any fact more probable than
5 not. So they are irrelevant. They are going to
6 inflame the passion -- they are going to shock the
7 jury.

8 Under 403, I believe those pictures of -- the
9 illicit pictures are more prejudicial than
10 probative.

11 And, Your Honor, if you definitely find them
12 relevant, our objection is they are completely
13 irrelevant, they are not going to aid this witness
14 in her testimony. She has other documents and
15 charts in her report that she can testify off of if
16 she needs to show where the injury is. But as far
17 as helping to prove a material fact in this case,
18 it is completely irrelevant. She has other means
19 of doing it. And I believe it would be more -- the
20 probative value would be substantially outweighed
21 by the prejudicial value of those photos.

22 THE COURT: All right. Well, I'm going to
23 overrule the objection. I will allow the
24 pictures -- those pictures that she has marked. Is
25 it five or six?

1 MS. BARRY: Five.

2 THE COURT: Five that she has marked. I did
3 on yesterday limit the number, and I told her that
4 she could not admit all of them.

5 And also, while we're at it, regarding the
6 motions earlier, I am going to make this a Court
7 Exhibit, the forensic examination report that shows
8 that the swabs that were used are from 2008, I will
9 make that a part of -- a Court Exhibit since we
10 talked so much about it earlier.

11 (WHEREUPON, Court's Exhibit No. 3 was
12 marked for identification only.)

13 THE COURT: And there was an objection
14 regarding the adult -- her being qualified as an
15 adult sexual assault nurse examiner. I'm going to
16 overrule the objection. She will be qualified. I
17 will put that -- let the jurors know.

18 All right, bring them in.

19 (WHEREUPON, the jury came into open
20 court at approximately 11:55 a.m.)

21 THE BAILIFF: The jury is all present, Your
22 Honor.

23 THE COURT: All right. Yes, ma'am, you may
24 continue.

25 MS. BARRY: Thank you, Your Honor. At this

1 time I would offer Donna DeBrew as an expert in the
2 field of adult sexual assault nurse examination.

3 THE COURT: All right. Ladies and gentlemen
4 of the jury, normally a person cannot give opinion
5 testimony. Normally when a person testifies, they
6 must testify as to what they either saw, heard, or
7 sensed by smell, or something of that nature.

8 However, there is an exception when someone is
9 qualified because of education or experience. They
10 are permitted to give their opinion in certain
11 areas if the Court qualifies them that way.

12 This witness will be qualified in the area of
13 adult sexual assault -- as an adult sexual assault
14 nurse examiner to give opinion testimony in that
15 area.

16 That does not mean that you must accept the
17 opinion, but it is evidence for you to use in any
18 way you see fit and give it the weight and
19 credibility you believe is appropriate.

20 Thank you. You may continue.

21 MS. BARRY: Thank you, Your Honor.

22 DIRECT EXAMINATION CONTINUES

23 BY MS. BARRY:

24 Q Ms. DeBrew, can you describe what a sexual assault
25 examination is?

1 A A sexual assault examination is to take care of the
2 patient, and if he or she presents with any
3 injuries, to take care of those injuries.

4 So we go through a detailed history of the
5 patient, medicines, allergies, past history,
6 medical problems or issues.

7 And then you do a head to toe assessment. We
8 do collect their statement as to what happened and
9 we do a head to toe assessment to collect evidence,
10 look for injuries, photograph injuries.

11 And we do an evidence collection kit, which
12 includes swabs, slides, clothing bags, and we turn
13 that over to law enforcement once we have collected
14 evidence.

15 And we treat the patient, and treat them if
16 they need medications or medical treatment.

17 Q And that is part of the training that you said that
18 you had extensive training in?

19 A Yes, ma'am.

20 Q Did you have an occasion -- were you employed with
21 Palmetto Health during October of 2010?

22 A Yes.

23 Q And were you a forensic sexual assault nurse
24 examiner?

25 A Yes.

1 Q Did you have an occasion to examine MINOR

2 A Yes, I did.

3 Q Do you recall that?

4 A Yes, ma'am.

5 Q I will show you a photograph and ask if you
6 recognize this young lady.

7 A Yes, ma'am.

8 Q You do?

9 A Yes. And that is in our exam room at Palmetto
10 Health.

11 MS. BARRY: Your Honor, at this time we would
12 offer State's Number 8 into evidence.

13 THE COURT: All right, State's 8 will be
14 entered with objection.

15 THE COURT REPORTER: That will be 9.

16 THE COURT: That is 9, I'm sorry.

17 MS. BARRY: Thank you.

18 (WHEREUPON, State's Exhibit No. 9 was
19 marked for identification and received
20 into evidence.)

21 BY MS. BARRY:

22 Q Who is that a photograph of?

23 A MINOR

24 Q And you remember that --

25 A Yes, ma'am.

1 Q -- specifically?

2 A Uh-huh.

3 Q Have you ever seen her before?

4 A No, not before that date.

5 Q Have you seen her since?

6 A Only today in the courtroom.

7 Q What day did you examine MINOR

8 A As far as the exact date? I would have to look at
9 my report. I'm not sure of the exact date.

10 Q I will show you the first page of your exam. Does
11 that refresh your memory?

12 A Yes, ma'am. October 14th, 2010.

13 Q Do you recall who brought her into the --

14 A I believe it was her mother.

15 Q What is the first thing that you do when you meet
16 MINOR

17 A When I arrive at the hospital I go to wherever they
18 are holding the patient, which is usually triage.
19 Talk to the nurse. Get the patient's medical
20 record that they have created. And then I meet the
21 patient, bring the patient back to our interview
22 room, and then I talk to her alone about what
23 happened to her.

24 Q So it is you and the victim?

25 A Yes, ma'am.

1 Q And what type of information are you trying to
2 get -- gather?

3 A The first thing we do is make sure everything is
4 accurate on that sheet that you just showed me with
5 her address, phone number, so we do have contact
6 information in case we have to call her about labs
7 or anything that we do at the hospital.

8 Then I go through a detailed medical history
9 as far as allergies, medication, any physical
10 problems, medical problems that she may have,
11 asthma, seizures, or anything like that, last
12 period, if she has ever been pregnant.

13 Then we go through a history or a statement of
14 what happened to her. And she tells me exactly
15 what happened in her own words, and I write it in
16 quotation marks.

17 Q And then what do you do?

18 A After the history, I get a little more detailed in
19 my questions and it gets very personal as far as
20 what type of assault, was it a vaginal assault, an
21 oral assault, rectal assault.

22 Q And why do you do that? Why is that important?

23 A It guides me when I do the physical assessment, the
24 head to toe assessment, what to look for as far as
25 if she does have an injury, if there is evidence

1 that needs to be collected as far as any fluids,
2 fibers, anything that could be collected I would
3 know where to collect and what to collect.

4 And we do photograph any injuries that we find
5 or anything that we find on her body that is
6 consistent with her story.

7 Q So after you gather all that information, what do
8 you do next?

9 A We go to the exam room. I do a head to toe
10 assessment. We put her in the hospital gown. And
11 we do an exam similar to an OBGYN exam. We do a
12 pelvic exam. We swab the vaginal area if that is
13 the area we need to collect from. We swab the
14 rectal area. We collect the patient's DNA from
15 her, which is called a buccal swab. We collect any
16 loose hair. We comb hair if the patient hasn't
17 shaved.

18 I photograph those injuries. We may measure
19 the injuries if it is a cut or a scratch or an
20 abrasion or anything like that.

21 We draw blood work. We collect cultures
22 for -- to look for any sexually transmitted
23 diseases. And we package them in a sexual assault
24 kit.

25 Q And in this particular case, did you do that?

1 A Yes, ma'am.

2 Q You took MINOR into an exam room?

3 A Uh-huh.

4 Q And you examined her head to toe?

5 A Uh-huh.

6 Q I show you another photograph, and I ask you if you
7 recognize it.

8 A That is the photograph --

9 Q Do you recognize it?

10 A Yes, I do.

11 MS. BARRY: Your Honor, at this time we would
12 offer State's 10 into evidence.

13 THE COURT: All right. And that is going to
14 be entered with objection.

15 (WHEREUPON, State's Exhibit No. 10 was
16 marked for identification and received
17 into evidence.)

18 BY MS. BARRY:

19 Q What is that a photograph of?

20 A It is a photograph of MINOR chest that had
21 some red scratches and ares on it, which she said
22 that -- she had told me in --

23 MS. PINNOCK: Objection.

24 Q You can't --

25 A Oh, I'm sorry. Red scratches that I noticed on her

1 chest, and I took a photograph.

2 Q That is part of a head to toe exam?

3 A Yes.

4 Q You had seen other areas, what, if anything, would
5 you do? Any other areas of injury?

6 A If there were any areas that I saw bruising,
7 scratches, anything like that, I would photograph.

8 Q And in this case was the victim's clothing
9 collected?

10 A I believe -- I can't be specific. I think I
11 collected maybe a shirt and pants. I think law
12 enforcement may have collected underwear in that
13 case.

14 Q And do you take that and put that somewhere?

15 A We have -- in our sexual assault kit there are
16 special packages. And each thing is packaged
17 separately as not to contaminate a specimen.

18 Underwear we put in a small bag. Clothing is
19 in a larger bag. We seal it, put the information
20 of the patient and her medical record number, the
21 date, my initials, all those things on there.

22 Q I show you something and ask you if you recognize
23 this.

24 A Yes.

25 Q What is that?

1 A This is the sexual assault kit that I did on
2 MINOR

3 Q Is that what you are referring to?

4 A Yes. My signature is on the back. My handwriting
5 is on the front.

6 MS. BARRY: Your Honor, at this time we offer
7 this into evidence as well.

8 THE COURT: Any objection?

9 MS. PINNOCK: Your Honor, I'm not quiet sure.
10 (Pause.)

11 MS. PINNOCK: No objection, Your Honor.
12 (WHEREUPON, State's Exhibit No. 11 was
13 marked for identification and received
14 into evidence.)

15 Q On State's Exhibit Number 11, how do you know that
16 is the one that you used for MINOR

17 A It has my name on the label that I printed. It has
18 my name written in my handwriting, and my signature
19 on the back.

20 Q And when you collect samples -- what comes in that
21 box when you first get the box?

22 A In the box are envelopes with -- they are each
23 labeled. There is a rectal swab envelope, vaginal
24 swab envelope, buccal swab, miscellaneous, several
25 envelopes for different areas of the body. There

1 are also small slides for vaginal, oral, and
2 rectal. There are clothing bags, a big clothing
3 bag, there is a smaller bag for underwear. There
4 is a biohazard sticker. And there are Q-tip swabs.

5 Sometimes we use the swabs in the kit,
6 sometimes we use our own swabs because we dry them
7 at the office, so it just kind of depends, but
8 Q-tip swabs are in here also.

9 Q So basically anything you need to do your exam to
10 collect is in that box?

11 A Uh-huh.

12 Q Once you are finished with the collection --

13 A Everything is placed back in the box. We tape it
14 shut, initial it, I write my name, sign it on the
15 back. The person I turn it over to signs it. And
16 then law enforcement when they pick it up, they
17 sign it, to maintain the chain of custody.

18 Q And why is that important?

19 A It is important because we cannot leave the kit
20 alone out of our sight until it is packaged,
21 labeled, and closed. And it stays at the hospital
22 until law enforcement picks it up. We have a
23 locked refrigerator to maintain chain of custody.
24 But until it leaves my hands to the next person's
25 hands, it has to be secure and it cannot be out of

1 my sight for that chain of custody.

2 If I were to leave it laying in the office,
3 someone could come in, bother it, mess with the
4 DNA, open the envelopes, so until it is sealed and
5 either locked in our office or given to law
6 enforcement, it stays with me.

7 Q And you testified that the SANE exam is similar to
8 a pelvic exam?

9 A It is. We --

10 Q Can you describe the process for the jury, please?

11 A We put the patient up in stirrups. Their legs are
12 up so we can have a better view. We have a light
13 source to make it easier to see if there are
14 injuries.

15 Before I start the actual pelvic exam, I swab
16 the outer labia. And we also do it with a forensic
17 light before we do the swabbing to see if there is
18 anything that fluoresces as far as fluid with the
19 light. In the dark you can shine that light and if
20 there is any fluid, seminal fluid, those kinds of
21 things, it will fluoresce a bright orange color.

22 Q What is the outer labia?

23 A It is the -- oh, excuse me -- it is the lips or the
24 outer portion of the female anatomy. Vagina.

25 Q You swabbed that?

1 A We swab that. I look with the light. We swab the
2 labia on the outer part and then a rectal swab.
3 And then after that then I start to look manually
4 with my fingers to see -- you know, because you
5 have to hold that area open to see it better,
6 because just looking straight on you really can't
7 see where you need to.

8 Q And in this case did you do that?

9 A Yes.

10 Q What, if anything, did you find on the outer labia?

11 A I didn't see anything with the naked eye on the
12 outer labia, but I did swab, which you may or may
13 not see anything. And then opening up that vaginal
14 opening or those lips, as you were, then we look.
15 And there was some bleeding, because I think she
16 was on her menstrual cycle. And there was also an
17 area in the posterior fourchette, which is the
18 bottom part of the -- the rectum is at the bottom
19 and then you have a perineum, and then right above
20 that is called the posterior fourchette. It is
21 like the bottom half of your vagina.

22 And when I looked there, I did see an injury.
23 It is hard to see with the naked eye sometimes, so
24 we use a purple dye called Toluidine dye, and we
25 paint that on the patient.

1 Q Before you get to that, let me show you another
2 photograph.

3 A Okay.

4 Q And ask if you recognize this.

5 A Yes.

6 MS. BARRY: Your Honor, at this time we would
7 offer this as Number 12.

8 MS. PINNOCK: Your Honor, same objection.

9 THE COURT: All right, that is 12?

10 MS. BARRY: Twelve.

11 THE COURT: It will be entered with objection.

12 (WHEREUPON, State's Exhibit No. 12 was
13 marked for identification and received
14 into evidence.)

15 BY MS. BARRY:

16 Q Can you step down?

17 (Witness steps down.)

18 Q Can you point out for the jury the outer labia that
19 what you were referring to?

20 A It is hard to see with someone with dark skin
21 sometimes when there is hair, but it is this area
22 here. There is actually an outer labia minora and
23 labia majora, which runs here and here, on either
24 side. And these are my fingers spreading that
25 apart so you can see better where the injure would

1 be.

2 Q So if you are doing that, how are you able to take
3 a picture of that?

4 A A lot of practice. You hold with one hand and you
5 kind of get everything situated and I have the
6 camera in my other hand. And then sometimes we use
7 a colposcope, but I don't think with her it was
8 working at the time.

9 Q And the area that you are talking about, the
10 posterior fourchette, which area is that?

11 A Right here to the bottom.

12 Q And looking at that, were you able to see an
13 injury?

14 A I can see an injury, but I've had a lot of
15 practice, right in this area here. And then you
16 can see there is blood around there, and I think
17 that is from her menstrual cycle. But there is
18 also a little area here that is kind of weeping or
19 it has fluid coming out of it.

20 Q Okay. And so the next photo you were getting to --
21 I show you another photograph and ask if you
22 recognize. Well, two of them. Do you recognize
23 this?

24 A Yes.

25 MS. BARRY: Your Honor, we'd offer this

1 photograph into evidence.

2 MS. PINNOCK: Same objection.

3 THE COURT: The objection is going to be
4 overruled and that will be entered with objection.

5 (WHEREUPON, State's Exhibit No. 13 was
6 marked for identification and received
7 into evidence.)

8 Q Referring to State's Number 13, what is that a
9 photograph of?

10 A It is the same area, but this is the purple dye
11 that I painted on her posterior fourchette and I
12 wiped away the excess, and this dark area right
13 there is the area I showed you before that was
14 weeping. The blue dye will adhere to anything that
15 is an injury, if there is a tear, an abrasion, a
16 laceration, because the cells are different when
17 the outer layer of the skin is gone. So it sticks
18 to that -- those cells. And it will be darker.

19 Q And what did you call that?

20 A I call it an abrasion. An abrasion, a tear. Can I
21 explain what that means?

22 When anything of force is applied to an area,
23 the skin can break or tear or abrade. And it just
24 kind of scrapes that skin off.

25 Q And can you explain to the jury the vagina itself

1 and the type of skin that is present?

2 A The vagina is very similar to your mouth. If you
3 ever bite the side of your mouth, it is similar to
4 the tissue that is in the vagina. So it heals
5 fairly quickly. And an injury like that is easy,
6 as far as, you know, something hits that and
7 scrapes it off, it will break that area. And
8 you -- it doesn't need to be fixed or repaired, it
9 will heal on its own. It may take a day or two or
10 a few days, but if you think about your mouth and
11 how wet and moist and tender it is, it is the same
12 way in the vagina.

13 Q Are you aware or were you made aware of whether or
14 not the victim had ever had a child?

15 A Yes. She told me on that medical history sheet
16 that she had been pregnant once and had one child.

17 Q So how does childbirth relate to how the vagina
18 allows to --

19 A If you think about how small a vagina is and a
20 baby, how big a baby is, and it comes through that
21 area, it can do similar injuries and worse as far
22 as tearing the skin, pulling the skin, abrading the
23 skin. You can get injuries similar or a lot worse
24 with a baby because it is a different object. But
25 you can have injuries from childbirth.

1 Q I am going to show you the last one. Do you
2 recognize that?

3 A Yes.

4 MS. BARRY: Your Honor, we would offer State's
5 14 into evidence.

6 MS. PINNOCK: Same objection, Your Honor.

7 THE COURT: All right, objection is overruled.
8 It will be entered.

9 (WHEREUPON, State's Exhibit No. 14 was
10 marked for identification and received
11 into evidence.)

12 BY MS. BARRY:

13 Q Looking at State's Exhibit 14, what is that a
14 photograph of?

15 A It is another photograph of the same injury. It is
16 closer. You can see it better. And generally with
17 an assault, if you see an injury, it is usually in
18 that 8:00 to 5:00 o'clock area. This is at
19 6:00 o'clock. If you think about a clock on the
20 wall, that is where the injury is, 12:00 at the
21 top, 6:00 is at the bottom. And that is very
22 common to see injury from sexual assault.

23 Q And why is that?

24 MS. PINNOCK: Objection.

25 BY MS. BARRY:

1 Q In your expert opinion, to a reasonable degree of
2 medical certainty, why is that an area that is
3 commonly injured?

4 MS. PINNOCK: Objection.

5 THE COURT: Your objection?

6 MS. PINNOCK: Your Honor, this is outside the
7 scope of the -- it goes to your prior ruling of
8 what her testimony goes to.

9 THE COURT: All right. Overruled. I said
10 overruled.

11 A I can say?

12 Q Yes.

13 A If you think about something going into the vagina,
14 the opening to the vagina is right here. And this
15 is back -- that bottom half of it. So when an
16 object is going in, it is going to hit here, then
17 slide further in. So it hits and then goes in.

18 That is normally where we would see an injury.
19 And can I say what type of injury? A mounting
20 injury is what we call an injury like that.

21 Q And why do call it a mounting injury?

22 THE COURT REPORTER: I'm sorry, y'all need to
23 speak up.

24 BY MS. BARRY:

25 Q Why do you call it a mounting injury?

1 A Because if you think about how people have
2 intercourse, mounting would be that object going
3 into the vagina. So it is mounting from whatever
4 direction it might be, front, back, is going into
5 that area.

6 (Witness returns to witness stand.)

7 BY MS. BARRY:

8 Q To know the injuries --

9 A Uh-huh.

10 Q -- you did the swab of the area, of the labia. Did
11 you take any other swab?

12 A I also did swabs inside the vaginal vault and
13 then --

14 Q And what is the vaginal vault?

15 A It is the open -- the vagina has an opening. And
16 once you put the speculum into that opening and
17 open the speculum up inside where the cervix is
18 located, that is considered the vaginal vault,
19 inside the vagina, further inside the vagina.

20 Q So you took swabs from that area as well?

21 A Yes, uh-huh.

22 Q What, if anything, do you do with that?

23 A We swab the slides that is in the kit. The Q-tip
24 swabs that I collected we put in the envelope
25 labeled, vaginal swabs. We want to get them as

1 moist as we can from the secretions that are inside
2 the vaginal vault and around the cervix and the
3 sides of the vaginal wall.

4 Q Do you look at any of this evidence prior to
5 putting it into the sexual assault examination kit?

6 A We may look at the slides collected from inside the
7 vaginal vault to see if sperm are present. But I
8 can't tell anything from the naked eye as far as
9 the swabs are concerned. I collect the swabs. And
10 that is why the history is important, is to collect
11 the evidence from the proper places, because I
12 can't see DNA with my eye, but we do look at those
13 slides of the vaginal vault to see if male sperm
14 are present.

15 Q How would you know if -- if there were sperm on a
16 slide, how would you be able to tell that?

17 A Sperm has a particular look. You have a small head
18 and a long tail, and they are usually moving. And
19 I have experience as a fertility nurse, so I have
20 seen many slides of sperm. And also in our
21 training we have looked at multiple slides of
22 sperm.

23 Q And on this particular -- in this particular case,
24 did you see any sperm on any of the slides?

25 A Yes. I think -- I think I did. And on the

1 history -- or in that report there should be a box
2 checked.

3 Q Would you like to see it just to confirm that?

4 A Yes, ma'am.

5 Q Look at that. And does that refresh your memory?

6 A I wrote beside vaginal swab and smear, sperm seen
7 on slide. And that is mainly for my memory
8 purposes because I do so many, so it is easy to
9 forget what you see and what you don't see, so I
10 try to write at much as I can.

11 Q And what, if anything, do you do with that slide?

12 A That slide is also put into the -- there is a small
13 plastic box that has the vaginal, oral, and rectal
14 slide, and I just add that extra slide into that
15 box.

16 So when it is processed at SLED -- because
17 sperm have DNA, so that is one way to collect DNA
18 because, you know, if you have a sperm, the head of
19 that sperm has DNA in it.

20 Q And after you collect it, put it in the box, what
21 do you do to secure it?

22 A After everything is packaged into the box, I put a
23 copy, a preliminary copy of the report in the box,
24 and then I close it, I seal it with evidence tape,
25 I initial it, and then we lock it in our

1 refrigerator at Richland or with law enforcement.
2 If available, they will come pick it up at that
3 time.

4 Q Do you recall if law enforcement was available at
5 that time?

6 A I think in this case Terry Casto signed -- I signed
7 it over to Terry Casto, and then she signed it over
8 to law enforcement, so I think it was locked up at
9 Palmetto Health Richland, and then it has John
10 Talkish who picked it up.

11 Q When you put it into the refrigerator, what if you
12 go off shift during that time before law
13 enforcement comes?

14 A There is a lock on the refrigerator, and no one has
15 access to the lock except the nurses in our
16 program, which are about six, and our office also
17 has a lock, and no one has access to those offices
18 except our nurses. So it is secured until law
19 enforcement arrives.

20 Q And when you put it in the refrigerator, was it
21 taped -- was it sealed?

22 A Uh-huh, yes, ma'am.

23 Q Where was it sealed at?

24 A It was sealed on all four sides, here, here, here,
25 and here. And they all have my initials. And then

1 it looks like the second evidence tape was probably
2 from SLED.

3 Q And do you tamper with it in any way?

4 A No.

5 Q Once it is sealed --

6 A Once it is sealed, it is sealed until law
7 enforcement picks it up. They take it to their
8 secure area. And then the person that actually
9 analyzes the kit to look for DNA, they are the next
10 person that would open it. No one opens it from
11 the point it leaves my hands until it arrives in
12 the -- the person that would check for DNA.

13 Q And prior to you taping up an initialing the box,
14 did you alter or tamper with any of the evidence?

15 A No, I did not.

16 Q And it was locked in a secured area inside a
17 locker?

18 A Yes.

19 MS. BARRY: Your Honor, that's all I have.

20 THE COURT: Please answer any questions that
21 Ms. Pinnock may have.

22 MS. PINNOCK: Thank you, Your Honor. May it
23 please the Court?

24 CROSS-EXAMINATION

25 BY MS. PINNOCK:

1 Q Ms. DeBrew, you are familiar with the Sexual
2 Assault Nurse Examiner, SANE, Development and
3 Operational Guide?

4 A Yes, ma'am.

5 Q Okay. That is what your testimony is you get your
6 certification?

7 A Yes, ma'am.

8 Q All right. Now, October 14, were you at the
9 hospital or were you at home and they called you
10 in?

11 A I was at home and they called me in. We're usually
12 on call 24 hours.

13 Q Okay. And how many -- you said you have done how
14 many exams?

15 A I think it is close to 180.

16 Q All right. And of those 180 exams, they wouldn't
17 call you if somebody didn't come in and report
18 sexual assault, right?

19 A Right. Well, I'm sorry, occasionally we do get a
20 call because they are unsure of whether they need
21 our services or not. So a physician may talk to us
22 and say, I've got this case and this is what is
23 going on, do you need to come or not.

24 Q Okay. But there is always some reason that they
25 would call you?

1 A Yes, ma'am.

2 Q You wouldn't just be called to the hospital just to
3 look at somebody to come to the hospital?

4 A No.

5 Q Okay. And a big part of doing a sexual assault
6 exam is to collect forensic evidence, right?

7 A Yes.

8 Q And that is what you do after you get a report from
9 the complainant?

10 A Yes, ma'am.

11 Q So you sit down and you meet with them, you hear
12 what they have to say, and then you take that
13 information with you into the exam room?

14 A Uh-huh. Yes.

15 Q State's, I guess that is Number 9, State's Exhibit
16 9, that is just a picture of MINOR --

17 A Yes.

18 Q -- in the hospital bed, right?

19 A Yes, ma'am.

20 Q And do you put everybody in there?

21 A We do.

22 Q You would give everybody robes?

23 A Yes.

24 Q Okay. So she comes in, y'all have a chat, you take
25 her to the exam room, and then you start your exam?

1 A Yes.

2 Q Okay. And you were talking about your report. You
3 would have certain things you ask about. You check
4 off just, you know, general medical stuff, and then
5 more personal detailed information about the
6 allegation?

7 A We have a database.

8 Q Uh-huh.

9 A So when we go into the computer system it is
10 consistent every time.

11 Q Okay.

12 A So I'm not randomly asking things or forgetting
13 things because we go through a systematic
14 checklist.

15 Q All right. When you fill that stuff out, you start
16 your examination, then do it head to toe?

17 A Yes, ma'am.

18 Q If you see anything at all, you take pictures of
19 it?

20 A Anything that is relevant to what she told me.

21 Q Okay. You take those pictures. Do you document
22 them on other charts that you keep in the report on
23 paper?

24 A No. All our charts are computer generated.

25 Q Right. But you don't only take pictures, you also

1 indicate on a, some sort of diagram?

2 A Yes. But it is in the computer. So what we do is,
3 if I take a picture of an injury, then I will go to
4 the computer and I will document that injury,
5 whatever it might be.

6 Q Okay. You said you document, you photograph, and
7 you measure injuries?

8 A If it is appropriate. I don't usually measure
9 vaginal injuries because it is an awkward area.

10 Q Uh-huh.

11 A But if it were on her leg or her arm, face.

12 Q Chest?

13 A Chest.

14 Q Did you measure the ones on her chest?

15 A I didn't.

16 Q Okay. And you asked her -- you said you asked her
17 personal information. She tells you her side of
18 the story. You start your exam.

19 Now, when you start doing the actual vaginal
20 exam, you said that it is kind of like a normal
21 pelvic exam where she is up in the stirrups. You
22 get a better view that way. Everybody knows that.
23 But it is not a normal exam? She is not in there
24 for a normal pelvic examine, right?

25 A No.

1 Q Okay. And I'm going to talk about what is in your
2 report just a little bit.

3 You did indicate there were scatches on her
4 chest?

5 A Yes.

6 Q And then you noted an abrasion on the posterior
7 fourchette? Did I pronounce that correct?

8 A Yes. You did.

9 Q Okay. Both of those are indicated? You use the
10 normal forms?

11 A (Nods affirmatively.)

12 Q Okay. And can you explain again what that area is?
13 What is the posterior fourchette?

14 A It is -- if you think about your bottom, if you are
15 a female, the rectum is at the very bottom. And
16 the area between the rectum up to the start of the
17 vaginal area is the perineum. And then just right
18 inside there is called the posterior fourchette.
19 If you open up the labia, you can see it.

20 Q All right. And you made a comparison when you were
21 speaking in this area about the vagina being
22 comparative to the tissue in the mouth?

23 A It is similar. It heals about the same. It is wet
24 and moist. It is similar to that.

25 Q Okay. Now, the posterior fourchette, you said you

1 used a clock indicator, it is at the bottom at
2 6:00 o'clock?

3 A Yes.

4 Q And that is the first point of injury with a penis
5 and a vagina, right?

6 A That is a common injury.

7 Q It is the first point of contact?

8 A Yes, ma'am.

9 Q Okay. And you call that a mounting injury?

10 A Yes, ma'am.

11 Q Because that is where the first contact was made?

12 A Yes, ma'am.

13 Q Any injury to that area, because it is the point of
14 first contact between a penis and a vagina,
15 different things can cause it, right?

16 A Yes.

17 Q That area can be injured with something as simple
18 as in middle school if somebody pulls a wedgie on a
19 girl, that can cause injury to that area?

20 A I'm not sure a wedgie would cause that, but there
21 are things that could cause an injury.

22 Q Okay. So it is very -- we can say it is very
23 easily injured?

24 A It can be injured.

25 Q Okay. And you didn't put in -- your report doesn't

1 say it was torn?

2 A (Nods negatively.)

3 Q You said an abrasion?

4 A An abrasion is similar to a tear. Those
5 abbreviations are very close, but if you think
6 about the skin, it is just kind of pulled off or --

7 Q Like a scratch?

8 A Kind of like a scratch or an abrasion. A scratch
9 is different too. It gets confusing, but an
10 abrasion is usually what I use a lot because it is
11 just the tearing away of that skin.

12 Q Compared to if you fall and scrape your knee or
13 elbow, that is considered an abrasion?

14 A Uh-huh. Yes.

15 Q And abrasions are caused by friction?

16 A Yes.

17 Q And friction is the rubbing of two things?

18 A Yes.

19 Q All right. Which is consistent with sex?

20 A Yes, ma'am.

21 Q Now, you said that you are familiar with this
22 operational guide, right?

23 A Yes.

24 Q Like the SANE Bible. That is what they test you on
25 when you get your certification?

1 A It is. I wouldn't say I have it memorized
2 completely, but, yes.

3 Q There is a lot of information. I don't expect you
4 to have it memorized. But when it comes to
5 injuries -- I'm interested in what, you know, the
6 studies on injuries -- isn't it true that usually
7 with sexual assault there is usually more than one
8 point of entry?

9 A Every case is different. A lot of sexual assaults
10 there is no injury at all.

11 Q Right. So there is some injury sometimes and no
12 injury other times. But are you saying it is not
13 more common for sexual assault?

14 A I mean, I can't give you exact numbers.

15 Q Uh-huh.

16 A And it varies case to case. Some victims panic and
17 freeze and they don't fight their assailant, so you
18 may not see an injury. Some people fight and you
19 might see an injury. But every case is different
20 and every body is made -- every body has a
21 different type of vagina. I mean, no one is the
22 same, so --

23 Q That is understandable. But, so we can pretty much
24 sum it up saying, one injury noted on MINOR
25 does not mean it was a sexual assault?

1 A Yes.

2 Q There is no way that one injury or any injury can
3 automatically say sexual assault?

4 A I mean, I can't say sexual assault. All I can do
5 is take what the victim told me and --

6 Q And you documented what you saw?

7 A Yes, ma'am.

8 MS. PINNOCK: Begging the Court's indulgence.
9 (Pause.)

10 MS. PINNOCK: Thank you. I have no further
11 questions.

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

13 REDIRECT EXAMINATION

14 BY MS. BARRY:

15 Q Ms. DeBrew, you testified that a lot of sexual
16 assaults there aren't injuries at all?

17 A Yes.

18 Q But in this case you did find an injury, correct?

19 A Yes, ma'am.

20 Q And Ms. Pinnock talked about the vagina?

21 A (Nods affirmatively.)

22 Q Would you expect in your expert opinion, to a
23 reasonable degree of medical certainty, would you
24 expect to find an injury like this one when a woman
25 is on -- has her period? You said the area is

1 moist?

2 A (Nods affirmatively.)

3 Q With consensual sex?

4 MS. PINNOCK: Objection, Your Honor.

5 THE COURT: Please refer to which picture.

6 MS. BARRY: Oh, I'm sorry, State's 14.

7 THE COURT: And your objection is the same
8 objection?

9 MS. PINNOCK: Yes.

10 THE COURT: All right. Overruled.

11 BY MS. BARRY:

12 Q Would you expect to find -- is it more common or
13 less common?

14 A It is less common to find an injury if it is
15 consensual or -- in my opinion.

16 Q What, if any, in your expert opinion -- what, if
17 any, effect does the bleeding from a menstrual
18 cycle -- what does that have -- what effect does
19 that have on --

20 MS. PINNOCK: Objection, Your Honor.

21 Q -- the inside of the vagina?

22 MS. PINNOCK: Outside the scope of my
23 cross-exam.

24 MS. BARRY: Your Honor, she talked about the
25 fiction with consensual sex and any sex, friction.

1 And she had testified about the tearing away of the
2 skin. Then she talked about friction.

3 THE COURT: It is overruled.

4 MS. BARRY: Thank you.

5 A If there is a fluid there, like blood or any type
6 of discharge, it would make it easier for something
7 to go into the vagina.

8 Q On the flip side of that, if there is an injury and
9 there is fluid in there already, in your expert
10 opinion to a reasonable degree of medical
11 certainty, would you expect to find an injury?

12 A I wouldn't expect to see an injury if there was
13 some type of lubrication there.

14 MS. BARRY: That's all I have.

15 MS. PINNOCK: Very briefly, Your Honor.

16 RE CROSS-EXAMINATION

17 BY MS. PINNOCK:

18 Q Ms. DeBrew, you just mentioned any sort of
19 lubrication would make it less likely to find an
20 injury?

21 A I would think, in my opinion.

22 Q Well, if you are laying on your back and there is
23 lubrication present, it would fall down? Gravity?

24 A Yes, ma'am.

25 Q And I believe you might have just said it is more

1 common to see this type of injury in an assault?

2 Was that your testimony?

3 A I don't know if I said more common, but if you see
4 an assault in a -- I mean, an injury, I'm sorry, in
5 a sexual assault, it is usually in that posterior
6 fourchette area. It can be in other areas too, but
7 we see more injuries in that specific area.

8 Q All right. Isn't it true that that injury can come
9 from consensual sex?

10 A Yes, ma'am.

11 Q If the man is positioned behind the woman, very
12 common injury from the positioning of the bodies,
13 right?

14 A Yes, ma'am.

15 Q That injury can come from duration that it lasts?

16 A Yes, ma'am.

17 Q The size of the male?

18 A Uh-huh.

19 Q So it is not uncommon to find it in cases where
20 there is consent?

21 A Depending on the circumstances. I don't know.

22 Q But can find it?

23 A Yes, ma'am.

24 Q Isn't it true that 94 percent of sexual assault
25 victims have injury in more than one place?

1 A I don't know a certain percentage, but I know most
2 of the patients I take care of a lot of times do
3 have injuries in other places.

4 Q Okay. So 94 percent have it more than one place
5 and 76 percent of those women have it in at least
6 three places, isn't that right?

7 A I don't see -- unless you are talking about like --

8 Q A study by Slaughter? Slater, Slaughter?

9 A I don't think I have read that. Are you talking
10 about an injury like on an arm or just all in the
11 vaginal area?

12 Q Genital injury?

13 A The patients I have taken care of over the years, I
14 don't see that many injuries at one time unless it
15 is an extreme circumstance. Most of the injuries
16 that I see, it is the one, maybe two.

17 Q All right.

18 A But that is just in my own work. I don't --

19 Q Okay. But injury in more than one place --

20 A You could have an injury in more than one place.

21 Q And 94 percent of women who are victims of sexual
22 assault have injury in more than one place?

23 A I didn't read that, but I don't know.

24 Q And MINOR has one injury?

25 A Yes, ma'am.

1 Q Thank you.

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

4 (Witness steps down.)

5 Any objection to this witness being excused?

6 MS. PINNOCK: No, ma'am.

7 (Witness excused.)

8 THE COURT: All right, ladies and gentlemen of
9 the jury, it is my understanding that your lunch is
10 here. We are going to take a break right now. We
11 will take about 30 minutes and give you an
12 opportunity to eat your lunch. And then we'll have
13 you back in the courtroom for more testimony.

14 All right. Thank you.

15 THE BAILIFF: Remain seated until the jury
16 leaves, please.

17 (WHEREUPON, the jury retires to the jury
18 room for a lunch break at 12:45 p.m.)

19 THE COURT: All right, so we will break until
20 about 1:15.

21 And I'm not trying to narrow you down on it,
22 but how many more witnesses do you have?

23 MS. BARRY: We have a bunch of chain
24 witnesses.

25 THE COURT: Yes.

1 MS. BARRY: And the DNA. I didn't count them.

2 THE COURT: Okay.

3 MS. BARRY: Sorry.

4 THE COURT: All right. We'll start back at
5 1:15.

6 MS. BARRY: And our case officer.

7 THE COURT: Yes, okay.

8 MS. PINNOCK: The other bus video, we just
9 need to make sure that is the only thing on there
10 before it goes back.

11 THE COURT: Okay. Y'all just let them take a
12 look at it.

13 MS. BARRY: Okay.

14 (Lunch Recess.)

15 THE COURT: Let's bring them in.

16 THE BAILIFF: The jury is all present, Your
17 Honor.

18 THE COURT: I hope that you had a good lunch.
19 I am going to ask the State to call the next
20 witness.

21 MS. BARRY: The State calls Investigator Rob
22 Martin.

23 (Pause.)

24 MS. BARRY: Would you like us to call another
25 witness?

1 THE COURT: Yes, ma'am.

2 MS. BARRY: The State would call Investigator
3 John Talkish.

4 (Pause.)

5 THE COURT: This is John Talkish?

6 MS. BARRY: No, Rob Martin.

7 THE COURT: All right, this is Investigator
8 Rob Martin.

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

11 (Witness complies.)

12 THE CLERK: Do you swear or affirm the
13 testimony you are about to give in this case will
14 be the truth, the whole truth, and nothing but the
15 truth, so help you God?

16 THE WITNESS: So help me God.

17 THE CLERK: Thank you. Have a seat in the
18 witness stand, and state your full name for the
19 record.

20 THE WITNESS: Investigator Rob Martin.

21 ROB MARTIN,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. VRIESINGA:

25 Q Investigator Martin, where are you currently

1 Mr. Cooper may have.

2 MR. COOPER: I have no questions, Your Honor.

3 THE COURT: Thank you. You may step down.

4 (Witness steps down.)

5 (Pause.)

6 MS. BARRY: If he is not back, we will call
7 Investigator Carter.

8 THE COURT: Who are you waiting on?

9 MS. BARRY: The DNA analyst, John Barron.

10 (Pause.)

11 MS. BARRY: The State calls Investigator
12 Carter.

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

15 (Witness complies.)

16 THE CLERK: Do you swear or affirm the
17 evidence you give in this case will be the truth,
18 the whole truth, and nothing but the truth, so help
19 you God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. Please have a seat in
22 the witness stand, and state your full name for the
23 record.

24 THE WITNESS: I'm Richard Carter.

25 RICHARD CARTER,

RICHARD CARTER -- DIRECT BY MS. BARRY

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1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. BARRY:

4 Q Investigator Carter, where are you employed?

5 A Richland County Sheriff's Department.

6 Q And how long have you been employed at the Richland
7 County Sheriff's Department?

8 A Almost nine years.

9 Q Prior to your employment in Richland County, were
10 you in law enforcement?

11 A I was.

12 Q And where were you in law enforcement?

13 A I originally started in 1996. I worked for
14 Carolina Beach Police Department, Carolina Beach,
15 North Carolina.

16 And after I left there in 2002, I went to work
17 for the Mt. Pleasant Police Department.

18 Q What are your current duties and responsibilities
19 at the Sheriff's Department?

20 A Currently I'm an investigator assigned to the
21 special victims unit. With that I investigate
22 cases that involve sexual abuse of adults,
23 children, physical abuse of children, and cases
24 involving vulnerable adults.

25 Q And in October of 2010, what were your duties and

1 responsibilities?

2 A I was an investigator assigned to the special
3 victims unit and was assigned to investigate this
4 case we're here on today.

5 Q And that is Darius Mack?

6 A Yes, ma'am.

7 Q How did you become involved in this case,
8 Investigator Carter?

9 A Initially, October 14th, 10:00 p.m., Sergeant
10 Faust, who was my sergeant of the special victims
11 unit, had contacted me regarding an incident that
12 occurred earlier that morning.

13 Q So where did you go?

14 A Well, due to the time of day I was already at home.
15 I didn't go anywhere. The next morning, the 15th,
16 I went to Spring Valley High School and met with
17 Deputy Fields.

18 Q So on the 15th you went to Spring Valley. Where is
19 Spring Valley located?

20 A It is located on Sparkleberry Lane. It is
21 Northeast Columbia closer to the Two Notch Road --
22 Two Notch Road, Sparkleberry, where Krogers is, not
23 too far up the road. Specifically it would be 120
24 Sparkleberry.

25 Q 120. What county is that?

1 A It is in Richland County.

2 Q And you met with Investigator -- I mean, Deputy
3 Fields?

4 A I did.

5 Q Were you provided any documents regarding this
6 incident?

7 A I was.

8 Q Is that common for your -- to begin your
9 investigation?

10 A This was a unique case because Deputy Fields had
11 already done some of the work. He had already met
12 with the victim at the school. He had met with a
13 teacher and some other students and had already
14 obtained some statements. He had also already had
15 taken an initiative and actually got some video and
16 some still photographs and actually had a lot of
17 information for me already, which is -- it is not
18 common, so it is kind of a, hey, you already have
19 this ready for me? Great.

20 Q Great. And what did you do then, after you got all
21 the information that Deputy Fields had provided?

22 A After that, I made -- I called Ms. LaShonda Green,
23 which I believe is MINOR mother, and spoke with
24 her. And I explained to her that I needed to meet
25 with MINOR and obtain a statement from her.

1 Q And did you do that?

2 A I did do that.

3 Q On the 15th?

4 A Yes, it was on the 15th.

5 Q And after speaking with MINOR what then did you
6 do?

7 A After I obtained a statement from her, I had -- at
8 that point I had the statements from the witnesses,
9 from the teachers, I had photos, I had her
10 statement, I went and met with the magistrate.

11 Q And did you obtain warrants on Mr. Mack?

12 A I did.

13 Q What day did you do that?

14 A On October 15th, 2010.

15 Q Did you ever have an occasion to meet up with
16 Mr. Mack?

17 A I did.

18 Q And when was that?

19 A On October 20th, 2010.

20 Q When you met with Mr. Mack on October 20th, where
21 did you meet him at?

22 A I met with him at the Richland County Sheriff's
23 Department.

24 Q When you met Mr. Mack at the Sheriff's Department,
25 was he in custody at that time?

1 A He was.

2 Q On the warrants that you obtained?

3 A He was.

4 Q Did you advise him of his Miranda rights?

5 A I did.

6 Q Do you have a certain form that you use?

7 A Yes.

8 Q And do you have that with you?

9 A I do.

10 Q And read for the jury what specific rights you read
11 to the Defendant.

12 A Under the -- there is two sections. The top part
13 it says, Your Rights. On the bottom section it
14 says, Waiver of Rights. And on the top section
15 under, Your Rights:

16 Before we ask you any questions, you must
17 understand your rights.

18 You have the right to remain silent.

19 Anything you say can be used against you in
20 court.

21 You have a right to talk to a lawyer for
22 advice before we ask you any questions and to have
23 a lawyer with you during any questioning.

24 If you cannot afford a lawyer, one will be
25 appointed for you before any questioning, if you

1 wish.

2 If you decide to answer questions now without
3 a lawyer present, you still have the right to stop
4 answering at any time.

5 You also have the right to stop answering at
6 any time until you talk to a lawyer.

7 Q And after each and every question, what do you have
8 the Defendant do?

9 A There is a -- if you will look at the form, there
10 is little boxes on the outside of it.

11 Q Do you want to step down where you can show them?
12 (Witness steps down.)

13 A On the outside area there is boxes. I had him put
14 his initials and then sign.

15 Q And that -- and who actually signs the bottom part?

16 A He does. He signs it. That is his signature
17 there. And then my signature.

18 MS. BARRY: And, Your Honor, at this time we
19 would offer this into evidence.

20 THE COURT: Any objection?

21 MR. COOPER: Let me look it over real quick.

22 THE COURT: Okay.

23 (Pause.)

24 MR. COOPER: No objection.

25 THE COURT: All right. That will be entered

RICHARD CARTER -- DIRECT BY MS. BARRY

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1 in evidence as State's 15.

2 (WHEREUPON, State's Exhibit No. 15 was
3 marked for identification and received
4 into evidence.)

5 BY MS. BARRY:

6 Q Can you read the last portion of the last
7 paragraph?

8 A In the Waiver of Rights?

9 Q Yes.

10 A It says:

11 I have read the statement of rights and
12 understand what my rights are. I am willing to
13 talk and answer questions. I understand and know
14 what I am doing. No promises have been made to me.
15 No pressure or coercion of any kind have been used
16 against me.

17 Q Did the Defendant appear to be under the influence
18 of alcohol or drugs?

19 A No.

20 Q Did you use any threats?

21 A No.

22 Q Did you coerce the Defendant to make any statements
23 to you?

24 A No.

25 Q Did you offer him any promises of leniency for him

1 to talk to you?

2 A No.

3 Q Did he appear to understand these rights?

4 A Yes.

5 Q Did he respond to your questions when he read the
6 rights?

7 A Yes.

8 Q Could he read and write?

9 A He didn't indicate he couldn't read, but he wrote
10 his name and didn't indicate otherwise.

11 Q And did he agree to talk to you?

12 A He did.

13 Q What -- when you began talking to Mr. Mack, what
14 did you tell him?

15 A After we completed the rights advisement form, I
16 actually told Mr. Mack, I said, you do not have to
17 talk to me if you don't want to.

18 He told me he understood.

19 I explained the rights waiver and told
20 Mr. Mack that if he wanted to talk to me it was
21 because he was doing it voluntarily and no one was
22 making him talk and no one was forcing him to do
23 anything he didn't want to do.

24 He told me he understood and he wanted to talk
25 to me.

1 I first explained to Mr. Mack that I knew that
2 he and MINOR had a child in common and the two
3 of them had been in a relationship in the past.

4 I then explained to Mr. Mack that the school
5 bus surveillance video, the school surveillance
6 video showed him getting on the bus and riding it
7 to school. And the school video, surveillance
8 video shows him following MINOR throughout the
9 school.

10 I had told Mr. Mack that I had obtained
11 statements from several students and a teacher.
12 And I asked Mr. Mack why he went to the school bus
13 stop.

14 And Mr. Mack told me that he and MINOR could
15 not have sex anymore at her mother's house and she
16 told him to meet her at the bus stop and go to
17 school with her.

18 Mr. Mack admitted that he did get on the
19 school bus and ride the bus to school. He admitted
20 he knew he was not supposed to be on the bus or at
21 the school.

22 I had asked Mr. Mack to tell me what happened
23 when MINOR exited the main building walking
24 into the Fine Arts Building.

25 Mr. Mack told me that MINOR took off her --

1 took her own pants off and he didn't rape her.

2 At that point I explained to Mr. Mack that
3 MINOR had scratches on her chest and there were
4 injuries present in her vagina.

5 MR. COOPER: Objection.

6 THE COURT: What is the objection?

7 MR. COOPER: May we approach the bench a
8 second?

9 (WHEREUPON, a bench conference was held
10 in the presence of the jury but out of
11 the hearing of the jury.)

12 THE COURT: Sustained.

13 MS. BARRY: Thank you, Your Honor.

14 BY MS. BARRY:

15 Q Once you finished telling Mr. Mack the allegations
16 against him, what did he tell you?

17 A He stated he stuck it in her.

18 Mr. Mack then told me that this was a family
19 matter because her family doesn't like him and they
20 were trying to say he did something to her.

21 I then asked Mr. Mack what did he tell the
22 teacher that came up to them.

23 Mr. Mack said when the teacher came up to them
24 he told the teacher he was her brother.

25 I then asked Mr. Mack why he told the teacher

1 this if the sexual intercourse was consensual.

2 Mr. Mack told me he knew he wasn't supposed to
3 be at the school.

4 And then he stated MINOR was just upset
5 because they got caught.

6 Q And after you got that statement from him, did you
7 obtain any evidence in this case?

8 A I did. I had obtained a search warrant for the
9 collection of Mr. Mack's DNA.

10 Q Pursuant to a lawfully obtained --

11 MR. COOPER: Objection. May we approach the
12 bench, Your Honor?

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

16 THE COURT: All right, please rephrase the
17 question.

18 BY MS. BARRY:

19 Q The statement that you obtained from Mr. Mack was
20 freely and voluntarily given?

21 A Yes.

22 Q And you made no threats, no promises or coercion?

23 A No, I didn't.

24 Q Mr. Mack spoke with you freely?

25 A He did.

1 MS. BARRY: Thank you. That's all I have.

2 THE COURT: All right. Please answer any
3 questions the Defense has.

4 MR. COOPER: Thank you, Your Honor. May it
5 please the Court?

6 CROSS-EXAMINATION

7 BY MR. COOPER:

8 Q Good afternoon, Investigator Carter.

9 A Good afternoon.

10 Q You -- I think you told Ms. Barry that you were
11 designated the lead investigator on this case, is
12 that right?

13 A That's correct.

14 Q And in the parlance of the Sheriff's Department
15 that means that you are basically in charge of the
16 investigation, is that right?

17 A Correct.

18 Q So you are the head guy on the investigation,
19 correct?

20 A Correct.

21 Q Other people involved in the investigation -- you
22 know, I hesitate to call them subordinates, but, I
23 mean, people with other rank in the investigation
24 who do other jobs ultimately report to you, right?

25 A They don't like directly report to me, but a case

1 such as this --

2 Q Uh-huh.

3 A -- there is many different people that will
4 probably do different tasks and different jobs, and
5 it doesn't mean I'm directing them as a true
6 subordinate as me being a sergeant to a corporal,
7 from a corporal down to a line unit.

8 Q Well, they look to you as the lead investigator in
9 this case, right?

10 A Right. It is my case.

11 Q Yes, sir. Okay. And you testified that when you
12 were assigned this case, a lot of the work had
13 already been done by Deputy Fields, who we have
14 heard from, right?

15 A Correct.

16 Q Right. And part of your job, even though that was
17 the case, a lot of the work had been done and
18 people had been talked to, as the lead investigator
19 you wanted to go and review what had been gathered,
20 right?

21 A Correct.

22 Q And you did that, right?

23 A I did.

24 Q And you became familiar with the statements that
25 were taken by Fields, correct?

1 A Yes.

2 Q And you became familiar with the video evidence
3 that was taken by Fields, right?

4 A Yes.

5 Q Okay. So you knew then, after becoming familiar
6 with those materials, and you know now basically
7 what was on the video and what was in the
8 statements, right?

9 A Correct.

10 Q And so during your investigation, during your
11 review of the videos, you learned that this alleged
12 incident took place in the morning of October 14th,
13 right?

14 A Correct.

15 Q And that it took place at Spring Valley High
16 School?

17 A Correct.

18 Q Right. And you learned from your review of the
19 video and talking to and reviewing the statements
20 that it took place before right around the time
21 classes started that morning, right?

22 A Correct.

23 Q And from your review of the video you could see
24 multiple students in the hallway of the school,
25 right?

1 A Correct.

2 Q You could see multiple students in the locker area
3 that we have become so familiar with, right?

4 A Right.

5 Q And upon your review of the video that the jury has
6 already seen, you can see students walking up and
7 down the hallway towards the Fine Arts Building,
8 correct?

9 A Correct.

10 Q Okay. Now, you, like you just testified, you later
11 went and took statements from several people,
12 right?

13 A Yes.

14 Q Okay. This was a couple of days later, right?

15 A Well, from ^{MINOR} it was the day after.

16 Q All right.

17 A And from Mr. Mack it was five -- five or six days
18 later.

19 Q Okay. But you took -- you took statements from
20 several of the people yourself, but Mr. -- Officer
21 Fields had taken the initial statements, right?

22 A Correct.

23 Q All right. The day -- on October 14th, right?
24 That's when you learned that he took the
25 statements, correct?

1 A Correct.

2 Q Okay. Now, you spoke to -- you just testified
3 Mr. Mack told you he didn't rape her, right?

4 A That's what he said.

5 Q You just testified Mr. Mack told you MINOR was
6 just upset because we got caught, right?

7 A Correct.

8 Q And he told you that back in 2010, right?

9 A Yes.

10 Q All right.

11 MR. COOPER: Beg the Court's indulgence one
12 moment.

13 (Pause.)

14 MR. COOPER: Nothing further from the witness,
15 Your Honor.

16 THE COURT: Anything further from the State?

17 MS. BARRY: No, ma'am.

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

19 (Witness steps down.)

20 MS. BARRY: The State calls John Barron.

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

23 (Witness complies.)

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

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

3 THE WITNESS: I do.

4 THE CLERK: Thank you. Please have a seat in
5 the witness stand, and state your full name for the
6 record.

7 THE WITNESS: My name is John Barron.
8 B-A-R-R-O-N.

9 JOHN BARRON,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. BARRY:

13 Q Mr. Barron, where are you currently employed?

14 A Richland County Sheriff's Department.

15 Q And how long have you been at the Richland County
16 Sheriff's Department?

17 A Eight years.

18 Q Where did you work prior to employment at Richland
19 County?

20 A South Carolina Law Enforcement Division, otherwise
21 known as SLED.

22 Q And how many years were you at SLED?

23 A Too many to count. Let's see. Since 1975. And
24 then in Richland County starting in 2004.

25 Q And what are your current duties and

1 responsibilities at Richland County?

2 A At Richland County? In 2004 I came over from SLED
3 to help set up the DNA laboratory at Richland
4 County.

5 Since that time I have been, you know, working
6 in the DNA lab in the forensic science division at
7 Richland County and doing DNA analysis and
8 testifying in court.

9 Q At SLED, what were your duties and
10 responsibilities?

11 A Well, at SLED I was there a number of years. As I
12 said, I started prior to the admin of DNA analysis.
13 I did do forensic serology, which is the
14 identification of blood -- body fluid, such as
15 blood, semen, saliva, and that type of thing.

16 Prior to DNA analysis, we did regular A-B-O
17 blood grouping, forensic enzyme testing, which is a
18 way to differentiate blood, but it was not as
19 specific as DNA.

20 But in 2000 -- no, 1999, I moved into the DNA
21 laboratory from the trace evidence laboratory,
22 where I did other types of analyses. And since
23 then I have been doing -- strictly involved with
24 DNA.

25 Q From '99 to 2012?

1 A Correct.

2 Q Can you estimate approximately how many DNA
3 analyses you have done?

4 A Oh, I have done a few thousand of them. And I have
5 testified about 40 times.

6 Q Can you give us your educational background?

7 A Yes. I have a bachelor of science degree in
8 microbiology from Clemson University.

9 I also attended several graduate level courses
10 at University of South Carolina in relation to DNA
11 analysis, electrobiology and statistics.

12 I was trained by a qualified DNA analyst at
13 SLED. I performed competency tests and determined
14 whether or not I'm able to do the tests. Did mock
15 trials, that type of thing.

16 And since then we do proficiency tests twice a
17 year to determine our proficiency in DNA analysis.

18 And I have been qualified previously about 40
19 times as a DNA analyst in the courts of South
20 Carolina.

21 Q Every time that you have been offered as an expert,
22 have you been found to be an expert in DNA?

23 A Yes.

24 MS. BARRY: Your Honor, at this time we would
25 offer Mr. Barron as an expert in the field of DNA

1 analysis.

2 THE COURT: Any voir dire?

3 MR. COOPER: No, Your Honor. And I don't
4 object to it.

5 THE COURT: Ladies and gentlemen of the jury,
6 Officer Barron will be admitted as an expert in DNA
7 evidence?

8 MS. BARRY: Analysis.

9 THE COURT: Analysis.

10 Yes, ma'am, you may continue.

11 BY MS. BARRY:

12 Q Currently -- well, back up to 2004 -- I mean --
13 2004 you began -- you started the lab at Richland
14 County Sheriff's Department?

15 A Yes. Myself and Dr. Gray Amick from SLED were both
16 working the DNA lab at SLED and we were recruited
17 by the Richland County Sheriff's Department to set
18 up their DNA laboratory.

19 Q And when did you start taking cases?

20 A At Richland County? It took us about seven months
21 to get the laboratory built and get it equipped and
22 get all the instruments up to date and validated.
23 So it was probably in 2005 before we actually got
24 it started. Probably about January.

25 Q And why is that important for the equipment to be

1 validated?

2 A The equipment has to be validated in the laboratory
3 in which it is used. It is just a certain protocol
4 you go through to make sure the instruments are
5 working properly, that you are getting the results
6 that you expect. So we run known samples to make
7 sure that it is precise and it is reproducible and
8 that it will give us quality answers, it will give
9 us the profiles we are looking for.

10 So we put known profiles in, and if that is
11 what we get out then we -- time after time after
12 time we run it through a whole series.
13 Reproducible tests to make sure it is working
14 properly.

15 Q Can you tell us what -- what is DNA?

16 A Well, DNA is a molecule that is in every cell,
17 nucleated cell in your body. It is what defines
18 who you are, not only as human beings, but you
19 individually.

20 Most of your DNA does -- is pretty generic to
21 all of us as human beings, but about one percent of
22 it is specific to you. And that is the area of the
23 DNA molecule that we are targeting. We are
24 determining human identification.

25 And since it is in every nucleated cell in the

1 body, which is most every cell, most cells in your
2 body, then it can be used for identification.

3 And since it is unique to you, unless you have
4 an identical twin, then it is an individualized
5 test.

6 So if you leave your blood or your saliva or
7 your semen in the case of a sexual assault case,
8 then it can be identified as being your DNA.

9 Q In your laboratory, how was the chain of custody
10 maintained?

11 A The chain of custody is maintained through our
12 evidence control department. They receive evidence
13 down there. It has to be properly sealed in a
14 container. If it is in a box, it has to be taped
15 and evidence tape put on it, initialed, dated, that
16 type of thing.

17 From there, either myself or our evidence
18 technician goes down there to the evidence room and
19 logs it out, insures that the seals are maintained,
20 and then brought to our laboratory.

21 Our laboratory is a sealed environment. There
22 is only a very few people who can get in there, the
23 analyst and some of the administrators, like the
24 laboratory director, the safety officer, that type
25 of thing can get in.

1 Inside our laboratory, the evidence is kept,
2 and we have lockers inside of there that can be
3 secured after hours. So when they are opened, we
4 are actually working on that specific case. We
5 only work on one case at a time so there is no
6 cross-contamination with other cases.

7 And then once it is done, then we seal it back
8 and return it to the evidence room until it is time
9 to either go to court or it is destroyed.

10 Q And specifically in this case -- well, in any case,
11 if you received evidence that has been -- there is
12 a seal open or it has been tampered in any way,
13 what, if anything, would you do?

14 A Well, I haven't run across that yet, but
15 procedurally what we would do is we would try to
16 track down the source of why it had been opened, if
17 it can be justified in any way, so that the chain
18 of custody is maintained. Then we will go forward.
19 But, if not, then the evidence is going to be
20 disregarded.

21 Q But specifically in this case, State versus Darius
22 Mack, did you receive evidence in this case?

23 A I did.

24 Q And when you received that evidence, had it been
25 altered or tampered with in any way?

1 A No, it was not.

2 Q And you received the evidence from her rape kit?

3 A Yes, I received what is called a criminal sexual
4 assault kit. It is a box that is -- it contains
5 all the envelopes and swabs and slides that are
6 necessary. They are supplied by the State Law
7 Enforcement Division to hospitals throughout South
8 Carolina. And this is a standard kit that is used
9 everywhere in South Carolina. And contained inside
10 the kit, as I said, are all the necessary
11 ingredients to collect the samples. And once the
12 samples are collected, the kit is then sealed with
13 evidence tape and the chain of custody is
14 maintained as it goes from the hospital, picked up
15 by one of our detectives or officers, and brought
16 to the evidence room at Richland County.

17 Q And specifically on your -- referring to your
18 report, did you receive vaginal slides?

19 A Yes. Within the sexual assault kit box is slides.
20 And based upon the victim's testimony and various
21 types of slides that we collected, one of them
22 would be vaginal, and of course there is other
23 possibilities there as well, but vaginal slides and
24 vaginal swabs would be in the case of a vaginal
25 assault would be collected.

1 Q Did you test that?

2 A Yes, I did.

3 Q And what is the purpose of testing that?

4 A The purpose of looking at the slide is to look
5 under a microscope to identify spermatozoa, which
6 would be a positive confirmation of semen present
7 in the vaginal area. And the vaginal swab is
8 collected to test for seminal fluid, which in doing
9 so would test the various proteins that are
10 specific for human semen. And then that swab is
11 then photo-tested for DNA to determine the DNA
12 profile of the semen donor.

13 Q Specifically with this particular case, were you
14 able to ascertain whether there was spermatozoa
15 present?

16 A I did. The slide was positive for spermatozoa.

17 Q Were you able to develop a profile from MINOR
18 so that you had her DNA, her specific DNA?

19 A Yes. In the vaginal swab it would contain vaginal
20 cells as well. So we perform an extraction that
21 enables us to separate the vaginal cell female DNA
22 from the sperm cell male DNA. And so both DNA
23 profiles would be present.

24 Q And how is it you can separate a man from a woman?

25 A Well, what contributes the female DNA is the

1 vaginal cells. There are numerous amounts of
2 vaginal epithelial cells in the vaginal area. That
3 would contain her DNA. The male DNA is contained
4 in the spermatozoa, which is a totally different
5 cell. So it is done in the laboratory based upon
6 the fact that the cell wall that contains the DNA
7 in the female is much weaker than the cell wall
8 that is contained around the spermatozoa. So we
9 can use very much weaker chemicals to extract the
10 DNA from the female and then we wash it and clean
11 it and *the sperm cells. And then we go in a much
12 stronger chemical that will then penetrate the cell
13 wall and free the DNA from the spermatozoa.

14 Q So that is how you tell a difference?

15 A That is how we separate it.

16 Q Separate it.

17 A And then we can tell the difference because when
18 you develop the profile, we are also looking at the
19 X and Y chromosomes. So a female has only the X
20 chromosome; whereas, as the male has X and Y.

21 Q So you found both? On her vaginal swab she had her
22 cells?

23 A Yes, that is expected.

24 Q And then sperm cells?

25 A Right.

1 Q And did you compare that to the profile developed
2 from Darius Mack?

3 A I did.

4 Q And what was your result when you compared the
5 spermatozoa from the vaginal swab of MINOR
6 to the profile of Darius Mack?

7 MR. COOPER: Objection. May we approach the
8 bench?

9 (WHEREUPON, a bench conference was held
10 in the presence of the jury but out of
11 the hearing of the jury.)

12 BY MS. BARRY:

13 Q Now, the rape kit you received and the swabs you
14 analyzed, who did you get that from?

15 A I got it from Christine Barrickman.

16 Q Who is she?

17 A She's my technician in the laboratory.

18 Q And from that you compared the two?

19 A Yes.

20 Q And when you compare the two, how does that work?
21 Can you tell us simply?

22 A Sure. A DNA profile ultimately ends up as a series
23 of numbers. And those series of numbers will be
24 unique to you. So each locus that is developed --
25 a DNA term -- but, anyway, each location in the DNA

1 molecule you will have a contribution from mom and
2 you will have a contribution from dad. Each of
3 those contributions has a certain size that is
4 arbitrarily given a number based upon how big it
5 is, so one being small, 20 being larger. So based
6 upon the size that is developed, then that profile
7 is given a number. And each location has a series
8 of numbers. And so, depending upon your mom and
9 your dad, you will get a different number from each
10 one, and that series of numbers then constitutes
11 your profile.

12 That profile then can be housed in any
13 computer database. And any time a piece of
14 evidence is developed, then that profile is entered
15 into the database and compared instantaneously.

16 Also, we have a printout of what is called an
17 electropherogram. This is a copy of one I hold in
18 my hand that you can actually look at the printout
19 of the evidence, you can look at a printout of the
20 suspect in the case, and you can look at the
21 numbers visually and see if they are the same,
22 knowing that they are the same profile.

23 Q And in this case, when you compared the two
24 together or against each other --

25 A Yes. They are identical, so meaning that the DNA

1 is the same. And since DNA is unique to you,
2 unless you have an identical twin, then that DNA is
3 your DNA.

4 Q And what were your -- what is your conclusion as
5 far as the semen from the vaginal swab?

6 A My conclusion is that it is the DNA of Darius Mack.

7 Q And what are the odds of it being another
8 individual?

9 A One way to express that certainty is with
10 statistics. And each of these series of numbers
11 has a frequency, a known frequency in the
12 population. So by calculating that, you can
13 determine how rare or how frequent this profile
14 would be in the population.

15 This profile would only occur once every, in
16 the black population, 630 quadrillion times. In
17 other words, it is 630 times more likely that this
18 DNA belongs to Darius Mack than from any random
19 individual. In this case it would have to be a
20 male since we are dealing with semen.

21 So with those kinds of statistics behind it,
22 it is statistically a unique profile because there
23 is only 7 billion people on the Planet Earth, and
24 approximately 49, 50 percent of those are males.
25 So you can cut that in half. So that is about,

1 according to my calculation, about 630 --
2 63 million times more worlds out there with our
3 population that it would take to statistically find
4 another profile like this.

5 So it is unique within reasonable scientific
6 certainty that DNA belongs to Darius Mack.

7 Q And in your expert opinion, whose DNA is that?

8 A That is Darius Mack's DNA.

9 Q On the vaginal swab?

10 A That is correct.

11 Q Now, the profile developed from semen on the
12 suspected bodily fluid swab --

13 A Yes. In the sexual assault kit is an additional
14 swab that can be used by the nurse doing the
15 examination to swab what is called suspected semen.
16 They use what we call a -- or what you would refer
17 to as a black light. Certain wave length that
18 allows semen to fluoresce.

19 So what is common to do is use this light to
20 see if there is any fluorescent material on the
21 body, and that would be swabbed and put into the
22 kit as a suspected semen swab.

23 So it has to be confirmed by our laboratory
24 that it is indeed semen because there are other
25 materials out there that would fluoresce. Certain

1 oils or whatever you may have on your body may
2 fluoresce.

3 So this suspected semen swab was also
4 analyzed, and the semen -- it was confirmed to be
5 semen on the swab. And that swab was also
6 subjected to DNA analysis. And it also returned
7 the DNA profile of Darius Mack.

8 Q So DNA, once you have DNA, once you have identified
9 the markers, do they ever change?

10 A No.

11 Q Over time do they ever change?

12 A They do not change because your DNA defines who you
13 are and your DNA is going to make more DNA look
14 like this.

15 Q And any doubt in your mind?

16 A No.

17 Q Whose DNA was on the vaginal swab?

18 A No doubt.

19 Q And whose was it?

20 A Darius Mack.

21 MS. BARRY: That's all I have.

22 THE COURT: Please answer any questions that
23 Mr. Cooper may have.

24 MR. COOPER: I have no questions, Your Honor.

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

1 (Witness steps down.)

2 THE COURT: Call your next witness.

3 MS. BARRY: Your Honor, at this time the State
4 rests.

5 THE COURT: All right. Ladies and gentlemen
6 of the jury, the State has rested in this case. I
7 am going to send you all back in the jury room and
8 we'll have further instructions shortly. There are
9 some matters of law I need to take up outside of
10 your presence.

11 Thank you.

12 (WHEREUPON, the jury retires to the jury
13 room at 2:32 p.m.)

14 THE COURT: I guess time-wise I can hear
15 motions and I can probably go ahead and advise
16 Mr. Mack of his rights.

17 Do you all have -- I'm just trying to decide
18 what time we have to come back in the morning. Do
19 you all have proposed charges?

20 MS. BARRY: Not right now.

21 MR. COOPER: I don't have anything additional
22 right now.

23 MS. PINNOCK: We can have it ready first thing
24 in the morning. I can e-mail it to Aaron first
25 thing.

1 THE COURT: I'm thinking if we start at 9:00
2 we can have the jurors here -- Aaron has already
3 put together a charge. I can have him send that to
4 you all. And then that will be a start. And if
5 there is any objection to anything that he included
6 in there, he has already put -- and he -- I haven't
7 even looked at it, but he just put together a
8 charge, as he normally does.

9 I can have them back, I'm thinking
10 10:00 o'clock in the morning. Maybe have the
11 jurors come in at 10:00. That will give us an hour
12 in the morning to go over the charges and get
13 everything together. But I will hear motions this
14 afternoon and then advise him of his rights and he
15 can let us know in the morning what he wants.

16 MR. COOPER: Yes, ma'am.

17 THE COURT: But I was just trying to figure
18 out the best way to do it where we won't waste time
19 and have them sitting back in the jury room. I'm
20 thinking 9:30, 10:00. I will tell them to be back
21 at 9:30, and we will start at 9:00.

22 All right, you can bring them back in.

23 (WHEREUPON, the jury came into open
24 court at approximately 2:35 p.m.)

25 THE BAILIFF: The jurors are all present, Your

1 Honor.

2 THE COURT: All right. Ladies and gentlemen
3 of the jury, we're just trying to figure out the
4 rest of the afternoon. And there are some matters
5 of law that I need to take up with the lawyers.

6 And as I explained to you all earlier, you
7 would be leaving a little earlier this afternoon,
8 but we are going to start back at 9:30 in the
9 morning. I am going to go ahead and release you
10 all so you won't have to sit back there in the jury
11 room. So we'll start back at 9:30 in the morning.

12 Remember, you can't discuss the case with
13 anyone, not even your family members, your spouses,
14 significant others. I'm sure they will be asking
15 you, what in the world are you doing down there at
16 the Richland County courthouse. You can tell them
17 you will tell them all about it over the weekend
18 this weekend.

19 But I am going to go ahead and release you all
20 for the afternoon. And, remember, no research, no
21 social networking regarding the case.

22 All right. Thank you. Have a great
23 afternoon.

24 (WHEREUPON, the jury retires for the day
25 at 2:37 p.m.)

1 THE COURT: All right, any motions?

2 MS. PINNOCK: Yes, ma'am, Your Honor.

3 At this time, the Defense first renews all our
4 pretrial motions, especially the renewal of the
5 Rule 5 motion that we had, Brady and Riddle. We
6 renew those at the time, specifically now that we
7 are made aware of it with DNA. We would renew that
8 objection. We renew our objection to suppress the
9 DNA that was addressed earlier. And every other
10 motion that we made pretrial during the course of
11 the State's case in chief.

12 And, Your Honor, we also move at this time for
13 a directed verdict on the charge of criminal sexual
14 conduct in the first degree because I don't believe
15 that the State at this point has provided
16 sufficient evidence to allow this case to go to the
17 jury.

18 Your Honor, criminal sexual conduct first
19 degree under Section B, as Ms. Barry said she was
20 going forward on, says that: A person is guilty of
21 criminal sexual conduct in the first degree if he
22 engages in sexual battery with the victim and if
23 one or more of following circumstances are proven.

24 And Subsection B says that: The victim
25 submits to the battery by the actor under

1 circumstances where the victim is also the victim
2 of a forcible confinement, kidnapping, trafficking,
3 robbery, extortion, burglary, housebreaking, or any
4 other similar offense or act.

5 Your Honor, the testimony from MINOR is
6 what is referenced those elements of the statute.
7 And the way it is written, forcible confinement and
8 kidnapping -- that is what I assume the State is
9 trying to pursue for that, for Section B -- it is
10 not as simple as saying that, I was forced to have
11 sex. The legislature clearly intended there to be
12 a different degree of force and confinement
13 associated with criminal sexual conduct in the
14 first degree because, if not, we wouldn't have the
15 different tiers. We wouldn't have first degree,
16 second degree, and third degree.

17 I don't believe there is actual testimony
18 supporting that MINOR submitted to the sexual
19 act under the -- while being a victim of any higher
20 level of forcible confinement.

21 Sex, in and of itself, any forcible sex can be
22 considered as being forcibly confined, but I don't
23 believe it raises to the level to get past the
24 initial, you are being confined to the forcible
25 confinement based on the best evidence that we just

1 submitted to this point, Your Honor.

2 But even viewing the evidence in the light
3 most favorable to the State, I don't believe that
4 they have provided even substantial circumstantial
5 evidence that that element of the offense has been
6 met.

7 So we would ask for a directed verdict at this
8 time.

9 THE COURT: Yes, ma'am?

10 MS. BARRY: She said in the light most
11 favorable to the State, sex itself is forcible
12 confinement. However, in this case there is more
13 than that. She is jacked up against the wall. Her
14 pants are ripped down. She is not free to leave.
15 He is holding her. He pushes her on the ground,
16 gets on top of her, and she is not free to leave.

17 This is an area that is secluded from the
18 other parts of the school. I believe several
19 witnesses testified that although it is outside, it
20 is a big concrete wall. There is no roof, but
21 there is a door opening it. She was not free to
22 leave. And she did testify to that on cross, that
23 he got on top of her and had sex with her. She did
24 not want to. She is saying no, no, get off of me.
25 That is forcible confinement.

1 MS. PINNOCK: Your Honor, I would just say
2 again, if that is all that was required for CSC
3 first degree, then every allegation of any sexual
4 assault would be considered criminal sexual conduct
5 in the first degree. It is a higher level of force
6 and confinement that was considered by the
7 legislature when they broke it up into first
8 degree, second degree, and third degree. Every
9 non-consensual sexual encounter somebody is going
10 to say that I was forced to do this.

11 It is not the actual act of sexual
12 intercourse. It got raised to a higher level of
13 confinement, not just being held down while
14 somebody has sex with you. That is not the meaning
15 of forcible confinement within the statute for the
16 first degree.

17 I don't want to keep repeating myself, but it
18 brings us to another level. I don't think that
19 there is any evidence that has been presented at
20 this point that would show that there was that
21 elevated level of forcible confinement. If that
22 was all that was needed, being held down somewhere
23 while somebody allegedly forces themselves on you to
24 have intercourse, we wouldn't have a different
25 tiers.

1 I don't believe they presented any evidence
2 that would raise it to the level of CSC first.
3 They have not presented evidence on an essential
4 element of that charge.

5 So, again, Your Honor, we would ask for a
6 directed verdict in this matter.

7 THE COURT: All right. As to -- and I know
8 you have renewed your motion, but as to your motion
9 regarding Rule 5 and motion to suppress, I will
10 find that there is not a violation of Rule 5. The
11 document in question was turned over in December of
12 2010, and that document clearly referenced the 2008
13 case number in which a swab was taken.

14 All witnesses that were -- who have testified
15 in the State's case in chief were listed as
16 witnesses with the exception of Investigator Rob
17 Martin, who was a chain witness.

18 And based on the case law that I have
19 researched, the witness, the chain witness, the
20 evidence, the issue goes to the issue of weight and
21 not evidence of admissibility, and so therefore I
22 am going to respectfully deny that motion again.
23 Well, I understand you are renewing it.

24 And then in viewing the evidence in the light
25 most favorable to the non-moving party, I believe

1 that there has been evidence that presents a
2 genuine issue of fact for the jury to decide. I am
3 going to respectfully deny your motion for directed
4 verdict.

5 All right, thank you.

6 All right, I am going to have Mr. Mack please
7 stand.

8 (Defendant stands.)

9 THE COURT: Please place him under oath.

10 THE CLERK: Please raise your right hand.

11 (Defendant complies.)

12 THE CLERK: Do you swear or affirm to tell the
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. Mr. Mack, at this time
17 I am going to explain to you certain rights that
18 you have under our constitution.

19 If you do not understand anything that I say,
20 please let me know. If you want me to explain
21 anything in more detail, please let me know. If
22 you do not understand, please let me know.

23 We have now reached the stage in the trial
24 where you may present your defense. You have the
25 right to claim the protections given to you by the

1 and gentlemen. As you heard yesterday, the State
2 rested its case. And at this time the Defense has
3 called their first witness, who is the Defendant,
4 and he is already seated on the stand.

5 I am going to have him raise his right hand.
6 You can just -- there you go.

7 (Defendant complies.)

8 THE COURT: Do swear or affirm to tell the
9 truth, the whole truth, so help you God?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: All right. And so we'll begin
12 with him.

13 Yes, sir?

14 MR. COOPER: Yes, ma'am. May it please the
15 Court? The Defense calls Darius Mack to the stand.

16 THE COURT: Yes, sir.

17 DARIUS DOMONIC MACK,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. COOPER:

21 Q Good morning, Darius.

22 A Good morning.

23 Q Can you please tell the jury your full name and
24 age?

25 A Darius Domonic Mack. And I'm 19 years old.

- 1 Q Nineteen years old. Okay. Be sure to speak up a
2 little bit so they can hear you, okay?
- 3 A All right.
- 4 Q All right. Now, Darius, where are you from?
- 5 A Columbia, South Carolina.
- 6 Q Have you lived here your whole life?
- 7 A Yes.
- 8 Q Do you have family here?
- 9 A Yes.
- 10 Q Okay. Where did you go to high school?
- 11 A Ridgeview High School.
- 12 Q Here in Columbia?
- 13 A Yes, sir.
- 14 Q Okay. Have you had jobs before?
- 15 A Yes, sir.
- 16 Q What kind of jobs have you had?
- 17 A Sonic.
- 18 Q Sonic restaurant?
- 19 A Yes, sir.
- 20 Q Now, Darius, were you convicted of a burglary
21 before?
- 22 A Yes, sir.
- 23 Q All right. You pleaded guilty to that?
- 24 A Yes, sir.
- 25 Q Okay. Darius, I want to talk about how you met

1 MINOR Do you know MINOR
2
3 A Yes, sir.
4 Q Okay. Do you see her here in the courtroom?
5 A Yes, sir.
6 Q All right. How did y'all meet?
7 A Through my mom. We had came over there one day to
8 my mom's and met her uncle. And she was like in
9 the back yard and on the trampoline with her little
10 brother and sister.
11 Q Okay. Did y'all start talking?
12 A Nah.
13 Q When did y'all start talking?
14 A About four years ago.
15 Q All right. How old were you when you started
16 talking to her?
17 A Sixteen.
18 Q All right. And did you and MINOR eventually
19 start dating each other?
20 A Yes, sir.
21 Q All right. And so y'all basically became boyfriend
22 and girlfriend, right?
23 A Yes, sir.
24 Q Now, Darius, when y'all were dating, did y'all
25 begin to have a sexual relationship?

1 A Eventually, yes, sir.

2 Q Okay. And eventually did you find out that MINOR
3 became pregnant?

4 A Yes, sir.

5 Q All right. How did you find out?

6 A I told my grandma and my grandma told my mama and
7 my mama called her mama.

8 Q And do you indeed -- do you have a child with
9 MINOR

10 A Yes, sir.

11 Q What is his name?

12 A Jaquan G.

13 Q How old is he?

14 A Two.

15 Q Okay. Now, Darius, I want to take you back to 2010
16 because you have been sitting in here and hearing a
17 lot about October of 2010, so we're going to talk
18 to the jury about that time, okay?

19 A All right.

20 Q In October of 2010, were you and MINOR still
21 hanging out?

22 A Yes, sir.

23 Q Okay. Were you still having sex?

24 A Yes, sir.

25 Q Were there occasions when MINOR would

1 call you on the phone?

2 A Yes, sir.

3 Q Would y'all talk?

4 A Yes, sir.

5 Q Were there occasions where y'all would meet up?

6 A Yes, sir.

7 Q All right. Did y'all ever meet up at her bus stop?

8 A Yes, sir.

9 Q Now, specifically I want to talk to you about
10 October 14th, the day that we have all heard so
11 much about. Why did you go to the bus stop that
12 day?

13 A Because she called me.

14 THE COURT REPORTER: I'm sorry?

15 A Oh, because she called me.

16 Q Did she ask you to go?

17 A Yes, sir.

18 Q Did you indeed go to the bus stop and meet MINOR

19 A Yes, sir.

20 Q When you got to the bus stop, did she tell you to
21 leave?

22 A No, sir.

23 Q Did she act afraid?

24 A No, sir.

25 Q Did she tell you to get away from her?

- 1 A No, sir.
- 2 Q From your observations, knowing MINOR being her
3 boyfriend, did she seem happy to see you?
- 4 A Yes, sir.
- 5 Q Did you talk to her?
- 6 A Yes, sir.
- 7 Q Did she ever push you away?
- 8 A No, sir.
- 9 Q All right. Now, when the bus came, did you get on
10 the school bus?
- 11 A Yes, sir.
- 12 Q Now, Darius, were you supposed to be on that school
13 bus?
- 14 A No, sir.
- 15 Q Why did you get on?
- 16 A Because she told me to.
- 17 Q Did you want to hang out with her?
- 18 A Yes, sir.
- 19 Q Did she seem like she wanted to hang out with you?
- 20 A Yes, sir.
- 21 Q Is that why you got on the bus?
- 22 A Yes, sir.
- 23 Q Now, during the bus ride -- you were in here when
24 you saw the video of that bus ride?
- 25 A Yes, sir.

1 Q And you heard MINOR testify?

2 A Yes, sir.

3 Q During the bus ride, did MINOR tell you, get away
4 from me?

5 A No, sir.

6 Q Did she tell you, get off me?

7 A No, sir.

8 Q Did she start kicking you?

9 A No, sir.

10 Q Did she scream out?

11 A No, sir.

12 Q Were y'all talking on the bus?

13 A Yes, sir.

14 Q From knowing MINOR and from your observations of
15 her, was she acting like she was glad you were
16 there?

17 A Yes, sir.

18 Q All right. Now, when the bus gets to the school,
19 Spring Valley High School, did you get off the bus
20 with everybody else?

21 A Yes, sir.

22 Q Did you get off the bus with MINOR

23 A Yes, sir.

24 Q Darius, are you supposed to be at Spring Valley
25 High School?

- 1 A No, sir.
- 2 Q Why did you go?
- 3 A Because she wanted me to.
- 4 Q When you got off the bus, do you remember seeing an
5 old coach of yours?
- 6 A Yes, sir.
- 7 Q Do you remember talking to him?
- 8 A Yes, sir.
- 9 Q Okay. Did you go on into the school?
- 10 A Yes, sir.
- 11 Q Did you go with MINOR
- 12 A Yes, sir.
- 13 Q All right. Did y'all go in the front door?
- 14 A Yes, sir.
- 15 Q Okay. Darius, I'm going to --
- 16 MR. COOPER: If I can approach, Your Honor.
- 17 THE COURT: Yes, sir.
- 18 Q I'm going to show you a few things that are --
19 pictures that are in evidence. I'm going to talk
20 about them a little bit.
- 21 All right. I'm referring to what is already
22 in evidence as State's 4. Darius, I'm going to
23 approach you and show you this picture.
- 24 A All right.
- 25 (Complies.)

- 1 Q Do you know what is in that picture?
- 2 A Yes, sir.
- 3 Q What is in that picture?
- 4 A Me, MINOR and Alexis.
- 5 Q All right. Is that the morning of October 14th?
- 6 A Yes, sir.
- 7 Q Are you walking with them?
- 8 A Yes, sir.
- 9 Q In this picture is MINOR telling you to get away
- 10 from her?
- 11 A No, sir.
- 12 Q Is she telling you, get off me?
- 13 A No, sir.
- 14 Q Is she telling you, get out of here, I don't want
- 15 you here?
- 16 A No, sir.
- 17 Q Is she walking with you into that school?
- 18 A Yes, sir.
- 19 Q All right. Now, after y'all went into the school,
- 20 did you continue to walk with her?
- 21 A Yes, sir.
- 22 Q Do you remember going to an area with a bunch of
- 23 lockers?
- 24 A Yes, sir.
- 25 Q Did you go there with her?

1 A Yes, sir.

2 MR. COOPER: Your Honor, I'm going to refer to
3 what is in as Defendant's 3.

4 Q Okay, Darius, do you recognize what is in this
5 picture?

6 A Yes, sir.

7 Q What is it?

8 A A picture of me at the lockers with MINOR

9 Q When you were over there with her in this area,
10 this crowded area, was she telling you to get away
11 from her?

12 A No, sir.

13 Q Is she telling you, get off me?

14 A No, sir.

15 Q Is she telling you, I don't want you here?

16 A No, sir.

17 Q Are you talking to her?

18 A Yes, sir.

19 Q Is she with you?

20 A Yes, sir.

21 Q And, Darius, did you continue -- did you continue
22 to walk with MINOR in the school?

23 A Yes, sir.

24 Q Do you remember walking down the hallway with her?

25 A Yes, sir.

1 Q I'm going to refer to what is in as State's 6.

2 Darius, do you recognize what is in this picture?

3 A Yes, sir.

4 Q What is in it?

5 A Me and MINOR holding hands.

6 Q Did you say you and MINOR holding hands?

7 A Yes, sir.

8 Q In this picture is MINOR telling you to get away
9 from her?

10 A No, sir.

11 Q Is she telling you, get off me?

12 A No, sir.

13 Q Is she telling you, leave?

14 A No, sir.

15 Q Is she walking with you?

16 A No -- yes, sir.

17 Q What is she doing?

18 A Holding my hand.

19 Q Now, Darius, you have been here. We have talked
20 about an area called the art patio. Do you
21 remember what I'm talking about?

22 A Yes, sir.

23 Q Do you remember going to the art patio on October
24 14th?

25 A Yes, sir.

1 Q Did MINOR go with you?

2 A Yes, sir.

3 Q I'm going to refer to what is in as State's 1.

4 Darius, do you recognize this?

5 A Yes, sir.

6 Q What is that?

7 A The art patio.

8 Q Is that where y'all went?

9 A Yes, sir.

10 Q Well, Darius did MINOR -- did she -- did you
11 force her to go there?

12 A No, sir.

13 Q All right. Now, after y'all got there, did y'all
14 make out?

15 A Yes.

16 Q Did you ask MINOR to have sex?

17 A Yes, sir.

18 Q What did she say?

19 A Yes.

20 Q Did you take MINOR pants off?

21 A No. No, sir.

22 Q Who took MINOR pants off?

23 A She did.

24 Q Now, Darius, this is a diagram drawn from testimony
25 of the art patio. Okay? Where were y'all when you

1 had sex?

2 A In this corner.

3 Q In the corner?

4 A Yes, sir.

5 Q Did you slam ^{MINOR} against the wall?

6 A No, sir.

7 Q Did you throw her book, bag down?

8 A No, sir.

9 Q Did you throw her drink down?

10 A No, sir.

11 Q Did you throw her down on the grounds on her back?

12 A No, sir.

13 Q Well, you did have sex with her?

14 A Yes, sir.

15 Q How did you have sex with her? Front or behind?

16 A Behind.

17 Q Did she take her pants all the way off?

18 A No, sir.

19 Q When y'all had sex, was she trying to get away from
20 you?

21 A No, sir.

22 Q Was she telling you to get off her?

23 A No, sir.

24 Q Did you force her to have sex?

25 A No, sir.

- 1 Q Darius, had you and MINOR been to this art patio
2 before?
- 3 A Yes, sir.
- 4 Q Had you had sex there before?
- 5 A Yes, sir.
- 6 Q Had you had sex there with her after meeting her at
7 her bus stop there before?
- 8 A Yes, sir.
- 9 Q Is that what happened on October 14th?
- 10 A Yes, sir.
- 11 Q Now, did you ejaculate?
- 12 A Yes, sir.
- 13 Q Inside her?
- 14 A Yes, sir.
- 15 Q After y'all had sex, what happened?
- 16 A We got caught. And she screamed that I rape her.
- 17 Q You got caught?
- 18 A Yes, sir.
- 19 Q Did you tell the lady that caught y'all that you
20 were her brother?
- 21 A Yes, sir.
- 22 Q And did you run?
- 23 A Yes, sir.
- 24 Q Why did you un?
- 25 A Because I know I wasn't supposed to be on campus.

1 Q Darius, that day, at any point leading up to when
2 y'all were on the art patio, did MINOR
3 tell you, get away from me, get off me?

4 A No, sir.

5 Q At any time did she tell you, get off me, get away
6 from me?

7 A No, sir.

8 Q When you got to that art patio, who took MINOR
9 pants off?

10 A She did.

11 Q Did you slam her against the wall?

12 A No, sir.

13 Q Did you put your hand around her throat?

14 A No, sir.

15 Q Did you force her to have sex?

16 A No, sir.

17 Q Darius, that day, did you rape MINOR

18 A No, sir.

19 MR. COOPER: Beg the Court's indulgence one
20 moment.

21 THE COURT: Yes, sir.

22 (Pause.)

23 Q Thank you, Darius. I appreciate it. That is all I
24 have for you right now.

25 THE COURT: All right, sir, please answer any

1 questions that Ms. Barry may have.

2 CROSS-EXAMINATION

3 BY MS. BARRY:

4 Q You were actually convicted of two burglaries and
5 one grand larceny, isn't that true?

6 A Yes, sir -- yes, ma'am.

7 Q And you know MINOR

8 A Yes, ma'am.

9 Q Right? And you have known her for four years?

10 A A little over four, yes, ma'am.

11 Q And you met her through your mom?

12 A Yes, ma'am.

13 Q She -- her mom dated her brother -- her uncle,
14 right?

15 A Yes, ma'am.

16 Q And you two have a baby together?

17 A Yes, ma'am.

18 Q But you haven't seen that baby -- you have seen
19 that baby twice, right?

20 MR. COOPER: Objection, Your Honor. Not
21 relevant.

22 THE COURT: Overruled.

23 A Uh-huh.

24 Q You have seen that baby twice, right?

25 A Yes, ma'am.

1 Q Do you have any other kids?

2 A Yes, ma'am.

3 Q How many?

4 MR. COOPER: Objection. Not relevant, Your
5 Honor. It goes to --

6 THE COURT: Sustained.

7 BY MS. BARRY:

8 Q But you don't live on Fore Avenue, do you?

9 A No, ma'am.

10 Q You never lived on Fore Avenue?

11 A No, ma'am.

12 Q You didn't call her -- she didn't call you to come
13 over to Fore Avenue, did she?

14 A Yes, she did.

15 Q In fact, the first time that you saw her was at the
16 fair the day before?

17 A No, ma'am.

18 Q You --

19 A I did see her at the fair, but that is not the
20 first time. I mean --

21 Q You guys had been broken up for some time, isn't
22 that true?

23 A No, ma'am.

24 Q You hadn't seen her and you hadn't seen the baby,
25 had you?

- 1 A I seen her, not the baby, though, no, ma'am.
- 2 Q How old was she at that time?
- 3 A When she had the baby?
- 4 Q Yes?
- 5 A Fifteen.
- 6 Q So she is 15 years old, but you see her, even
- 7 though you don't go to Spring Valley High School,
- 8 you go to Ridgeview?
- 9 A Yes, ma'am.
- 10 Q Right? Is that right?
- 11 A Yes, ma'am.
- 12 Q But that morning, October 14th, 2010, you are at
- 13 her bus stop -- you came from Carvelle's house,
- 14 right?
- 15 A Yes, ma'am.
- 16 Q You were at Carvelle's house?
- 17 A Yes, ma'am.
- 18 Q He lives down the street, right?
- 19 A Yes, ma'am.
- 20 Q You show up at her bus stop and you want to talk to
- 21 her, isn't that true?
- 22 A No, ma'am.
- 23 Q You want to talk to her because you loved her and
- 24 you wanted to get back together, isn't that true?
- 25 A No, ma'am.

- 1 Q You did love her, though, didn't you?
- 2 A Yes, I do love her, yes. I did, yes.
- 3 Q But you weren't dating then?
- 4 A On and off.
- 5 Q And you get on the bus, right?
- 6 A Yes.
- 7 Q Alexis is there?
- 8 A Yes, ma'am.
- 9 Q And MINOR But you don't sit with MINOR
- 10 A Yes, ma'am.
- 11 Q The whole time you sat with MINOR
- 12 A Not the whole time, no, ma'am.
- 13 Q But you knew you weren't supposed to be on the bus?
- 14 A Yes, ma'am.
- 15 Q Because you don't go to that school?
- 16 A Yes, ma'am.
- 17 Q Have you ever ridden that bus before?
- 18 A Yes, ma'am.
- 19 Q How many times?
- 20 A Like two other times.
- 21 Q And you know Alexis, don't you?
- 22 A Yes, ma'am.
- 23 Q And you know that is her best friend?
- 24 A Yes, ma'am.
- 25 Q And she lives close-by?

- 1 A Yes, ma'am.
- 2 Q They have been friends for a very long time,
3 haven't they?
- 4 A Yes, ma'am.
- 5 Q And when you get off at the school, you -- Alexis
6 and MINOR are together. And then you get off
7 afterwards, right?
- 8 A No, ma'am. We all got off at the same time.
- 9 Q But you are behind them, a couple of kids behind
10 them, correct?
- 11 A No, ma'am. I'm right beside them.
- 12 Q When they are on the bus. You are getting off the
13 bus.
- 14 A Yes, ma'am.
- 15 Q You are a couple of kids behind?
- 16 A No, ma'am, I'm right there, yes, ma'am.
- 17 Q Okay. And when you get off the bus, Alexis and
18 MINOR they go on and you are behind them
19 following them, isn't that true?
- 20 A I did not follow them, no, ma'am.
- 21 Q But you see Mr. Davis?
- 22 A Yes, ma'am. I went and approached Mr. Davis and
23 talked to him, yes, ma'am.
- 24 Q And what did you -- and you told Mr. Davis --
- 25 A I was there to drop somebody off, yes, ma'am.

1 Q You lied to Mr. Davis?

2 A Yes.

3 Q You said you were there to drop somebody off?

4 A Yes, ma'am, because I know I wasn't supposed to be
5 on campus.

6 Q But still, even though you lied and you knew you
7 weren't supposed to be on campus, you go into the
8 school?

9 A Yes, ma'am.

10 Q And you follow MINOR and Alexis to the lockers,
11 right?

12 A No, I didn't follow them, no, ma'am.

13 Q When you get to the lockers, she tells you to
14 leave? That it is the conversation you had, isn't
15 it?

16 A No, ma'am.

17 Q Alexis was there, you were there, and MINOR And
18 MINOR said, you need to leave?

19 A No, ma'am.

20 Q After they get their books and start heading to
21 class, you guys are walking together, all three,
22 you, Alexis, and MINOR correct?

23 A Yes, ma'am.

24 Q And I'll show you a photograph, State's Exhibit
25 Number 5. Show me where you are holding her hand.

- 1 Are you holding --
- 2 A I'm walking beside them.
- 3 Q Right. But you are not holding her hand, are you?
- 4 A Not in that picture, no, ma'am.
- 5 Q In fact, she is a little -- she is far -- you are
- 6 farther away than she is to her friend Alexis,
- 7 correct?
- 8 A Yes, ma'am.
- 9 Q Yes. State's Exhibit Number 6 that you testified
- 10 to you are holding her hand, you are not holding
- 11 her hand, you are pulling your pants up, aren't
- 12 you?
- 13 A No, ma'am. I'm holding her hand, yes, ma'am.
- 14 Q Show me where your hand is.
- 15 A Right there. That is her hand right there too.
- 16 Yes, ma'am.
- 17 Q Those are your hands on your pants, isn't that
- 18 true?
- 19 A No, ma'am.
- 20 Q And then State's Exhibit Number 7, after Alexis
- 21 breaks off from y'all and you are alone following
- 22 her to art class --
- 23 A I'm not following her. I'm right beside her, yes,
- 24 ma'am.
- 25 Q You are right beside her talking to her, aren't

1 you?

2 A I'm right beside her, yes, ma'am.

3 Q You are facing her and she is looking straight,
4 correct?

5 A Yes, ma'am.

6 Q She is not talking to you, is she?

7 A Yes, she was talking to me, yes, ma'am.

8 Q You are not holding her hand, are you?

9 A Not in that picture, no, ma'am.

10 Q You weren't holding her hand at all in that
11 hallway, you were following her to class?

12 A No, ma'am, I wasn't.

13 Q You loved her, you wanted to get her back, because
14 you weren't dating her at that time. You hadn't
15 even seen her since the day before at the fair,
16 isn't that true?

17 A No, ma'am.

18 Q Yet when you go through and get to the point where
19 you are going to go into her class, you see that
20 little art patio, and you push her into that area,
21 don't you?

22 A No, ma'am.

23 Q This area, State's Exhibit Number 3?

24 A No, ma'am. I didn't push her in that area no,
25 ma'am.

1 Q You went in there, right?

2 A Yes, ma'am.

3 Q And the bell rang. She is going to be late to
4 class, wasn't she?

5 A I don't know. I guess so, yes, ma'am.

6 Q Did the bell ring?

7 A I don't recall.

8 Q You don't recall that?

9 A No, ma'am.

10 Q But you forced her in there and you pulled her
11 pants down, right?

12 A No, ma'am.

13 Q You broke her belt?

14 A No, ma'am.

15 Q Her belt was broken?

16 A Okay.

17 Q Do you agree with me with that?

18 A I don't know. I didn't see her belt.

19 Q You put your hands around her neck, tell her you
20 love her so much and you want to show her, don't
21 you?

22 A No, ma'am, I did not put my hands around her neck,
23 no, ma'am.

24 Q You told her that you loved her?

25 A No, ma'am.

- 1 Q You did love her?
- 2 A I did, but I didn't. I didn't say I loved her, no,
- 3 ma'am.
- 4 Q But you -- she was crying and screaming telling you
- 5 to get off?
- 6 A She was not crying or screaming.
- 7 Q And she turned around trying to get away from you?
- 8 A No, ma'am.
- 9 Q And you pulled her book bag off, didn't you?
- 10 A No, I didn't.
- 11 Q You threw her drink down, didn't you?
- 12 A No, ma'am.
- 13 Q And when you pulled her pants down and pulled your
- 14 pants down, you get on top of her and hold her
- 15 down, don't you?
- 16 A She was never on the ground.
- 17 Q She was never on the ground?
- 18 A No, ma'am.
- 19 Q You had sex with her, didn't you?
- 20 A Yes, ma'am.
- 21 Q You raped her, didn't you?
- 22 A No, ma'am.
- 23 Q You took it? You stuck it in her, didn't you?
- 24 A I didn't take no -- I didn't take it, no, ma'am,
- 25 no, I didn't.

1 Q It is true, though, that she had her menstrual
2 cycle, isn't that true?

3 A She wasn't on her period, no, ma'am, not at the
4 time, no, ma'am.

5 Q She wasn't?

6 A No, ma'am.

7 Q Yet your testimony to your attorney was that you
8 came from behind. She was never at any point on
9 the ground, you are totally standing up?

10 A Yes, ma'am.

11 Q State's Number 3. Where were you?

12 A In that corner right there.

13 Q In that corner?

14 A Yes, ma'am.

15 Q Standing up?

16 A Yes, ma'am.

17 Q Having sex?

18 A (Nods affirmatively.)

19 Q While she's on her period heading to class? Is
20 that true?

21 A She wasn't on her period, no, ma'am. She didn't
22 even have a pad. No, ma'am, she wasn't. No,
23 ma'am.

24 Q Yet when she is screaming, get off me, get off me,
25 she starts crying. Then you started crying too,

1 didn't you?

2 A No, ma'am.

3 Q And then the teacher comes up, doesn't she?

4 A The teacher came up when we was leaving the art
5 patio, yes, ma'am, she did.

6 Q You were leaving the art patio?

7 A Yes, ma'am.

8 Q But your pants were down?

9 A My pants weren't down.

10 Q They were not down?

11 A I sag, but, no, they wasn't all the way down, no,
12 ma'am.

13 Q Was your butt showing?

14 A No, ma'am.

15 Q Were your pants below your butt?

16 A Yes, ma'am.

17 Q So they are sagging all the way down?

18 A No, they are not sagging all the way down, no,
19 ma'am.

20 Q But you lied to Ms. Pleasants, didn't you?

21 A Yes, ma'am, because I knew I was not supposed to be
22 on campus.

23 Q You told her you are her brother, isn't that true?

24 A Yes, ma'am, I did say that, yes, ma'am.

25 Q And that some boys had been messing with her,

1 right?

2 A No, I didn't say no boys had been messing with her,
3 now, no, ma'am. But I did say I was her brother.

4 Q Some kids were messing with her?

5 A I didn't say no kids were messing with her. I said
6 I was just her brother.

7 Q And then you ran off?

8 A Yes, ma'am, because I knew I was not supposed to be
9 on campus, so --

10 Q But you loved this girl?

11 A Yes, ma'am, but I wasn't about to stick around and
12 get caught on campus, no, ma'am.

13 Q You didn't want to stick around and get caught on
14 campus?

15 A No, ma'am.

16 Q Because you just raped a girl, isn't that true?

17 A I didn't rape her, no, ma'am.

18 Q Well, why did you lie?

19 A When did I lie?

20 Q Why did you lie? Why did you tell her you were her
21 brother?

22 A Because I knew I was not supposed to be on campus.

23 Q So you lied and tell Ms. Pleasants, you are on
24 campus, and then you hit the door running?

25 A Yes, ma'am.

1 Q And then you meet up with Investigator Carter,
2 isn't that true?

3 A Yes, ma'am.

4 Q You remember meeting with him?

5 A Yes, ma'am.

6 Q Do you remember him advising you of your rights?

7 A Yes, ma'am.

8 Q And you talked to him, didn't you?

9 A Yes, ma'am.

10 Q But you didn't tell him -- the first time we hear
11 that she wanted to have sex with you was today,
12 isn't that true?

13 A No, ma'am, I told Investigator Carter that. That
14 is all in my statement.

15 Q You told him you stuck it in her?

16 A Yes, ma'am.

17 Q Didn't you?

18 A Yes.

19 Q You told him, I didn't rape her, didn't you?

20 A Yes, ma'am.

21 Q That was your third lie, wasn't it?

22 A No, ma'am.

23 Q Your first lie is to Mr. Davis, correct? You lie?

24 A Yes, I did lie to him, yes, ma'am.

25 Q Your second lie is to Ms. Pleasants, the teacher?

1 A Yes, ma'am.

2 Q I'm her brother.

3 And your third lie is, I didn't rape her,
4 because you got caught, right?

5 A No, ma'am.

6 Q Why is today the first time you have told anyone --

7 MR. COOPER: Objection.

8 THE COURT: Yes, sir? Your objection?

9 MR. COOPER: May we approach the bench?

10 (WHEREUPON, a bench conference was held
11 in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: Sustained. Please rephrase the
14 question.

15 MS. BARRY: Thank you.

16 BY MS. BARRY:

17 Q Your testimony is you told Investigator Carter --

18 A Yes, ma'am.

19 Q -- that you -- wait till I finish my question. You
20 told Investigator Carter that it was consensual, is
21 that true?

22 A Yes, ma'am.

23 Q Yet this girl that you love so much, you ran off
24 and left her in the hallway at the school crying.
25 You didn't care what happened to her, did you?

1 A She wasn't crying when I left her, no. No, ma'am.

2 Q She was crying, slobbering is the way that Doris
3 Pleasants -- you remember hearing that, don't you?

4 A Said she was slobbering?

5 Q She said she was slobbering. You heard her
6 testimony. You were in here.

7 A No, she wasn't slobbering, no, ma'am.

8 MS. BARRY: Beg the Court's indulgence.

9 (Pause.)

10 BY MS. BARRY:

11 Q Isn't it true, Darius, you jacked her up against
12 that wall, pulled her pants down, broke her belt,
13 then pulled your pants down? That is why
14 Ms. Pleasants found you with your pants down? You
15 were caught with your pants down, weren't you?

16 MR. COOPER: Objection.

17 A No, ma'am.

18 MR. COOPER: That is a compound question. She
19 is asking three or four questions. He hasn't
20 answered.

21 THE COURT: All right, please rephrase the
22 question.

23 MS. BARRY: I'll move on.

24 BY MS. BARRY:

25 Q The scratches on State's Number 10, that is because

1 you grabbed her around the neck, wasn't it?

2 A No, ma'am.

3 MS. BARRY: That's all I have.

4 MR. COOPER: May it please the Court?

5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MR. COOPER:

8 Q Darius, in 2010 did you tell Investigator Carter
9 that you did not rape MINOR

10 A Yes, ma'am -- yes, sir.

11 Q Did you tell Investigator Carter it was consensual?

12 A Yes, sir.

13 Q In 2010 did you rape MINOR

14 A No, sir.

15 Q Thank you.

16 MR. COOPER: That's all I have, Your Honor.

17 THE COURT: Anything else from the State?

18 MS. BARRY: No, ma'am.

19 THE COURT: All right. Ladies and gentlemen
20 of the jury, at this time there are some matters of
21 law that I need to take up with the attorneys
22 outside of your presence. It may be about a ten
23 minute break, but I will let you all take about a
24 ten or 15 minute break.

25 All right. Thank you.

1 (WHEREUPON, the jury retires to the jury
2 room at 10:09 a.m.)

3 THE COURT: All right, he can step down.
4 (Defendant steps down.)

5 THE COURT: Do you have any other witnesses?

6 MR. COOPER: No, ma'am.

7 THE COURT: And I'll have to -- we need to let
8 you all rest in front of the jury. I'll let you
9 officially rest in front of the jury.

10 MR. COOPER: Yes, ma'am.

11 THE COURT: Do you all have anything on reply?

12 MS. BARRY: (Nods negatively.)

13 THE COURT: No? Okay. All right.

14 Procedurally, as far as the charge -- well, I'm
15 sorry, the Defendant has rested, and I will give
16 you an opportunity to rest in front of the jury.
17 The State has informed me that they don't have any
18 reply. Is there any motions at this time?

19 MR. COOPER: No, I just renew all our previous
20 motions and objections. With that, I have nothing
21 further.

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

24 MS. BARRY: No, ma'am.

25 THE COURT: All right. As far as the charge,

1 arguments and the charge on the law.

2 At this time I am going to -- we will hear
3 from Ms. Vriesinga. She is going to open on the
4 law. Then you will hear from Mr. Cooper, on behalf
5 of the Defendant. And then you will hear from
6 Ms. Barry, on behalf of the State.

7 Yes, ma'am?

8 MS. VRIESINGA: May it please the Court?

9 THE COURT: Yes, ma'am.

10 CLOSING STATEMENT

11 MS. VRIESINGA: At the beginning of this trial
12 I stated that rape was a crime about power and
13 about control. Rape is a crime about power and
14 about control.

15 And at the beginning of this trial I stated
16 that rape is a crime of violence. And rape is a
17 crime of violence.

18 But despite the emotional nature of this case,
19 Ms. Pinnock was exactly right in her opening
20 statement when she said that this case has to be
21 decided with your head, not your heart. And that
22 is what I am doing right now, is to explain a
23 little bit of the law to you.

24 I know when you came in on Monday morning, no
25 one really gave you any instruction on what you are

1 supposed to do as a juror. Usually when you start
2 a job someone will sit you down and give you some
3 guidelines, some sort of instructions.

4 When you learn how to drive a car, you
5 probably took lessons and then you took a test.
6 And then you were able to go out on your own and
7 drive a car and this Monday past Monday you weren't
8 given any sort of instructions and you weren't
9 given a test in order to sit in the jury box. But
10 we chose you because of your common sense and
11 because of your life experiences. That is why your
12 here today.

13 Now, ultimately you are the judges of the
14 facts and Judge Benjamin is the judge of the law.
15 And if there is anything I say here today that
16 conflicts with anything that she charges you on,
17 then I want you to follow her instructions. She is
18 the ultimate judge of the law.

19 Now, first I'm going to walk you through the
20 elements of the crime. And I know we've been
21 referring to this as a rape case, but under the law
22 the Defendant has been charged with criminal sexual
23 conduct in the first degree.

24 Now, I know you can read these for yourself.
25 I'm just going to go through them.

1 The first element is, engage in sexual battery
2 with the victim.

3 Now, you may wonder what sexual battery means.
4 I have a list here of all of the different meanings
5 of sexual battery. And in this case we're really
6 dealing with the first one, sexual intercourse.
7 You don't really have to worry about the rest of
8 these.

9 But it also means, any intrusion, however
10 slight, of any part of a person's body or of an
11 object into the genital openings of another
12 person's body. Okay.

13 Now, the first element must be proven beyond a
14 reasonable doubt. And you have heard testimony
15 even in the very opening of the Defense's argument
16 that sex occurred. And you have just recently
17 heard from the Defendant that sex occurred on
18 October 14th, 2010.

19 Now, the second prong of this criminal sexual
20 conduct is down here. And that is the forcible
21 confinement element. You can disregard these right
22 here. We're trying to prove sexual battery and the
23 forcible confinement.

24 Now, forcible confinement is exactly what it
25 sounds like. It is confining someone with force.

1 Now, this doesn't mean putting someone in
2 handcuffs, or putting them in a locked room,
3 binding them in some way. It just means that the
4 victim doesn't feel free to leave.

5 Now, in this case I think we have several
6 examples of that, but Ms. Barry is going to get to
7 that when she discusses the facts. But what I want
8 you to remember is that we are looking for the
9 forcible confinement of the victim.

10 Now, as the State we have the burden of
11 proving the case beyond a reasonable doubt. And we
12 have talked about this throughout the trial. But
13 this gives you a real definition of what beyond a
14 reasonable doubt actually means. And I'll let you
15 read through that.

16 Basically it means that there is proof beyond
17 a reasonable doubt if there is proof that leaves
18 you firmly convinced of the Defendant's guilt.
19 Okay.

20 And there are very few things in this world
21 that are certain. But in criminal cases the law
22 does not require proof that overcomes every
23 possible doubt, it just requires proof beyond a
24 reasonable doubt. Now, I will leave that up so you
25 can read that.

1 In order to reach your conclusion today, you
2 have to use the evidence put in front of you. And
3 we have seen two different types of evidence today.
4 We've seen direct and we've seen circumstantial.

5 Direct evidence is something that you can
6 touch, you can feel, it is something like these
7 pictures that were put into evidence. This is
8 direct evidence.

9 Circumstantial is a little bit different than
10 direct. And circumstantial evidence are the facts
11 that help you lead to a conclusion. It is not the
12 direct. It is everything else.

13 So an example that I have often heard used is,
14 when you go to sleep and it is totally clear
15 outside and there is nothing on the ground, and
16 then you wake up and you see white powdery
17 substance all over, covering your yard, covering
18 everything around you, you can make an inference
19 that it snowed. Now, even if you didn't see the
20 snowflakes actually falling, you can make an
21 inference that it snowed outside. And that is an
22 example of circumstantial evidence. And, again,
23 you can read for yourself the definition here.

24 In this case, circumstantial evidence can
25 include things that the Defendant said on the stand

1 in changing his story, which brings me to
2 credibility.

3 And at the beginning of this trial I stated
4 that this case hinges on credibility. What I meant
5 by that is that it is important to determine who is
6 believable in this case.

7 And in order to determine who to believe, you
8 are going to look at certain factors. For
9 instance, you'll look at the demeanor of the
10 witness on the stand. Did they seem uneasy. Did
11 they seem sure of themselves. Was the witness
12 forthright or hesitant. These are all factors you
13 look at. And was the testimony of the witness
14 consistent. Was the testimony of that witness
15 consistent and was the testimony consistent with
16 all of the other witnesses throughout the trial.
17 You are looking for consistency.

18 And, finally, was the testimony of the witness
19 corroborated. Did you hear the same story over and
20 over again, or did you hear something different.

21 These are all things you need to think about
22 when you are determining the credibility of the
23 witnesses on the stand.

24 You also need to remember why the witnesses
25 were up on the stand to begin with. Did they have

1 a motive? Did have a reason? Did they have a
2 reason to lie on the stand?

3 Why would the victim put herself through this
4 whole trial? I stressed this in the opening
5 statement. Why would she talk about the most
6 intimate personal details of her life in front of
7 strangers, complete strangers, family, friends, all
8 of these people in this courtroom? Why would she
9 talk about those things in front of you? Why would
10 she go through having done a rape kit and all those
11 intimate personal details?

12 And one of the most important jobs that you do
13 as a juror is assessing the credibility of each of
14 these witnesses. And all you need is common sense.
15 Each and every one of you came in today with that.
16 And you can believe all or you can believe some or
17 you can believe none of what a witness says.

18 Now, we had a couple of different types of
19 witnesses take the stand. We have lay witnesses.
20 That is your everyday, ordinary people like you and
21 I. And then we have expert witnesses. We had a
22 couple. We had a nurse. We had a DNA expert that
23 we put up on the stand.

24 And expert witnesses are a little bit
25 different than lay witnesses in that they can give

1 an opinion based on their experience, their
2 knowledge, their training, because they have become
3 experts in a certain field.

4 Now, I want to end up with one last board, and
5 that is this one. This is South Carolina Statute
6 16-3-657. You can read it very easily for
7 yourself.

8 Basically, our state legislature recognizes
9 that crimes involving criminal sexual conduct are
10 of a unique variety. Since most rape cases have
11 just two witnesses, they have the victim and they
12 have the Defendant, and that's it. You think about
13 it, that is how most rape cases come about is you
14 just have those two people. It is one person's
15 word against the other.

16 So what our state legislature has done is they
17 have made it abundantly clear that a Defendant may
18 be convicted solely based on the victim's
19 testimony. Solely based on what MINOR
20 told you at the beginning of this trial. The
21 Defendant can be convicted because of that.

22 Now, at the beginning of this trial you took
23 an oath. You took an oath to put aside any bias or
24 any prejudice you have towards the State or towards
25 the Defense. And you were to base your verdict on

1 two things, the evidence and the law.

2 At this point in the trial you have seen all
3 of the evidence there is to see. You saw all the
4 witnesses. You saw all of the physical evidence.

5 And you have to remember that evidence is not
6 our opening statement. It is not our closing
7 argument. None of that is evidence. Evidence is
8 what you saw up here. So when you are coming to
9 your decision you have to remember what you heard
10 from each of the witnesses. You don't use
11 speculation, you don't use innuendo, and you don't
12 use any wishful thinking.

13 Now, at the beginning of this trial I asked
14 you to do two things. I asked for your patience
15 and I asked for your common sense.

16 You have been an incredibly patient group
17 listening to all of this testimony, and now I ask
18 for you to use your common sense and find the
19 Defendant, Mr. Darius Mack, guilty of criminal
20 sexual conduct in the first degree.

21 Thank you.

22 THE COURT: Thank you. Do you need that?

23 MR. COOPER: No, ma'am, I will move it right
24 now.

25 (Complies.)

1 MR. COOPER: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. COOPER: Thank you.

4 CLOSING STATEMENT

5 MR. COOPER: Ladies and gentlemen, this
6 morning, this is the absolute scariest part of the
7 trial for me. With everything we have been
8 through, it is the part of the trial that scares me
9 the most.

10 Why? Because right now Darius Mack is sitting
11 over there in that chair and I know he is innocent.
12 Darius Mack is sitting over there in that chair and
13 I know he didn't rape MINOR

14 But it is scary for me because it is my job --
15 it is my duty and it is my job to be able to show
16 you today, this morning, to be able to guide you
17 through today, this morning, to be able to get
18 through to you what I know, to get through to you
19 the truth. It is my job this morning to make sure
20 the right thing happens in this case and to help
21 you understand the truth. We're talking about
22 Darius's life. And from everything I do in my job,
23 that scares me.

24 But one thing that I have noticed is that
25 y'all have been paying attention during this case.

1 Y'all have been looking at the witnesses. You have
2 been watching them. You've been looking at the
3 demonstratives. You have been looking at the
4 video. You have been listening, every one of you,
5 and I appreciate that. Thank goodness you have.
6 Because that gives me hope. It makes me believe
7 that I can do what I know I must do, that I can get
8 through to you, I can take you through this, and I
9 can show you the truth, and I can guide you to the
10 right thing.

11 Now, obviously I have had to think a lot about
12 exactly how I am going to do this. And I'll tell
13 you that, you know, going to law school and from
14 talking to other attorneys, there is a common bit
15 of wisdom.

16 Well, you know, when you've got a jury and you
17 want to be able to show them something and there
18 has been a lot of facts and they are sitting there
19 and they have seen a lot of witnesses, you know,
20 you need to use like a story, maybe something from
21 your personal life, maybe a little vignette, a
22 little analogy. That is the common wisdom. And I
23 thought about that a long time. I mean, I did.
24 Went through several things.

25 This morning going through it I thought, I do

1 not need that. Looking at the piece of paper in
2 front of me blank, I thought, I don't need a story.
3 I don't need a story from my own life. I don't
4 need a fable. I don't need any kind of
5 illustration or analogy, because I have already got
6 the truth. The truth is already in here now.

7 So I thought, why don't I just tell y'all,
8 instead of resorting to that, why don't I just use
9 what I know is here and what I have and tell it to
10 you straight.

11 So that is what I decided to do. There is not
12 going to be any stories. There is not going to be
13 any parlor tricks. I don't need them. No
14 analogies. I don't need it. Because I've got the
15 truth. So that is what we're going to do.

16 And I'm going to ask you again for your
17 patience because the way I'm going to do this is
18 we're going to talk about each of the witnesses
19 that the State gave you on that stand. We are
20 going to examine what their testimony means. And
21 how individually and together their testimony and
22 the accompanying evidence leads to one conclusion.
23 That is, that Darius did not rape MINOR
24 That is, that he is innocent.

25 You know, Ms. Pinnock at the beginning of the

1 case told you this case is about one question. You
2 might hear a lot of other stuff, but you have got
3 to focus on the one question, and now I am going to
4 reiterate that.

5 This whole thing is about, did they have
6 consensual sex or did he force her to have sex.
7 That is the question.

8 And in order to answer that, I want to take
9 you step by step through exactly what they have
10 shown you. And I want to guide you through just
11 using the truth. I want to guide you through how
12 the only conclusion, the only answer to that
13 question is, it was consensual sex that day. Okay.

14 So, what do we have? The first witness I want
15 to talk to you about is Ms. Doris Pleasants. Y'all
16 remember her.

17 Ms. Doris Pleasants absolutely did not see
18 what she told y'all she saw. I will say that
19 again. She did not see what she told y'all she
20 saw.

21 How do we know? We can prove it because it is
22 on video. They showed you the video. And that
23 video don't lie. Okay?

24 She did not see what she told y'all she saw.

25 So, let's look at it. Let's go through it.

1 All right, first, this the the art hallway
2 right here, students, multiple students in the
3 hallway that morning. You see more students.
4 Another student coming in. A lot of traffic in the
5 hallway. More traffic. More students walking past
6 the breezeway. Walking past that art patio.
7 Nobody turning around. And then back there you can
8 see Darius and MINOR Still more traffic.
9 Everybody acting normal. Nobody alerted to
10 anything. Nobody turning around and running. Lots
11 of students. More students coming through. More
12 people. Everybody acting normal.

13 I don't know how many students, though, I
14 didn't count them. There is a teacher out there.
15 She is acting normal. Another student. Nobody
16 hears anything. More students come in. Nobody is
17 alerted. Everybody is just walking around.
18 Teacher walks out. More traffic. Normal behavior.
19 Another student. And everybody is going back and
20 forth between this breezeway. Everybody is in that
21 hallway where supposedly she heard screaming. That
22 is where they are right there.

23 Another teacher comes out. Nothing unusual.
24 I think he just yawned. Couple more. Teacher goes
25 back in the classroom. Another student comes

1 through. Nobody alerted. Nobody hears anything.
2 Another girl passes the patio. Okay. Another
3 couple of people. Okay.

4 Portia S. Okay. Watch this. High five.
5 Oh, I'm upset about what I saw. Acting normal.
6 Normal traffic in the hallway.

7 Now, here is Ms. Doris Pleasants. This is
8 key. She told you -- she got on the stand and she
9 told you, when I came in the door to the art
10 hallway I heard screaming coming from that area.

11 Well, you know, it is for you to decide, but
12 it doesn't look like she is in a big rush to me. I
13 mean, she is halfway to the door out there. She
14 told you that is when he heard the screaming right
15 there.

16 More importantly, Ms. Pleasants told y'all
17 that, when I went outside and I rounded the corner,
18 I saw a boy with a girl against the wall. She did
19 the motion against the throat. With his hand up
20 against her throat. I saw him have her against the
21 wall with his hand up against her throat. I
22 rounded the corner and I saw this.

23 And then I heard the screaming and crying and
24 then the boy started talking to me about being her
25 brother. And then she responded somehow. And then

1 she said, and then I walked with the girl. I think
2 she said she said something like, not today. And
3 then I walked with the girl and he followed us down
4 the hallway.

5 That is basically what she said, that all that
6 happened.

7 Now, I want you to pay close attention to what
8 happens next as soon as she opens that door.

9 Door opens. Boom, there is Darius, there is
10 MINOR Door opened for like one second. She
11 just gets out there. Boom, door opens, there is
12 Darius and MINOR They are not up against the
13 wall. He doesn't have her hand against her throat.
14 That door opens for one second and you see them
15 right there.

16 You know why you see that? You know why it is
17 different from Doris Pleasants' story? Because
18 this rape didn't happen. That is why that doesn't
19 make sense. The door opens. Boom, they are right
20 there.

21 Then you've got a pause. Okay. Can you run
22 it back a little bit? I want to make sure that is
23 clear. Because timing is important here.

24 Okay, we're back to the students. We've got
25 the students coming through. Supposedly this

1 attack is going on. Again, everyone acting normal.
2 High five. All this traffic in the morning, all
3 this in the morning, right there. Right there.
4 Right there in the same hallway where Ms. Pleasants
5 told you she could hear screaming. And these kids
6 are walking in and out.

7 All right. Here she is. Doris Pleasants.
8 Watch this. Door open. Boom, there they are.
9 Boom, Darius runs. What was that, two, three
10 seconds? He is running. He is not following them
11 down a hallway. They didn't have some lengthy
12 interaction out on the art patio. She didn't see
13 him with her up against the wall.

14 You can see it. You can tell that is not the
15 way it happened. You can watch it here and you can
16 watch it again in the jury room, and I hope you do.
17 Because it clearly shows that Doris Pleasants did
18 not see what she said she saw. She did not see
19 what she said she saw. It did not happen the way
20 she said it happened. Because this rape didn't
21 occur because Darius Mack didn't rape MINOR

22 That's why.

23 Now, I also -- I will also direct your
24 attention to my cross-examination of her. She
25 admitted that she didn't even put in her letter

1 anything about a hand around the throat.

2 Now, we look at the video and we find out that
3 nothing went the way she said it went. You can see
4 it right there.

5 Now, I want to move on and I want to talk
6 about MINOR Okay? And I know y'all
7 remember her testimony. And a big part of
8 MINOR testimony is -- the theme of her
9 testimony was that she was scared of Darius and
10 that she was continually telling him to get away
11 from her and that she didn't want him around her.
12 And that the whole time, as they went through the
13 whole narrative, she didn't want him there. She
14 wasn't with him. She wanted him to get away.

15 Well, we know from the evidence that is not
16 the way it happened.

17 I will refer you to what is in evidence as
18 State's Exhibit 4. She showed y'all this just a
19 few minutes ago, I'll show it to you again. I hope
20 you look at again. I hope you look at it again and
21 again.

22 There they are. He's coming into school with
23 them. She is not running away from them. She's
24 not alerting the people at the front desk. They
25 are right there. She is not running. She's not.

1 She's coming into the school with him. Okay?. That
2 doesn't make sense. It doesn't add up.

3 The reason that doesn't make sense and add up
4 with her story is because this did not happen. It
5 didn't happen. That is why this picture doesn't
6 fit with her story. That is why it didn't happen.

7 I am going to refer you to what is in evidence
8 as State's Exhibit 5. Again, following, stalking
9 down the hallway. There they are walking together.
10 It speaks for itself. They appear to be talking.

11 Darius told you, she wasn't telling me to get
12 away, she wasn't telling me, leave me alone, she
13 wasn't telling me, get off me. I walked with her
14 into the school. I had done it before. Been there
15 before. That is what I did that day.

16 Now, I am going to refer to what is in
17 evidence as State's 6. Darius and MINOR in the
18 hallway. He told you, she was holding hands with
19 me. Of course, the Solicitor made a big deal about
20 that. I don't know whether or not their hands are
21 actually touching in that picture. I don't. I
22 mean, honestly I can't tell. But I know that
23 Darius knows he was holding hands with her walking
24 down the hall. He doesn't know whether they got
25 the exact moment this shot picked it up. But look

1 at them. Look at them. I mean, holding hands --
2 look at the picture. She is turned towards him.
3 It is for you to judge, but she is turned towards
4 him. They are talking. She is smiling.

5 She isn't trying to get away from him. She is
6 not saying, get off me. She is not going to an
7 administrator saying, get this boy off me. She is
8 not going up to another boy at school saying, get
9 this boy off me.

10 Look at Number 6. This doesn't fit with her
11 story. It doesn't make sense with her story. Why
12 doesn't this make sense with her story? Because
13 this didn't happen. This rape did not happen.
14 That is why none of this makes sense.

15 Please look at that.

16 Now, eventually, as y'all know, we get to the
17 -- and I will also show you Number 3. We talked
18 about this. The crowded lockers. All the people
19 there. You know, all these people. Nobody
20 alerted. It speaks for itself. There they are.

21 Now, as y'all know, eventually they end up at
22 what is known as the art patio. This is the area
23 where they had sex. Y'all will have all of these
24 back there.

25 The art patio which, from testimony and

1 Ms. Pinnock showed this representation, the art
2 patio is what y'all saw on the video a minute ago.
3 That door that Ms. Doris Pleasants exited the art
4 patio was right there where all the students were
5 going through and no one heard anything or none of
6 them turned their heads, none of them were worried
7 about anything. That is where Darius and MINOR
8 go.

9 When they get there, MINOR says, well,
10 you know, we went there, and I didn't want to go
11 with him. I didn't want him around me. And this
12 is when he forced me to have sex. This is when he
13 took my book bag off, threw it on the ground,
14 knocked my drink out of my hand and did this
15 allegedly, you know, violent attack, all the while
16 with all this foot traffic going through, with all
17 these people who could have seen or heard
18 something, with Portia S. who came by and said
19 she saw them making out. She was so concerned she
20 was high fiving people in the hallway. This is
21 when MINOR tells you this attack happened.

22 She said, he had me up against the wall.
23 Well, I just went through that. We heard that from
24 Doris Pleasants too, up against the wall.

25 But what is important about her story at the

1 scene really is that physically common sense-wise
2 it doesn't make sense. You know, Ms. Pinnock took
3 her through this. She did. And she did it for a
4 reason.

5 This is where MINOR indicated she was. She
6 testified that she was on her back. She testified
7 to Ms. Barry and to Ms. Pinnock that her jeans were
8 halfway down. So she is on her back. Jeans
9 halfway down to her thighs. Okay? And that this
10 is when she was raped.

11 We're all adults here. Think about this.
12 Supposedly she doesn't want this. She is
13 struggling. She is on her back with jeans just
14 down to here. She can't separate her legs. He
15 can't separate her legs.

16 She said, well, one leg was lifted up. Well,
17 if the jeans are only down this far, how does one
18 leg lift up in the air and the other stay on the
19 ground? How does this happen? How does Darius
20 physically accomplish that with the legs closed by
21 the jeans. And not only that, with someone who
22 doesn't want it to happen. Someone who supposedly
23 is struggling against it.

24 She has her jeans right here, her legs closed.
25 One leg didn't come up because it can't do that if

1 your jeans are like this. Physically it didn't
2 happen that way.

3 The reason that doesn't make sense physically,
4 common sense-wise is because it did not happen.
5 That is not the way it works. That is not the way
6 it works. The story doesn't make physical sense at
7 all. Because, again, this didn't happen.

8 And her story doesn't make sense at all with
9 what even Doris Pleasants said. I mean, MINOR
10 told Ms. Pinnock, oh, my gosh, I was walking around
11 in circles when she came out. Not up against the
12 wall.

13 Their stories don't make sense individually.
14 They don't make sense together. They don't make
15 physical sense. They don't fit with common sense.
16 Because it did not happen.

17 Now, I want to set this up. See if I can do
18 it right. I want to talk about -- oh, yeah, I want
19 to talk to y'all about credibility of witnesses.
20 I'm glad that she showed y'all this, because I want
21 to go over it too.

22 What did Ms. Vriesinga tell y'all about how
23 you are supposed to judge the witnesses, including
24 MINOR

25 Number One, demeanor of witness on the stand.

1 Y'all saw MINOR testify. Her story changed. She
2 was combative. She was dismissive. She fought
3 with Ms. Pinnock. But, more importantly, she
4 changed her story. It didn't come together. It
5 looked terrible. The testimony looked -- her
6 demeanor was bad. And the State told you, look at
7 the demeanor. I'm asking you to do the same thing.

8 Was the witness forthright or hesitant.
9 MINOR hesitated several times. She did not
10 appear forthright.

11 In fact, did you see that happen on the bus?
12 No, but it did.

13 Did you see it happen on the bus? No, but it
14 did.

15 Did you talk to Ms. Barry about that? That is
16 none of your business.

17 Forthright? No. Hesitant? Yes. Demeanor?
18 Not good.

19 This is how you judge credibility, ladies and
20 gentlemen. That is what they told you to do.

21 Was the testimony of witness consistent?
22 Absolutely not. Well, I was on my back, my leg
23 was up. Well, Ms. Pleasants came, I was walking
24 around. Not consistent. Not forthright.
25 Hesitant. Demeanor bad.

1 Was the testimony of the witness corroborated.
2 Well, we heard from Ms. Pleasants. Their stories
3 don't match up. Still don't.

4 She fails all of these. Everything they asked
5 you to look at, she fails.

6 Okay. All right. The next person we need to
7 talk about is the sexual assault nurse. Okay?
8 Ms. DeBrew. And I appreciate y'all continuing to
9 pay attention, you know how important this is.
10 Ms. DeBrew got there. There was a question by Ms.
11 Barry, Ms. Pinnock asked her some questions.

12 Here is the important thing about her. She
13 cannot and could not tell you whether or not this
14 encounter was consensual or not. Done. She can't
15 tell you that. She wasn't there. She can't tell
16 you whether or not this encounter was consensual or
17 not. Absolutely not. Can't do it.

18 She told you about what she observed, that she
19 observed an injury, an abrasion. Not multiple
20 injuries, one injury abrasion. She called it a
21 mounting injury.

22 She testified with Ms. Pinnock that there are
23 many ways that that type of injury can occur. And
24 that she absolutely cannot tell whether or not the
25 encounter was consensual or not consensual by

1 looking at that. That is it.

2 And she showed you pictures of the vagina, but
3 in the end she cannot tell you how that injury
4 happened, she can't tell you whether it was -- got
5 there and -- even whether it got there in a
6 consensual encounter -- a sexual encounter at all,
7 much less tell you whether the encounter was
8 consensual or not.

9 But Ms. Pinnock kept questioning her, and she
10 admitted that it is more common in cases of sexual
11 assault to see injuries in multiple places, at
12 least more than one. Here we have one.
13 Ms. Pinnock confronted her with a copy. That study
14 was out of what she called the SANE Bible, or what
15 she agreed was the SANE Bible, what they are
16 trained with. Non-consensual encounters. Multiple
17 injuries. This case, one, and we don't even know
18 how it got there. She can't tell you.

19 Now, I mean, next I want to talk to y'all
20 about Deputy Fields. I think Deputy Fields did a
21 good job. I do. I think he is an honest guy. I
22 think he really did his best job that day. He got
23 a report of an incident. He went out. He tried to
24 find people. He went and collected a video that he
25 knew was there. You know, he sat here in the

1 courtroom and he took y'all through that video and
2 he tried to explain exactly what it showed.

3 But the key thing is, he told y'all this
4 school is, in the morning, is controlled chaos.
5 Those were his words. You've seen the pictures of
6 the locker area. Almost every witness at that
7 school would describe numerous amounts of student
8 who were out there in the morning. They are in the
9 locker area. They are in the art hallway. They
10 are in the regular hallways. All kinds of people
11 out there. All sorts of people who were not
12 interviewed or talked to.

13 I mean, Ms. Vriesinga said at the beginning,
14 you know, the purpose of this statute so in cases
15 where it is only a guy and a girl. Well, this
16 ain't one of those cases. There were a lot of
17 other potential people. But they didn't come in
18 here and say anything. Because it didn't happen.
19 Because it wasn't a rape.

20 And that is the important thing to remember
21 from Fields' testimony is, he went out and he did
22 the leg work, but there are all these other people
23 there, all these other students there who could
24 have seen something and could have heard something.
25 And we didn't hear from all of them. Because they

1 didn't hear anything either.

2 And the video, I'm glad he did his job, I am
3 so glad he did his job and went and got that video,
4 because that video shows what it shows. Y'all saw
5 that. That video is not lying to you. I am glad
6 he did that. I am glad you could see it. And that
7 is what you need to take from Fields' testimony.

8 Now, in a bit of a contrast, I want to talk to
9 you about Lead Investigator Carter. Now, Lead
10 Investigator Carter came up and said -- who, by the
11 way, apparently Ms. Pleasants doesn't even remember
12 who he is or talking to him -- but came up here and
13 said, you know, he's the lead investigator, he is
14 the lead guy.

15 When he got to Spring Valley, a lot of that
16 leg work had already been done by Fields. Well, he
17 is in charge of this investigation. This is an
18 allegation of rape. He is the lead guy. And he
19 says, oh well, phew, thank goodness for Fields. I
20 mean, I've got a school full of kids and potential
21 witnesses, but, you know, he interviewed two or
22 three people, and, whew, he did some work for me.
23 Thank God.

24 Really? Is that what is called being an
25 investigator? He didn't take the extra step. He

1 didn't go up there and find other people. All
2 those kids we saw. All the teachers that we saw.
3 Doing what is called in-ves-ti-gate. The reason
4 is, because this didn't happen. Because they
5 didn't see anything. They didn't hear anything.
6 To him, leg work done, okay.

7 And the thing is, he reviewed the video. And,
8 again, the video shows what it shows. It speaks
9 for itself. Darius in the school with MINOR
10 Darius walking down the hall with MINOR
11 Darius -- and Ms. Doris Pleasants' story that
12 doesn't make any sense with the video. The video
13 shows what it shows. Carter didn't take the extra
14 step.

15 Now, DNA, I know y'all sat through that. I
16 admire y'all for that. A challenge. I don't care
17 about the DNA. Darius Mack ejaculated in MINOR

18 His DNA? It is. Don't care. Admit that.

19 Portia S. High five. She says, when I
20 questioned her, she said she saw two people that
21 looked like they were making out.

22 I said, you know what making out is?

23 Yes.

24 Making out, not just a peck on the lips, a
25 peck on the cheeks. No, making out you are full on

1 kissing the person?

2 Yep.

3 And that is how you chose to describe what you
4 saw?

5 Yep.

6 Why?

7 Well, that is where people normally make out
8 and stuff.

9 That is what Portia said, that is where people
10 normally go to make out and stuff.

11 Now, let's talk about Darius himself. He just
12 testified. You just heard it.

13 Carter said, when questioned by Ms. Barry --
14 Darius said in 2010 Carter talked to him. He told
15 Carter, I did not rape her. It was consensual.
16 Yes, I stuck it in her at the high school. We went
17 there to have sex. I didn't rape her.

18 That was in 2010.

19 Today he gets on the stand and says, I didn't
20 rape her. I went there to have sex. We've done it
21 there before in the place where people go to make
22 out and stuff, according to Portia S.

23 The story didn't change. Same story. Same
24 story.

25 You know, we have talked about the physical

1 story with MINOR Let's talk about
2 Darius's story.

3 Yes, went back there to the art patio. I
4 said, do you want to have sex. She took her pants
5 down. And I put it in from behind.

6 Now, physically that makes sense. That makes
7 a lot more sense. Quick encounter. Area of the
8 school where people go for this kind of thing. His
9 story physically makes sense. It rings more true
10 because it is true. He is telling the true story.
11 That is why his version makes sense. Because that
12 is the way it happened. Because he didn't rape
13 MINOR He didn't force MINOR to
14 do anything. They went to the area where people
15 make out and stuff. And they had consensual sex.

16 And they got caught. So let's talk about
17 that. Got caught. Darius is very open and that.
18 I was not supposed to be on that bus. I was not
19 supposed to be at that school. So when I saw that
20 lady, I said, I'm her brother. And I ran.

21 Of course he ran. Of course he ran. He got
22 caught. At 17 you get caught having sex with your
23 on and off girlfriend in high school. Yeah, he
24 ran. Of course he ran.

25 Now, when you look at those factors that I

1 went over with MINOR about her demeanor, when you
2 apply those to Darius, he passes. He didn't snap
3 at anybody. He didn't yell at anybody. He didn't
4 get argumentative. He got up there and just told
5 you the way it was. Didn't hesitate. Answered
6 questions.

7 That is how you should judge his demeanor. I
8 want you to. But that is how you judge
9 credibility, him versus her? Use those factors.
10 He passes. She fails. The test they gave you to
11 use.

12 Now, I know during this trial one question
13 that has loomed out there is, they have asked it,
14 we're going to talk about it now. That question is
15 why would she make this up and why would she say
16 it.

17 Well, I want you to remember the testimony of
18 her mother. Her mother testified that when MINOR
19 was 14 she got pregnant. She found out from
20 Darius's mom. She didn't tell her mom she was
21 pregnant. She hid it. And now she is hiding her
22 relationship with Darius again.

23 They got caught having sex. Why not blame
24 him. But what she didn't realize when she said
25 that word rape when they got caught when she was

1 still trying to hide Darius, what she didn't
2 realize is that that little snowball that that rape
3 word created is now an avalanche, an avalanche of
4 stories that don't make sense, conflicting
5 testimony. It is an avalanche that she wants to
6 fall on Darius Mack.

7 I don't think she realized that little
8 snowball was going to become this avalanche, but it
9 has. But at that time, at 15, she was going to
10 hide it, just like she had before. So she said
11 rape. The problem is, it doesn't make any sense.
12 And now we're here.

13 Now, one question that Ms. Pinnock asked you
14 to think about at the beginning of her remarks was,
15 throughout this trial, ask yourself the question,
16 why not. And y'all may have been wondering, well,
17 what does that mean or what was she talking about,
18 but we're going to go through that now.

19 We wanted you guys to keep the question, why
20 not, in your mind until the end when you analyze
21 this all and ask these questions. So let's go
22 through it.

23 There are not multiple injuries to MINOR
24 as commonly seen in non-consensual
25 encounters. Why not? Because the rape didn't

1 happen. This didn't happen.

2 Ms. Doris Pleasants' story does not make any
3 sense. It doesn't fit with the evidence that we've
4 seen on the video. Why not? Because this didn't
5 happen. That is why not.

6 You have got multiple students in the hallway.
7 Apparently don't react. Don't see anything. Don't
8 hear anything. Why not? Because this didn't
9 happen. That's why not.

10 The video that you have seen and the pictures
11 that you have seen, they don't show MINOR
12 trying to escape from Darius Mack. They don't show
13 her pushing him away. They don't show her alerting
14 anybody. They don't show her going to a teacher,
15 going to an administrator. Why not? Because it
16 didn't happen. Because her story didn't happen.
17 That is why not.

18 All these together, all this stuff that you
19 have seen, people you have heard from, it doesn't
20 add up and make sense. It doesn't prove a rape.
21 It doesn't make any sense individually or together.
22 Why not? Because this did not happen. That is why
23 not.

24 When I began my remarks to you, I told you
25 that this is the scariest part for me. It is. And

1 you might think, well, he has gone over all these
2 inconsistencies, all these things that cannot be
3 true, all these stories that don't make sense.
4 He's got all that. He's gone over it with us. Why
5 is it scary? It is scary because, despite all
6 that, Darius Mack is still sitting in that chair
7 over there. So, yes, it is scary. He is still
8 sitting in that seat over there. And we're in
9 here.

10 But, I know that y'all have paid attention. I
11 know y'all have been good jurors. I've seen it. I
12 know that you are going to review everything that
13 we've been over with a careful eye. I know that
14 you are going to think it through.

15 And I know Darius Mack didn't rape MINOR

16 Darius Mack did not rape MINOR

17 So, I am -- we -- we are asking you -- we are
18 asking you to do the right thing, and to do the
19 correct thing, and to do the just thing, to do the
20 thing that makes sense. To do the right thing,
21 because Darius Mack is innocent. And that right
22 thing we're asking you to do is when you go back
23 there, check the box next to not guilty.

24 Thank you for your attention.

25 Thank you, Your Honor.

1 THE COURT: All right, thank you.

2 Yes, ma'am.

3 CLOSING STATEMENT

4 MS. BARRY: Thank you, ladies and gentlemen.

5 The crime is -- rape is a crime of power and
6 control. Rape is a crime of violence. And rape is
7 a crime in seclusion. People don't rape victims in
8 public, in Wal-Mart, in the halls of Spring Valley
9 High School. They take them somewhere secluded to
10 commit the crime. And that is exactly what Darius
11 Mack did when he raped MINOR on October
12 the 14th, 2010.

13 Ms. Pinnock said in her opening that this case
14 is not about emotions, it is about facts. And that
15 is exactly right. Facts. The facts are that on
16 October 14th, 2010, this man right here, Darius
17 Mack, went to MINOR bus stop to get on a
18 bus and go to a school that he was not a student
19 at. He was staying down the street at his friend's
20 house, Carvelle. He testified to that. He had
21 seen her the day before at the fair and he wanted
22 to get back with her.

23 Those are the facts. That is what is
24 consistent about this case. He shows up at the bus
25 stop and gets on a bus. They put the bus video in.

1 You have seen that. He doesn't deny he did it.

2 At the beginning of this trial the judge
3 instructed you that nothing the attorneys say is
4 evidence. And that is correct. Questions are not
5 evidence, nor are our closing or opening arguments.
6 And for Mr. Cooper to say that he knows the truth,
7 he doesn't know the truth. It is your job to
8 decide what happened. All 14 of you have heard
9 everything from the witness stand and that is all
10 you are to consider, along whether the physical
11 evidence, the pictures, the video. You are the
12 fact finders, not him or me. You decide what is
13 true.

14 We have not heard from anyone, anyone except
15 Darius Mack that contradicts what MINOR --

16 MR. COOPER: Objection.

17 THE COURT: What is your objection?

18 MR. COOPER: May we approach?

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

22 THE COURT: Overruled.

23 MS. BARRY: Thank you.

24 CLOSING ARGUMENT CONTINUES:

25 MS. BARRY: MINOR story is

1 consistent, and it is corroborated. Although it
2 doesn't need to be, it is corroborated by
3 witnesses.

4 Although no one actually sees him forcing her
5 to the ground except her, although no one sees him
6 forcing his penis into her except her, there are
7 people that see before and after what happened,
8 what was the demeanor like. And that is important
9 for you to decide.

10 Who has something to gain by taking this
11 witness stand, putting their hand on the Bible and
12 swearing to tell the truth? What do they have to
13 gain, and what do they have to lose?

14 Doris Pleasants is a teacher at Spring Valley
15 High School. She didn't even know ^{MINOR} She is
16 just coming into the building. She had a doctor's
17 appointment. She was coming in late.

18 The video shows that the hallways were
19 basically clear. The last person that you see go
20 through the door there is Portia. That is Portia.
21 You see her coming -- you see her coming the other
22 way. High five. That is her. See?

23 She comes in. High five. Does whatever she
24 does. That is her walking out. That is her
25 stopping and looking. And what she saw and what

1 she heard was screaming. She heard the victim.

2 She heard the victim say, no, no, get off me.

3 That is Ms. Pleasants. But see how it is
4 jumpy? This isn't a movie. This is a surveillance
5 video. She walks through. She never said she
6 saw -- Doris Pleasants never said she saw the
7 actual assault. She saw what happened immediately
8 after. She saw him with those pants down.

9 She asked, hey, what is going on here.

10 She heard him say, oh, I'm her brother.

11 That is the first lie.

12 He is talking over her. She is crying,
13 hysterical. She said slobbering. She couldn't
14 even understand her. This is right at that point.
15 She was slobbering, crying hysterical.

16 Ms. Pleasants could hear her as soon as she walked
17 into the door.

18 The victim didn't have time to know she had
19 been caught, as they want you to believe. She was
20 already crying. She was already hysterical,
21 because she had been raped by Darius Mack, who
22 runs. He doesn't stick around. He got caught and
23 he ran.

24 Ladies and gentlemen, innocent people don't
25 lie. Innocent people don't run. But that is

1 exactly what he did. He lied and he ran.

2 And I told you that was the first lie.

3 Actually, that was the second lie, because the
4 first lie was to Bruce Davis when he got off of the
5 bus.

6 Bruce Davis was the administrator at Spring
7 Valley High School, a high school of 2,200 kids.
8 It is controlled chaos. Absolutely. Out of 2,200
9 kids, ten administrators are in charge of
10 overseeing the activity in the morning. And he
11 knew Darius. And he told Darius, just stop by the
12 front desk, get a visitor's pass if you are
13 dropping someone off, because that is what Darius
14 told him, hey, I'm just here dropping someone off.
15 That is Lie Number One.

16 He didn't stop by the front desk. He is
17 behind those girls. He is not walking with them.
18 Alexis and MINOR are together. He is walking
19 behind them, following them, following them to the
20 lockers where MINOR told you, I told him to
21 leave. I wanted him to go. Get away. Get out of
22 here. She just wanted to get to class on time.
23 But he wasn't going to let that happen.

24 But, fortunately, she wasn't the only one
25 there. Her friend Alexis, her best friend, who

1 says she doesn't even know Darius Mack is. Her
2 best friend doesn't know Darius Mack. These are
3 15-year-old girls at that time. And there is --
4 according to Mr. Mack, they are supposed to be
5 secretly dating. They weren't dating. He hadn't
6 even seen her.

7 The State presents the first time he saw her
8 was the day before at the fair, and then he came to
9 the bus stop intent on following her to school and
10 raping her. That is exactly what he did.

11 She could tell MINOR didn't wanted him
12 around. She could tell she was upset.

13 He is not holding her hand in the hallway.
14 These two are together, MINOR and Alexis. They
15 are together.

16 What is being said in that hallway? We don't
17 know. We know what she told us, MINOR MINOR
18 said, I was telling him to leave me alone. I did
19 not want to get back with him.

20 He was telling her he loved her. He wanted to
21 show her how much he loved her. He sure did. That
22 is what he wanted to do. And he did.

23 But ask yourself, what does each and every
24 witness have to gain or lose by getting up on this
25 witness stand. What did Ms. Pleasants have to gain

1 or lose by getting up on this witness stand?

2 Nothing. She told you what she saw. She told you
3 what she heard.

4 Portia told you what she saw. She told you
5 what she heard. They know each other casually, but
6 they are not friends.

7 Alexis told you what she saw. She told you
8 what she heard.

9 They didn't come in here and tell you they saw
10 this rape. Even Ms. Pleasants didn't see that.
11 She saw what happened afterwards. She heard the
12 victim say, he raped me, as she is crying and
13 slobbering. Hysterical.

14 Darius Mack takes off running out of the
15 building and MINOR goes into Deputy Fields'
16 office.

17 And Deputy Fields did a great job.
18 Absolutely. Spring Valley is lucky to have him.
19 They did exactly what they are supposed to do, take
20 statements from people that saw or heard something
21 happen, not scour the whole school, did you see
22 him? He is there. He was walking through the
23 hallway. He admits he is there. They don't need
24 to interview anyone else. He interviewed the
25 people that were important in this case, the people

1 that saw what happened right after and right before
2 Darius raped MINOR.

3 And, unfortunately -- and I apologize, I'm
4 sure you didn't think that on Monday you would be
5 coming in here and have to see the pictures that
6 you saw.

7 Donna DeBrew, after Deputy Fields talked with
8 MINOR not once, but twice, and her story remains
9 consistent, she is taken to the hospital and
10 immediately examined. She goes to Palmetto Health
11 Richland and has a rape kit done by a trained
12 sexual assault nurse examiner. She is an expert.

13 Expert witnesses give their opinion. And her
14 opinion was this is consistent with forcible rape.

15 MR. COOPER: Objection, Your Honor. It is not
16 in evidence.

17 THE COURT: Let me see you.

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

21 THE COURT: All right.

22 CLOSING ARGUMENT CONTINUES:

23 MS. BARRY: And Ms. Pinnock got out of her
24 that 94 percent of the time when there is a sexual
25 assault victims have at least two injuries. She

1 does. Scratches on her neck, that is an injury.
2 She took a photograph of it because it was
3 important and is an injury. And this injury, the
4 abrasion appearing inside of her vagina. There are
5 two injuries.

6 She went over this exam. She told you how
7 long it took, the process, how intrusive it was to
8 a 15-year-old girl. But she went through that and
9 followed through with it. Because it happened.
10 Because it was important to her. And the evidence
11 speaks for itself. She is injured. And her
12 injuries match what she said to you. Her injuries
13 are from the rape and from him grabbing her around
14 the throat and forcing himself inside of her.

15 Investigator Carter comes the next day to
16 Spring Valley High School. He didn't get the call
17 till late about this assault. He comes. Deputy
18 Fields had gathered a lot of the statements. He
19 had talked with students because he had a great
20 relationship with the students. He is a mentor at
21 that high school. He is an assistant coach of the
22 football team, a coach of the basketball team. He
23 is more than just a cop at the school. He is there
24 for the kids. Someone to go to. They feel
25 comfortable with him. They want to talk to him.

1 He is a cop. He is a friend.

2 But Investigator Carter talked with Darius
3 Mack, and Darius Mack told him in his own words, I
4 didn't rape her.

5 Investigator Carter didn't say anything about
6 rape. Darius Mack just blurts that out. I didn't
7 rape her. I stuck it in her. Does that sound like
8 a man that loves her? I stuck it in her. He sure
9 did. And he ran when he got caught.

10 He continued to lie, ladies and gentlemen, and
11 he lied today. Today was the fourth lie. He now
12 is telling you how they were positioned, because it
13 fits. He wants to make everything fit. He was
14 running out of school because they got caught
15 having sex.

16 Well, he is not running through the hallway.
17 He knew he wasn't supposed to be there. He is not
18 running. Very brazenly walking through the
19 hallways at Spring Valley High School.

20 Yet he wants you to believe what he is saying
21 today. He wants you to believe that he loves her.
22 That they have been boyfriend and girlfriend off
23 and on, he said.

24 No, they weren't. Wouldn't her friend know
25 about that? Her mom might not. But her friend

1 would.

2 He had only seen his child twice. If they are
3 boyfriend and girlfriend, she could have gone out
4 with the baby and at least let him see the baby.

5 It wasn't like that. The first time he saw
6 her was at the fair. And he came the next day to
7 her bus stop.

8 He goes into so much detail he doesn't tell
9 Investigator Carter, but now he's had plenty of
10 time to think about it, and now he had the
11 opportunity to see these pictures and see the video
12 and come up with this fourth lie.

13 Common sense, ladies and gentlemen, is the
14 most important tool you bring in here. Everyone
15 has a varied background, different educational
16 level. But everyone judge people's credibility.

17 If someone has something to gain or someone
18 has something to lose, you know when someone is
19 telling the truth. And I know it is hard looking
20 at these pictures and I know your job is hard, but
21 think about MINOR Please think about
22 MINOR

23 I know we had a lot of breaks in this case and
24 I know there were a lot of technical difficulties
25 and operator error, but please do not take that out

1 on MINOR Think about how she felt on
2 October 14th, 2010.

3 MR. COOPER: Objection.

4 THE COURT: Sustained.

5 CLOSING ARGUMENT CONTINUES:

6 MS. BARRY: How hard has it been? She got up
7 in the morning. She is a 15-year-old mother, A
8 15-year-old mother who takes care of her baby and
9 herself. Her mom does very little to help her.
10 She said that. It is hers. She takes care of him
11 when she gets off of school.

12 So she gets up, gets her child ready, gets
13 herself ready, goes to school, and he is at the bus
14 stop. Harassing her. Gets on the bus. Follows
15 her to school. She doesn't want him there.

16 How hard must it have been as she is trying to
17 get to class, trying to get him to leave her alone,
18 and then he pushes her into this art patio and
19 rapes her. She was on her period.

20 Ms. Vriesinga said -- talked a little bit
21 about reasonable doubt. And Your Honor will
22 instruct you more on reasonable doubt. But is it
23 reasonable to believe that she would submit to a
24 consensual act, that she is going to bend over in
25 the art patio when she is already late for class

1 and have sex with him first thing in the morning at
2 school? No. That is not reasonable. That is not
3 reasonable because it is not true.

4 She just wanted to go to class. Get there on
5 time. But she couldn't because he kept her from
6 doing that.

7 Once she gets caught, she tells them exactly
8 what happens. She told she was raped. She has
9 maintained that.

10 She goes to the hospital and has a very
11 intrusive exam. She has to go through this. And
12 then a year and a half later she has got to come up
13 here, sit on this stand, and tell you that she was
14 raped. That her belt was broken off. Her pants
15 torn down. And that this man stuck his penis in
16 her. And it hurt.

17 What does she have to gain by that? Nothing.
18 Nothing.

19 She could have walked away from this, but she
20 didn't because it is important to her, because she
21 was raped on October the 14th, 2010, by Darius
22 Mack.

23 He forced himself on her. He held her down
24 and raped her.

25 Innocent people don't lie and innocent people

1. don't run.

2. Power, control, seclusion is rape. And Darius
3. Mack is guilty of raping MINOR

4. Thank you.

5. THE COURT: All right, ladies and gentlemen of
6. the jury, we have been going about an hour and a
7. half or more. Does anyone need to take a break
8. before I give you the charge on the law? A
9. bathroom break? It may take about 15 or 20
10. minutes.

11. JUROR: Yes.

12. THE COURT: Yes. Okay, we will take about a
13. five or ten minute break for you all to take a
14. bathroom break.

15. (WHEREUPON, the jury retires to the jury
16. room.)

17. THE COURT: We'll took about a ten minutes --
18. well, let me ask you this. Did y'all want to put
19. any of that on the record, your objection?

20. MR. COOPER: Yes, I just want to put one of my
21. objections weren't on the record since we discussed
22. it at the bench.

23. The first objection was to burden shifting.
24. I'm trying to recall the Solicitor's comment the
25. best I can.

1 THE COURT: She said no one --

2 MR. COOPER: Get it exactly right. She said
3 no one other than Darius was here to contradict her
4 story. I contend that is burden shifting.

5 THE COURT: I don't think that is what she
6 said. I can have the court reporter pull it up,
7 but I think she said no one else but Darius said.
8 She didn't -- so that is why I ruled -- I said
9 overruled it because she was referring to the
10 people testifying. But I can have the court
11 reporter pull it back up for me.

12 MR. COOPER: Whatever it was. I just want to
13 note my objection to it.

14 All right. I think the second objection
15 was --

16 THE COURT: The second objection was regarding
17 her saying that --

18 MR. COOPER: On the misstatement by the SANE
19 nurse. I mean, we just disagree that that is what
20 the SANE nurse said. And whatever the transcript
21 said it says, but I disagree with her
22 characterization of that. That was my second
23 objection.

24 The third objection was Golden Rule. You
25 can't place the jury in the Defendant's shoes.

1 So just to complete the record, those were my
2 objections, Your Honor.

3 THE COURT: And I sustained that.

4 MR. COOPER: Yes, ma'am.

5 THE COURT: All right. We'll take about ten
6 minutes.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Are you ready to bring them in?
9 You can bring them in.

10 And I just explained to them what was going
11 on. They told them they could start eating, but we
12 would probably have to stop them. So I don't know
13 that they are or not.

14 (WHEREUPON, the jury came into open
15 court at approximately 1:11 p.m.)

16 THE BAILIFF: The jury is present, Your Honor.

17 THE COURT: All right, ladies and gentlemen of
18 the jury, thank you for your patience.

19 JURY CHARGE

20 THE COURT: You have heard all of the evidence
21 in this trial. You have heard the arguments of the
22 parties. And now it is time for me to charge you
23 as to the law.

24 I remind you that during this trial you and I
25 have certain duties to perform. As the trial judge

1 it is my responsibility to preside over the trial
2 of this case. And I also have the duty to rule on
3 the admissibility of evidence offered during this
4 trial.

5 You are to consider only the competent
6 evidence before you. If there was any testimony
7 ordered stricken from the record in this case
8 during this trial, you must disregard that
9 testimony. You are to consider only the testimony
10 which has been presented from the witness stand,
11 any exhibits which have been made a part of the
12 record in this case, and any stipulations of
13 counsel.

14 I have the additional duty to charge you the
15 law applicable to this case. As the presiding
16 judge, I am the sole judge of the law of this case,
17 and it is your duty as jurors to accept and apply
18 the law as I now state it to you.

19 If you already have an idea as to what the law
20 is or what the law ought to be and it does not
21 agree with what I now tell you the law is, you must
22 abandon this idea because you are sworn to accept
23 the law and apply the law exactly as I state it to
24 you.

25 In every case tried in the court before a

1 jury, the jury becomes the sole and exclusive judge
2 of the facts in a case. A trial judge cannot
3 state, comment on, or make any statement to a trial
4 jury about the facts in a case.

5 Since you, the jury, are the sole judge of the
6 facts in this case, you are not to infer from what
7 I have said during the progress of this trial in
8 ruling upon the admissibility of evidence or
9 otherwise or anything that I say now during the
10 course of this instruction to you that I have an
11 opinion about the facts in this case. The law does
12 not allow me to have an opinion about the facts in
13 this case. This is a matter solely for you, the
14 jury, to determine.

15 As jurors it is your duty to determine the
16 effect, value, weight and truth of the evidence
17 presented during this trial.

18 There are two types of evidence which are
19 generally presented during a trial: Direct
20 evidence and circumstantial evidence.

21 Direct evidence is the testimony of a person
22 who claims to have actual knowledge of a fact, such
23 as an eyewitness. It is evidence which immediately
24 establishes the main fact to be proved.

25 Circumstantial evidence is proof of a chain of

1 facts and circumstances indicating the existence of
2 a fact. It is evidence which immediately
3 establishes collateral facts from which the main
4 fact may be inferred. Circumstantial evidence is
5 based on inference and not on personal knowledge or
6 observation.

7 The law makes absolutely no distinction
8 between the weight or value to be given to either
9 direct or circumstantial evidence, nor is a greater
10 degree of certainty required of circumstantial
11 evidence than of direct evidence.

12 You should weigh all of the evidence in a
13 case. After weighing all the evidence, if you are
14 not convinced of the guilt of the Defendant beyond
15 a reasonable doubt, you must find a Defendant not
16 guilty.

17 Credibility of witnesses. The testimony of a
18 victim in a criminal sexual assault prosecution
19 need not be corroborated by testimony or evidence.
20 Necessarily, you must determine the credibility of
21 witnesses who have testified in this case.

22 Credibility simply means believability. It
23 becomes your duty as jurors to analyze and to
24 evaluate the evidence and determine which evidence
25 convinces you of its truth in determining the

1 believability of witnesses who have testified in
2 this case.

3 You may believe one witness over several
4 witnesses, or several witnesses over one witness.
5 You may believe a part of the testimony of a
6 witness and reject the remaining part of the
7 testimony of that same witness.

8 You may believe the testimony of a witness in
9 its entirety or reject the testimony of a witness
10 in its entirety.

11 You may consider whether any witness has
12 exhibited to you an interest, bias, prejudice, or
13 other motive in this case.

14 You may also consider the appearance and
15 manner of the witness while on the witness stand.

16 Statement by the Defendant. A statement
17 alleged to have been made by the Defendant has been
18 admitted into evidence in this case. While the
19 Court has determined that the statement is
20 admissible, I instruct you that you make the
21 ultimate decision of whether or not the Defendant
22 made the statement. If the Defendant did make the
23 statement, you must determine whether the statement
24 was made by the Defendant voluntarily and of his
25 own free will.

1 This means that the statement was not caused
2 by pressure, force, fear, threat, coercion, or
3 intimidation, or by hope or a promise of leniency,
4 or a reward of any kind.

5 In determining whether the statement was
6 voluntary, you should consider both the
7 characteristics of the Defendant and the details of
8 the questioning.

9 Some of these factors that you must consider
10 are, the age of the Defendant, the Defendant's
11 education or lack of education, the Defendant's
12 mental ability or capacity, the Defendant's IQ or
13 intelligence, the Defendant's background and
14 environment, the place and length of the detention,
15 the nature of the questioning, and the advice or
16 lack thereof to the Defendant of his constitutional
17 rights, including but not limited to the right to
18 remain silent, that any statement could be used
19 against him in a court of law, the right to have a
20 lawyer present, that if he could not afford a
21 lawyer, a lawyer would be appointed to represent
22 him without any cost, and that he could stop making
23 a statement at any time.

24 You must carefully consider all of the
25 surrounding circumstances before you give any

1 weight to any alleged statement.

2 The State has the burden of proving beyond a
3 reasonable doubt that the alleged statement was
4 voluntary. If you determine it was, you may give
5 the statement any further consideration that you
6 deem proper. You must decide what weight, if any,
7 should be given to the alleged statement.

8 If you determine the alleged statement was not
9 the free and voluntary statement of the Defendant,
10 you should not consider the statement at all.

11 There has been evidence presented that
12 witnesses have made prior statements which are not
13 consistent with the witness's present testimony.
14 You may use this evidence to decide whether to
15 believe the witness. You may also use evidence of
16 the earlier contradictory statements to determine
17 the truth of those statements. It is up to you to
18 decide whether to believe the earlier statements or
19 the testimony given at trial.

20 If a witness is shown to have knowingly
21 testified untruthfully concerning any material
22 matter, you may consider this in determining
23 whether to trust a witness's testimony as to other
24 matters. You may reject all the testimony of that
25 witness or give all or part of the testimony the

1 weight you think it deserves.

2 The rules of evidence ordinarily do not permit
3 witnesses to testify to opinions or conclusions.

4 An exception to this rule is this for witnesses we
5 call expert witnesses. A witness who, by education
6 and experience, has become an expert in some art,
7 science, profession or calling may state an opinion
8 as to relevant and material matters in which the
9 witness claims to be an expert and may also state
10 the reasons for the opinion.

11 You should consider any expert opinion
12 received in evidence in this case and, like any
13 other evidence, give it the weight you think it
14 deserves.

15 If you decide that the opinion of an expert
16 witness is not based on sufficient education and
17 experience, or if you conclude that the reasons
18 given in support of the opinion are not sound, or
19 that the opinion is outweighed by other evidence,
20 you may disregard the opinion entirely.

21 An expert witness's testimony is to be given
22 no greater weight than that of other witnesses
23 simply because the witness is an expert.

24 Further, you are not required to accept an
25 expert's opinion even though it is not

1 contradicted.

2 The indictment charges the Defendant with
3 criminal sexual conduct, first degree. I remind
4 you that the fact that the Defendant was arrested,
5 charged, and indicted in this case is not evidence
6 in this case and cannot be considered by you as
7 evidence of guilt in this case, nor does it create
8 any presumption or inference of guilt.

9 This document is simply the formal written
10 instrument which contains the charges made against
11 the Defendant. It is a formal document by which
12 this case is brought into this court.

13 The Defendant has pled not guilty to the
14 indictment, and that plea puts the burden on the
15 State to prove the Defendant guilty.

16 A person charged with committing a criminal
17 offense in South Carolina is never required to
18 prove himself innocent.

19 I charge you that it is an important rule of
20 law that the Defendant in a criminal trial, no
21 matter what the seriousness of the charge may be,
22 will always be presumed to be innocent of the crime
23 for which the indictment was issued unless guilt
24 has been proven by evidence satisfying you of that
25 guilt beyond a reasonable doubt.

1 This presumption of innocence does not end
2 when you begin your deliberation but accompanies
3 the Defendant throughout the trial until you reach
4 a verdict of guilt based on evidence satisfying you
5 of that guilt beyond a reasonable doubt.

6 The presumption of innocence is like a robe of
7 righteousness placed about the shoulders of the
8 Defendant which remains with the Defendant until it
9 has been stripped from the Defendant by evidence
10 satisfying you of the Defendant's guilt beyond a
11 reasonable doubt.

12 The presumption of innocence is not mere legal
13 theory. It is not just a legal phrase. It is a
14 substantial right to which every Defendant is
15 entitled unless you, the jury, are satisfied from
16 the evidence of the Defendant's guilt beyond a
17 reasonable doubt.

18 What is reasonable doubt? A reasonable doubt
19 is the kind of doubt that would cause a reasonable
20 person to hesitate to act. The State has the
21 burden of proving the Defendant guilty beyond a
22 reasonable doubt.

23 Some of you may have served as jurors in civil
24 case where you were told that it is only necessary
25 to prove that a fact is more likely true than not

1 true, such as the greater weight or preponderance
2 of the evidence.

3 In criminal cases, the State's proof must be
4 more powerful than that. It must be beyond a
5 reasonable doubt.

6 Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the Defendant's
8 guilt. There are very few things in this world
9 that we know with absolute certainty. And in
10 criminal cases the law does not require proof that
11 overcomes every possible doubt.

12 If, based on your consideration of the
13 evidence, you are firmly convinced that the
14 Defendant is guilty of the crime charged, you must
15 find the Defendant guilty.

16 If, on the other hand, you think there is a
17 real possibility that the Defendant is not guilty,
18 you must give the Defendant the benefit of the
19 doubt and find him not guilty.

20 As I stated to you earlier, the Defendant is
21 charged with criminal sexual conduct in the first
22 degree.

23 The first element which the State must prove
24 beyond a reasonable doubt is that the Defendant
25 engaged in a sexual battery with the victim.

1 A sexual battery is sexual intercourse,
2 cunnilingus, fellatio, anal intercourse, or any
3 intrusion, however slight, of any part of a
4 person's body or of any object into the genital or
5 anal openings of another person's body except when
6 the intrusion is accomplished for medically
7 recognized treatment or diagnostic purposes.

8 If you find that the State has not shown
9 beyond a reasonable doubt that a sexual battery
10 occurred, you would stop deliberating and your
11 verdict would have to be not guilty.

12 If you find that a sexual battery did occur,
13 you must then decide whether the State has proved
14 beyond a reasonable doubt that the victim submitted
15 to sexual battery while the victim was also the
16 victim of forcible confinement, kidnapping,
17 robbery, extortion, burglary, housekeeping --
18 housebreaking, I'm sorry, or any other similar act
19 or offense.

20 In order to establish criminal liability,
21 criminal intent is required. For example, the
22 mental state required to be proven by the State for
23 a particular crime might be purpose, intent,
24 knowledge, recklessness, or criminal negligence.

25 Criminal intent must be proved by the State

1 beyond a reasonable doubt. Criminal intent is
2 always a matter that must be determined by the jury
3 from the circumstances surrounding the situation.

4 There is no way to prove intent to a
5 mathematical certainty. There is no way medical
6 science can dissect a person's brain and determine
7 what the person had in mind. So the law says that
8 criminal intent may be inferred from the
9 circumstances shown to have existed.

10 This is how you make a determination of
11 whether or not the element requiring intent was
12 present. It is not necessary to establish intent
13 by direct and positive evidence. But intent may be
14 established by inference in the same way as any
15 other fact by taking into consideration the acts of
16 the parties and all the facts and circumstances of
17 this case.

18 Criminal intent is a mental state, a conscious
19 wrongdoing. It is up to you to determine what the
20 Defendant intended to do based on the circumstances
21 shown to have existed. Criminal intent can arise
22 from action or a failure to act. It may arise from
23 negligence, recklessness, or an indifference to
24 duty or the consequences that is considered by the
25 law to be equivalent of criminal intent.

1 The State and the Defendant are entitled to
2 the individual opinion of each juror on the issues
3 of fact in this case.

4 It is the duty of each of you to consider and
5 weigh all of the evidence in this case and from
6 such evidence determine, if you can, the question
7 of guilt or innocence of the Defendant.

8 There is nothing peculiarly different in the
9 way a jury should consider the evidence in a
10 criminal case from that in which all reasonable
11 persons treat any question depending upon evidence
12 presented to them.

13 You are expected to use your good sense,
14 consider the evidence in the case for only the
15 purposes for which it has been admitted, and give
16 it a reasonable and fair construction in the light
17 of your common knowledge of the tendencies and
18 inclinations of human beings.

19 If the accused be proved guilty beyond a
20 reasonable doubt, say so. If not so proved guilty,
21 say so.

22 Your verdict in this case will be one of two
23 forms. If from the evidence and the law you find
24 that the Defendant is not guilty, Mr. Foreman, you
25 will circle not guilty on the verdict form that I

1 will give you and the foreman will sign his name
2 and date it.

3 If, on the other hand, you find that the
4 Defendant is guilty based upon the evidence and the
5 law which you have heard, you will circle guilty on
6 the verdict form. And the foreman will sign his
7 name and date it.

8 Your verdict must be unanimous. It must be
9 guilty or not guilty.

10 The law requires that a jury verdict be
11 unanimous, which means that all jurors must agree.

12 The only two forms of verdict are guilty or
13 not guilty.

14 Mr. Foreman, once the jury reaches a verdict
15 of not guilty or guilty, circle the verdict on the
16 face of the verdict form and sign under the verdict
17 to signify that what you have circled is the
18 verdict of all the jurors. Then notify us by
19 knocking on the door that you have reached a
20 verdict.

21 I have before me the verdict form that says,
22 The State of South Carolina, County of Richland, In
23 the Court of General Sessions of the Fifth Judicial
24 Circuit, Indictment Number 2011-GS-40-1375.

25 And it states, verdict form, State of South

1 Carolina versus Darius Mack, Defendant. And it
2 says, please circle the appropriate verdict below
3 and follow the accompanying instructions carefully.

4 One, as to the charge of criminal sexual
5 conduct in the first degree, we, the jury,
6 unanimously find the Defendant -- and on here it
7 has a place for guilty and not guilty. You will
8 stop and end your deliberations. Mr. Foreman, you
9 will sign where it stays presiding juror and date
10 it. You will knock on the door and notify the
11 bailiff that you all have reached a verdict.

12 At this time I am going to send you back into
13 the jury room. You will not begin your
14 deliberations until you receive instructions from
15 the bailiff to begin deliberations, all of the
16 evidence, and the verdict form.

17 Once you receive the verdict form, the
18 instructions from the bailiff, and all of the
19 evidence, you may begin your deliberations. And
20 you may begin eating your lunch.

21 Thank you.

22 And the two alternates, I am going to ask you
23 all to hang back. Everybody else can go.

24 (WHEREUPON, the jury retires to the jury
25 room at 1:30 p.m.)

1 THE BAILIFF: All right.

2 (WHEREUPON, the jury came into open
3 court at approximately 8:28 p.m.)

4 THE BAILIFF: The jury is all present, Your
5 Honor.

6 THE COURT: All right, thank you. Mr.
7 Foreman, it is my understanding that you all have
8 reached a verdict?

9 THE FOREMAN: Yes, Your Honor.

10 THE COURT: All right. If you could pass that
11 to the bailiff.

12 (Foreman complies.)

13 THE COURT: Thank you.

14 (Court views verdict.)

15 THE COURT: I am going to ask the clerk to
16 publish the verdict.

17 THE CLERK: Thank you. Indictment Number
18 2011-GS-40-1375, The State of South Carolina versus
19 Darius Mack.

20 As to the charge of criminal sexual conduct in
21 the first degree, we, the jury, unanimously find
22 the Defendant guilty. Signed: Number 138,
23 Foreperson. May 17th, 2012.

24 Mr. Foreman, was this your verdict, and the
25 verdict of the entire jury?

1 MS. BARRY: Nothing from the State.

2 THE COURT: All right, anything from the
3 Defense?

4 MR. COOPER: Yes, ma'am. At this time I would
5 renew all previous motions and objections that we
6 made. And I also have a motion for a new trial at
7 this time.

8 My motion for a new trial is based on several
9 aspects. Number One, I'd like to address the
10 introduction of the SANE nurse pictures that we
11 objected to.

12 I think that deprived Mr. Mack of his right to
13 fair trial, I think it deprived him of due process,
14 I think it unfairly inflamed the passion and the
15 prejudices of the jury. I think that is grounds
16 for new trial.

17 I think also the late witnesses that we
18 objected to which testified to some DNA evidence, I
19 think that whole scenario of testimony and late
20 instruction of witnesses prejudiced Mr. Mack. I
21 think it denied his right to a fair trial and his
22 right to due process.

23 Probably most importantly, Your Honor, I'd
24 like to address the charge of the statute, the
25 corroboration statute in cases such as these.

1 Your Honor, that charge violated Mr. Mack's
2 right to due process. It violated his equal
3 protection rights. It violated his right to fair
4 trial. It violated his equal protection rights.
5 Because that charge is only made in these kind of
6 cases. Other criminal defendants charged, the jury
7 isn't charged that way. That charge unfairly tells
8 the jury to basically believe the victim without
9 corroboration. It puts emphasis on the victim's
10 testimony. It tells the jury that they may lessen
11 the impact or lessen their consideration of other
12 people's testimony. It tells -- it is a direct
13 comment on the facts that gives the jury the
14 message that no matter what they think about the
15 rest of the evidence, it is okay to just believe
16 the victim.

17 And we believe that is what happened in this
18 case. And I'd like to highlight for the record
19 what is already Court's Exhibits, the jurors
20 questions.

21 I would point out on the record the comments
22 of the foreman concerning the statute and what they
23 requested.

24 We believe that that statute weighed
25 impermissibly heavily on the juror's minds in this

1 case. We believe that it led them to put -- the
2 Court emphasized weight on MINOR testimony
3 and perhaps ignored or discounted other evidence.
4 We think the record shows that. We think the
5 record -- the Court's discussion with the jury
6 about their questions reflects that.

7 I mean, I guess in short we think this case is
8 the ultimate example of everything that is wrong
9 with that statute, Your Honor.

10 I think if anything entitles Mr. Mack to a new
11 trial, it was to charge that statute.

12 If I could just beg the Court's indulgence a
13 moment.

14 (Pause.)

15 MR. COOPER: So, Your Honor, based on those
16 factors, I respectfully request that Mr. Mack
17 receive a new trial.

18 Thank you.

19 THE COURT: All right. Anything in reply?

20 MS. BARRY: Your Honor, I think you ruled
21 appropriately. The most recent case is State v.
22 Hill where the Court of Appeals upheld that jury
23 instruction because that was the intent of the
24 legislature to instruct jurors that these cases are
25 special. And this is the exact type of case that

1 they refer to, that there are no witnesses in rape.
2 Rape is a crime of seclusion. And this exact --
3 this case was absolutely a crime of seclusion.

4 Just as they said, that criminal sexual
5 conduct cases are special in nature for that
6 reason. And that Your Honor ruled correctly in
7 allowing that charge to go to the jury. There was
8 no special emphasis on that particular part of the
9 statute. And we agree with Your Honor's decision.

10 As far as the SANE pictures, we only
11 introduced five. She was an expert witness. She
12 relied on those pictures to instruct the jury and
13 to further help them understand the types of
14 injuries that she saw on October 14th, 2010. Your
15 Honor allowed them over objection. We find that
16 that is proper. We think that that is proper.

17 And the late witnesses, there was one witness
18 that testified, Investigator Rob Martin. He was --
19 it was a late witness. We did, however, limit his
20 testimony. He was very careful on the stand. And
21 I don't know that the jury could have perceived
22 that he was not a part of this case. All he
23 testified to was that he got consent from the
24 Defendant to swab his mouth. In fact, the
25 Defendant swabbed his own mouth. And that buccal

1 swab was introduced into evidence -- it wasn't
2 introduced into evidence, but it was used in
3 this -- the DNA testing for which Mr. Cooper did
4 not ask the DNA expert any questions on that issue,
5 nor did he ask Investigator Rob Martin any
6 questions. In fact, in their closing he said DNA
7 did not even matter in this case.

8 Thank you.

9 THE COURT: All right. The Defendant's motion
10 for new trial will be denied.

11 As to the issue of the pictures, I think the
12 case law is pretty clear. I'm relying on State v.
13 Jarrell, 564 S.E.2d 462. I also relied on State v.
14 Martucci, 669 S.E.2d 598. The pictures were
15 visually presented to me. It was about 40. I did
16 limit the amount of pictures. I believe five or
17 six were presented. And they were presented along
18 with the SANE testimony, the testimony accompanying
19 the testimony of the SANE expert witness who
20 testified to them.

21 I find that the prejudicial effect is not --
22 does not substantially outweigh by the probative
23 value and there was no prejudice to the Defendant
24 in showing the photographs.

25 As to the late witnesses, there was one

1 witness that testified, Investigator Rob Martin.
2 He was a chain witness. And the -- as I stated
3 earlier, his testimony went more towards the weight
4 of the evidence than the admissibility.

5 The DNA issues were presented to the Defense
6 in the discovery. It listed the number, the 2008
7 number of the swab. And, like I said, he was the
8 only witness that was identified late. And I
9 believe that it went more towards the weight of the
10 evidence as to whether or not he was admissible as
11 a witness.

12 As to the corroboration statute, the Court
13 relied on State v. Hill, State v. Orozco, which are
14 both Court of Appeals cases from last year, and
15 State v. Rayfield, which is a Supreme Court case
16 where the Supreme Court goes into great detail
17 about the purpose of the law and the Court's
18 ability to charge it to the jury.

19 And the Court further goes on and talks about
20 the reasoning behind the law. And I think we had
21 much exchange about that earlier.

22 And for those reasons, I am going to deny the
23 motion for a new trial.

24 All right. All right, anything from the State
25 regarding sentence?

1 So, Your Honor I ask you to be as lenient as you
2 possibly can.

3 Thank you.

4 THE COURT: Thank you. All right, have him
5 stand up.

6 (Defendant stands.)

7 SENTENCING

8 THE COURT: On Indictment 2011-GS-40-1375, the
9 Defendant is committed to the State Department of
10 Corrections for 20 years. He will of course have
11 to register on the sex offender registry. And I'll
12 put that on here.

13 All right. Anything else from the State?

14 MS. BARRY: No, ma'am.

15 THE COURT: Anything from the Defense?

16 MR. COOPER: Nothing at this time, Your Honor.

17 THE COURT: Thank you.

18 (WHEREUPON, the proceedings were concluded.)

19

20

21

22

23

24

25

(END OF TRANSCRIPT)

WITNESSES

✓
(S) Richard Carter – Richland County Sheriff

ARREST WARRANT NUMBER

1901460

ACTION OF GRAND JURY

TRUE BILL

Mena H. Gardiner
Foreperson of Grand Jury MAR 09 2011
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-40-1375

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2011

92

THE STATE
vs.

Darius Dominic Mack

Indictment for
CRIMINAL SEXUAL CONDUCT
(ADULT) 1ST DEGREE

SC Code: 16-03-0652
CDR Code: 0160

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

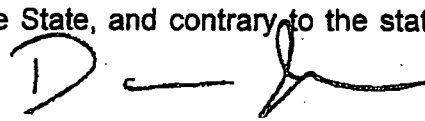
At a Court of General Sessions, convened on MARCH 9, 2011, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT (ADULT) 1ST DEGREE

CDR: 0160 16-03-0652

That DARIUS DOMINIC MACK did in Richland on or about October 14, 2010, engage in sexual battery with MINOR and the defendant used aggravated force in order to accomplish the sexual battery and/or while the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act, in violation of Section 16-03-0652, 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.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF 410
STATE

Richland

VS.

Darius Dominic Mack

AKA:

Race: Sex: M Age: 19

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct - First degree

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Debra Barry Moore 69810

Barry, Debra

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
§ 44-53-450(C) (Conditional Discharge)	\$350
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter: D. McChadsey

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-40-1375

A/W#: 1901460

Date of Offense: 10/14/2010

S.C. Code § : 16-03-0652

CDR Code #: 0160

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

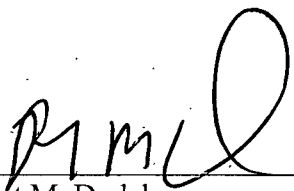
\$ _____ paid to Public Defender Fund

Other: sex offender registry☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge NBJudge Code: 2161Sentence Date: 5-17-12

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."

September 17, 2014



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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Greenville, SC 29603

ATTORNEYS FOR APPELLANT

RECEIVED

SEP 17 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

DeAndrea G. Benjamin, Circuit Court Judge

RECEIVED

SEP 17 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

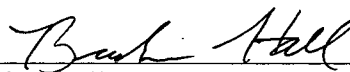
DARIUS DOMONIC MACK,

APPELLANT

APPELLATE CASE NO. 2012-212105

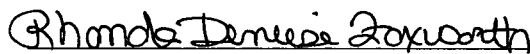
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of September, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 17th day of September, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 17, 2021