

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
J.C. Nicholson, Jr., Circuit Court Judge

Opinion No. 2015-UP-262 (S.C. Ct. App.)

Filed May 20, 2015

Appellate Case No: 2013-000694

THE STATE

PETITIONER,

v.

ERICK ARROYO

RESPONDENT.

APPENDIX
Volume 1 of 3

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SC Court of Appeals

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State of South Carolina

County of Charleston

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-VS-

Erick Arroyo,

Defendant.

2010-GS-10-00522, 00529
2011-GS-10-4790

July 9 through 13, 2012

Transcript of Record

BEFORE:

The Honorable J.C. "Buddy" Nicholson, Judge

APPEARANCES:

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Assistant Solicitor for 9th Judicial Circuit
Attorney for the State

Andrew Savage, Esquire
Attorney for the Defendant

Jo Rice
Circuit Court Reporter

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1 **July 9, 2012**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had, commencing
4 at approximately 12:30 p.m.)

5 THE COURT: All right. I understand we have
6 some motions that we need to hear before we start the
7 jury process. And I believe, Ms. -- does the State have
8 -- do you want to hear your motions now, or do you want
9 to hear those at a later time?

10 MS. GORDON: Your Honor, our motions -- the
11 404(b) motion, I think, would be, for judicial economy,
12 would be better heard after testimony begins.

13 THE COURT: Okay. Fine.

14 MS. GORDON: The others are a rape shield
15 motion.

16 THE COURT: Okay. All right. As far as the
17 jury's concerned, it's twelve thirty. Have you already
18 pulled the fifty?

19 THE CLERK: Yes, sir.

20 THE COURT: All right. Are they downstairs?

21 THE CLERK: Yes, sir.

22 THE COURT: The rest of them are gone?

23 THE CLERK: Yes, sir.

24 THE COURT: It's twelve thirty. Mr. Savage,
25 how long do you think your motions will take? Thirty

1 minutes? Forty-five minutes? An hour?

2 MR. SAVAGE: I'd say an hour, Your Honor.

3 THE COURT: It will be an hour?

4 MR. SAVAGE: An hour.

5 THE COURT: All right. That will be close to
6 one thirty.

7 Why don't you tell that jury ...

8 If we finish your motion at one thirty, can y'all
9 come back at two thirty? Will that be sufficient time
10 for you?

11 MR. SAVAGE: Yes, sir.

12 THE COURT: Tell the jury to be back in this
13 courtroom at two thirty.

14 THE CLERK: Two thirty, okay.

15 THE COURT: All right. Mr. Savage, which
16 motion do you want -- would you like to hear first? Do
17 you want to address any issues concerning negotiations
18 towards plea bargaining during this process?

19 MR. SAVAGE: Judge, thank you. If you would
20 give me just a moment so I can make part of the record
21 our preliminary discussions.

22 (WHEREUPON, Court's Exhibit Number 1 through 4 were
23 marked for identification only.)

24 MR. SAVAGE: Your Honor was kind enough to
25 advise us in the chambers at which time we reviewed the

1 State's proposed voir dire to which the Defendant has no
2 objections. We reviewed the Defendant's voir dire with
3 the Court's understanding that any objections raised by
4 the State would be incorporated in the preliminary
5 instructions to be given to the Court. Therefore, the
6 Defense has ---

7 THE COURT: I think that was thirty-two through
8 forty-one requests?

9 MR. SAVAGE: Yes, sir.

10 THE COURT: I have not gotten them out of the
11 notebook yet, but I will.

12 MR. SAVAGE: We have no objections considering
13 the Court's explanation of the court proceedings and how
14 that would be done. As far as the Court's instructions
15 on arguments, the Defense realizes that we are limited to
16 state the grounds for the objection. There will not be
17 any speaking objection. In other words, we will not give
18 a factual basis for our objection. But that if we so
19 choose, that we can either excuse the jury or complete
20 the record at the bench conference.

21 THE COURT: Or you can come to the bench and
22 argue your facts, and then we can memorialize that in the
23 record at a later date without excusing the jury, if you
24 so desire. If you want to -- would like that.

25 MR. SAVAGE: The State and the Defense agree

1 that the length of the trial will be no longer than one
2 week, but we expect it to go into at least Thursday and
3 perhaps Friday. I say that at this time because there
4 are approximately four jurors who Judge Jefferson excused
5 for particular days during the week. One today, one
6 Wednesday and I think Thursday and Friday.

7 Your Honor also made an inquiry as to the status of
8 my conversations and conferences with the Solicitor. And
9 I would state for the record -- and my client, who's
10 present in the courtroom at this time, I would ask him to
11 concur -- that the State has made a plea agreement on
12 numerous occasions, each of which have been provided to
13 the Defendant and each of which the Defendant has said
14 that he was not involved in any misconduct, and,
15 therefore, would not agree to the proposed plea
16 agreement.

17 He was asked specifically by Judge Jefferson in
18 October when this case was previously called. I believe
19 it's Mr. Arroyo's present position that Defense counsel
20 has fully explained it.

21 THE DEFENDANT: That's correct.

22 THE COURT: Pardon?

23 THE DEFENDANT: That is correct, Your Honor.

24 That's correct, sir.

25 MR. SAVAGE: Fully explained the ---

1 THE COURT: All right. Defense counsel has
2 fully explained it to you, Mr. Arroyo?

3 THE DEFENDANT: That is correct.

4 THE COURT: All right. And did you understand
5 those conversations you had with Defense counsel
6 concerning the plea negotiations?

7 THE DEFENDANT: I did, sir.

8 THE COURT: And you do not want to accept those
9 negotiations; is that correct?

10 THE DEFENDANT: Absolutely not, sir.

11 THE COURT: All right, sir.

12 MR. SAVAGE: It's been a bit of a moving target
13 factually. And I've explained this to Mr. Arroyo in a
14 number of conferences and confirmed it in writing,
15 depending on the rulings of the Court on the 404(b) and
16 the availability of an adult witness, one who alleged the
17 misconducts. I have told him that the accusations are
18 grave. The penalties are twenty-year felonies, not
19 parolable. A lewd act is a fifteen-year penalty, all
20 which requires sexual offender registration. He's aware
21 of that. He knows that the Court, may, in its
22 discretion, do concurrent or consecutive sentences. And
23 in fact, he could be facing fifty-five years or the
24 remainder of his natural life in prison. He's aware of
25 that.

1 We've explained the elements of the offense as to
2 criminal sexual conduct in the second degree, two counts,
3 lewd act upon a minor, one count. He's aware of the
4 elements of the offense. He's aware of the discovery
5 provided by the State. He's aware of the extent of
6 discovery that Defense counsel has engaged in with these
7 investigators and the staff.

8 Is that correct?

9 THE DEFENDANT: That's correct, Your Honor.

10 MR. SAVAGE: Your current decision?

11 THE DEFENDANT: My current decision is not to
12 accept any plea deal from the Prosecutor.

13 THE COURT: Okay. Mr. Savage, is there
14 anything else you would like to add for the record
15 concerning that or any questions you would like to ask
16 your client concerning that?

17 MR. SAVAGE: No, sir. I think Mr. Arroyo has
18 been fully informed both verbally and in writing by email
19 and letters of the nature of this case, the facts that
20 the State has to present against him, legal arguments
21 that we'll exercise on his behalf against certain of the
22 evidence that may come in the record. We've discussed
23 that. We've discussed appeals. We've discussed ...

24 Is there anything we haven't discussed?

25 THE DEFENDANT: No. Mr. Savage has been very

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11

1 thorough, sir.

2 THE COURT: Okay. All right. Thank you very
3 much.

4 All right. Mr. Savage, which motions would you like
5 to hear first?

6 MR. SAVAGE: Judge, in chambers we discussed
7 very briefly the current case that's pending before the
8 South Carolina Supreme Court, *State versus Lankford*,
9 which I believe was argued earlier this year, maybe
10 January, February, March time frame. In that case, in
11 the *Lankford* case, there was a speedy trial issue. And
12 defense counsel filed a motion for a continuance and
13 recusal of the solicitor because the solicitor, unlike
14 any other state in the United States, has the authority
15 in South Carolina for the call of the docket.

16 Our situation is a little different. We're not
17 raising an issue ---

18 THE COURT: Well, what was the issue in that
19 case? I'm not familiar with it. Was it a speedy trial
20 issue or a denial of due process, or what was it?

21 MR. SAVAGE: It was a speedy trial issue, and
22 that's how it developed. And so because Mr. Lankford was
23 not prosecuted in a timely fashion, as he claimed, his
24 attorney and he claimed that the reason for that
25 violation of speedy trial was because the solicitor

1 controlled that docket and determined when, at what time,
2 under what conditions the case would be going forward.
3 Again, oral arguments were before the Supreme Court
4 earlier this year. We make the same argument but on a
5 little bit different ground. And our ground, you will
6 find in our written motion on page two -- and I will read
7 this -- that there are -- excuse me. It should be
8 exhibit number 2.

9 Court's Exhibit Number 2?

10 MR. SAVAGE: Does the Court have a copy?

11 THE COURT: Yeah. Court's Exhibit Number 2,
12 motion for continuance and recusal of the Solicitor re
13 docket procedures; is that correct?

14 MR. SAVAGE: Yes, that's correct. On page two

15 ---

16 THE COURT: Well, which are you proceeding on,
17 the continuance and the recusal or both or ---

18 MR. SAVAGE: That is correct.

19 THE COURT: Both of them?

20 MR. SAVAGE: Yes, sir.

21 THE COURT: Okay.

22 MR. SAVAGE: The continuance would be for the
23 benefit of the Court then to review the status of the
24 case and assign that on a particular term of court where
25 the Court makes the decision on whether or not it's

1 appropriate for this case to go forward.

2 The selection of cases for trial in this circuit, as
3 they are in many circuits in South Carolina, is fairly
4 arbitrary. And it's at the will and planning for
5 whatever purpose the solicitor might have. The solicitor
6 can delay a case as in Lankford and leave the defendant
7 in jail for what they call solicitor's imprisonment until
8 such time as they decide to call the case.

9 In our case, it's a little bit different. The
10 history of this case, as you will see in the indictments
11 -- there were two indictments, a CSC second for digital
12 penetration and a lewd act, filed during one term of the
13 Grand Jury. Many months later the Solicitor filed with
14 the Grand Jury a second CSC indictment with penile
15 penetration. The State then, almost immediately ---

16 THE COURT: I assume he's been arraigned on
17 that indictment? Was he actually indicted?

18 MR. SAVAGE: He's out on bond, and I don't
19 recall whether he was arraigned or not.

20 MS. GORDON: Your Honor, he was served with the
21 indictment. I believe that Mr. Scott Bishop (phonic)
22 attended that hearing in front of Judge Jefferson last
23 year sometime. At the ---

24 THE COURT: He was arraigned at that time?

25 MS. GORDON: He entered -- he did enter a not-

1 guilty plea, and bond was set.

2 THE COURT: All right.

3 MR. SAVAGE: I don't believe the arraignment
4 part is an issue. He was out on bond. The bond was
5 continued the same as it previously had been.

6 THE COURT: Okay.

7 MR. SAVAGE: But the gravamen of that is to
8 give the Court a history that once that second indictment
9 was filed -- and you will note on the back of that
10 indictment there's no witness name.

11 THE COURT: Okay. Let me see. I've got an
12 indictment number 4790 and 0522. Which one are you
13 speaking of?

14 MR. SAVAGE: This is 4790 that was filed July
15 13th.

16 THE COURT: Okay. I've got the indictment.

17 MR. SAVAGE: And you will notice the back of
18 that indictment does not give -- identify the party or
19 parties who appeared before the Grand Jury. In fact,
20 what is written on the back of that indictment is
21 inconsistent with the discovery that has been provided by
22 the Solicitor. The back of that indictment lists the
23 Mount Pleasant Police Department on name as the witness
24 before the Grand Jury, but we have learned that that
25 claim of improper conduct that led to the indictment was

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1 made correctly to the Solicitor and to one of her
2 investigators. Of course, it would be very improper for
3 an investigator or the Solicitor to appear before the
4 Grand Jury, and certainly we would want to document who
5 actually appeared before the Grand Jury so we could make
6 the appropriate motion if it was, in fact, a member of
7 the Solicitor's staff or the Solicitor herself.

8 But going back to this particular argument, you'll
9 see on page two in the full paragraph, a number of
10 reasons for potential abuses and conflicts inherent in
11 the use of a solicitor-controlled docket, including but
12 not limited to forcing a trial upon an ill prepared
13 defense.

14 That's exactly what happened last year when the
15 Solicitor called this case to trial before Judge
16 Jefferson. The Defendant moved for a continuance at that
17 time because the Defendant was unrepresented by counsel.
18 And Judge Jefferson granted the Defendant's request for a
19 continuance.

20 And a second part is leveraging a guilty plea from
21 defendants who would otherwise prefer to go to trial.
22 Now, when Mr. Arroyo said that he wasn't prepared to
23 enter a guilty plea because he's maintained his innocence
24 -- and that happened over a long period of time. You
25 will see that the indictment that was originally filed

1 was filed in January of 2010. It wasn't until some
2 eighteen months later, following his rejection of the
3 plea offers, is that he was leveraged with an additional
4 indictment for another twenty-year class C felony.

5 Number three, repeated and unnecessary appearances
6 by a defendant, we don't claim that.

7 Denying judicial involvement in the docketing
8 process until the day of trial, we do claim. We believe
9 that's a constitutional violation inherent in the
10 separation of the branches of the government, that this
11 is a court proceeding and should be controlled by the
12 court and not by the executive branch.

13 Number five is pretty interesting. And I say this
14 with all deference to the Court. We believe that one of
15 the reasons this case is called today by the Solicitor is
16 because of a different Judge on the bench. I've had
17 experience with this Solicitor on these charges and this
18 Judge in the past, and it's fairly clear to me that the
19 Solicitor has chosen Judge Nicholson to be the presiding
20 judge, we believe because of the rulings that this Court
21 presented in a very similar circumstance, under very
22 similar circumstances, some two years ago. There have
23 been a number of judges available in this circuit that
24 this case could have been called in front of. The
25 Solicitor is more than well aware of our position

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1 regarding the case involving *State v. Long*, which was
2 tried a few years ago last month.

3 It's our understanding, and number six, that while
4 this case was noticed to the Defendant previously and we
5 were prepared to try the case, without any explanation,
6 at the last minute the case was called from the docket,
7 we understand, because the Solicitor had a problem in
8 getting the witnesses that they believe would be
9 competent witnesses to court.

10 So for all of those reasons and others explained in
11 detail in our motion, we would ask that the Court
12 continue this case, that the Court take control of this
13 docket, that the Court should review, not just this case
14 but all the other pressing matters before the Court,
15 particularly those matters in which the Defendant has
16 been in jail at the Charleston County Detention Center
17 without bond or unable to make bond for an excessive
18 period of time. In many cases, well over six months; in
19 many cases, well over a year, eighteen months or even two
20 years. So that the reason for this case being called at
21 this time is questionable in terms of public policy and
22 in fairness to all accused now pending in the Court of
23 General Sessions in Charleston County.

24 If the Court would give me just one moment, please?

25 THE COURT: Yes, sir.

1 MR. SAVAGE: Your Honor, one thing that I
2 failed to do in this case is to include a federal
3 constitutional argument so that this argument is based
4 both on state constitutional principles as well as
5 federal principles. Thank you.

6 THE COURT: Okay. Thank you very much.
7 Solicitor?

8 MS. GORDON: Thank you, Your Honor. I will
9 briefly address Mr. Savage's argument regarding one
10 through five. Regarding number one, forcing a trial on
11 an ill-prepared defense, the Defendant was granted a
12 continuance last year upon the new indictment, stating
13 that he had not had enough time to prepare. It was then
14 rescheduled at which time the Defense said, well, we
15 weren't going to represent him on the new indictment. So
16 it was rescheduled again. So here we are in July of 2012
17 ---

18 THE COURT: It's been rescheduled how many
19 times?

20 MS. GORDON: This would be the third time that
21 we've actually been in the courtroom.

22 THE COURT: Okay.

23 MS. GORDON: Well, I take that back. The
24 second time we've been in the courtroom. It was
25 continued, I believe, the Friday before we were starting

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1 on the first one. Several months ago or several weeks
2 ago, earlier in the spring, I believe, I had emailed Mr.
3 Savage with some possible dates. This case was scheduled
4 for next week which would have been with a different
5 judge. So the argument that we were judge shopping, I
6 believe, is disingenuous since it was scheduled with a
7 different judge and he chose this week instead because he
8 had a scheduling conflict. So it was his choice to have
9 it this week instead of next week. The prior time when
10 he asked for a continuance was in front of Judge
11 Jefferson. So the State has been prepared to try this
12 case in front of at least three different circuit court
13 judges, all in Charleston County.

14 Your Honor, he agreed, we have not ask the Defendant
15 to make unnecessary appearances. And I think five and
16 six go towards the same thing with the judge shopping.

17 THE COURT: Anything else?

18 MS. GORDON: Nothing else from the State, Your
19 Honor.

20 THE COURT: Mr. Savage, anything you would like
21 to put on the record in rebuttal?

22 MR. SAVAGE: Yes, sir. At the time the case
23 was initially called by the Solicitor, I did not
24 represent the Defendant on this case, so I did not ask
25 for a continuance. He was unrepresented by counsel.

1 There is also something I think the Solicitor's
2 forgotten, that she noticed on the docket that this case
3 had been called. That's the argument I made about when
4 apparently one or more of the witnesses that they wanted
5 to use in this trial, for whatever reason, couldn't be
6 found or would not cooperate. And they continued that
7 case on their own.

8 Finally, with respect to today's court decision by
9 the Solicitor, Defense counsel had no input. It was not
10 a matter of, hey, would you like to try this in front of
11 this judge on this date or whatever. No. That was an
12 instruction received from the Solicitor, which is
13 specifically the argument that we're making, that there's
14 no input on the Defense counsel's scheduling conflicts
15 and whatnot. Yes, we did have a conflict, but not with
16 next week. Then can't just then say, well, then I chose
17 for you to try the case for this week. It should be, as
18 it is in civil court, defense counsel and plaintiff's
19 counsel to arrive at a mutually agreeable scheduling,
20 particularly in matters of this importance. And that is
21 our objection.

22 THE COURT: All right. Thank you very much.
23 All right. Right or wrong, the Solicitor has control of
24 the docket. They call cases as they see fit, and that's
25 the law in the State of South Carolina at this time.

1 Whether it changes with the law that's pending before the
2 Supreme Court or not, this Court does not know on the
3 time or make that determination. And based upon the fact
4 that the Solicitor does have control of the docket, the
5 motion is denied.

6 What's your next motion, Mr. Savage?

7 MR. SAVAGE: Your Honor, you will find this in
8 your notebook. This will be found on index D, motions
9 for production.

10 THE COURT: D?

11 MR. SAVAGE: Yes, sir. This was filed --
12 actually, it's D-1.

13 THE COURT: Motions for production, Solicitor's
14 investigation?

15 MR. SAVAGE: Yes, sir.

16 THE COURT: Okay.

17 MR. SAVAGE: This motion was filed in July, the
18 19th of last year. And basically, it's a request that
19 the Solicitor's office has exceeded their scope of
20 constitutional ---

21 THE COURT: Mr. Savage, could I ask you to just
22 give me a chance to read it. It's about -- apparently,
23 it's about six pages. Let me read it, and then I'll
24 listen to your argument, if you don't mind, please.

25 MR. SAVAGE: Thank you, Your Honor.

1 THE COURT: Mr. Savage, let me ask you a
2 question, please. I have this notebook. It's been
3 marked as Court's Exhibit Number 1. Do you have a copy
4 of this that I could -- available for me?

5 MR. SAVAGE: That is your copy, Judge.

6 THE COURT: Well, it's a part of the court
7 record, and I would like a copy I can write on.

8 MR. SAVAGE: That's your record. That's your
9 copy. I just put that ---

10 THE COURT: You don't want it as part of the
11 Court's record?

12 MR. SAVAGE: My intent in asking that that be
13 marked is so that you would have your use as you see fit.

14 THE COURT: Okay. Because I want to make some
15 marks on it. And if it's going to be part of the record
16 or for appellate purposes, I don't want to be making
17 those marks.

18 MR. SAVAGE: Those motions that you have before
19 you have all been filed, so they're in the Clerk's
20 office.

21 THE COURT: Okay.

22 MR. SAVAGE: I marked it as a Court's exhibit.

23 THE COURT: Okay.

24 MR. SAVAGE: I meant that so you would know
25 that's your copy.

1 THE COURT: Okay. Thank you so very much.

2 Mr. Savage, let me just ask a question. You're
3 asking for the Solicitor's investigator to produce his
4 notes, witness statements and any other evidence
5 concerning the investigation that they conducted, and
6 also, in the alternative, a log. Is that correct?

7 MR. SAVAGE: Well ---

8 THE COURT: Are you asking for this information
9 to be suppressed because of the, as you state, the
10 personal roles as investigators. I'm trying to see what
11 relief you're asking for, and then I'll listen to your
12 argument.

13 MR. SAVAGE: If I'm not too burdensome to the
14 Court -- and I don't mean to be. But historically,
15 Judge, it's been our practice here when you are the
16 assistant solicitor, solicitors at that time were not
17 funded as they are today with the various investigators.
18 The First Circuit might have one investigator for the
19 whole circuit. The Ninth Circuit might have had one or
20 two back in the 70's. And that changed over a period of
21 time with the federal monies and increased state and
22 local funding. The solicitor now has a staff in
23 Charleston County -- there may be ten. I don't know how
24 many investigators. The traditional role, the
25 constitutionally permissible role, of a solicitor's

1 office is to apply evidence in court, not to uncover
2 evidence.

3 I think the most important case the Court might want
4 to refresh and may look at at that time is when
5 Charleston County Solicitor Cade Farr (phonic) and Joe
6 Barr (phonic) from the Attorney General's Office in the
7 investigation of Judge Kraiden (phonic), a family court
8 judge in Charleston County, for a DUI, tried to himself
9 appear before the grand jury to leave an investigation.
10 And at trial level, that was denied by Judge Finney. And
11 it was dismissed, and then it was appealed up to the
12 Supreme Court. And the Supreme Court held at that time
13 it was impermissible for the solicitor to act as an
14 advocate before the grand jury in the investigatory
15 process. There was no such law that allowed that.

16 As a result of that decision, the Legislature passed
17 a state-wide grand jury that gave statutory permission to
18 solicitors and members of the attorney general's staff
19 limited authority to investigate criminal conduct. No
20 such authority has ever been granted to a solicitor in a
21 county grand jury, and it's impermissible today for the
22 solicitor to conduct itself in such a way.

23 In this case, as in any, a very troubling trend
24 around the state, but particularly in this jurisdiction,
25 the solicitor now goes out and engages in an improper,

1 unconstitutional investigatory process. They are no
2 longer going out and taking factual information from law
3 enforcement's investigation and rehashing or embellishing
4 that conduct.

5 Certainly, the solicitor has a right, the solicitor
6 has an obligation, to interview witnesses regarding her
7 post-courtroom testimony so that they can determine
8 what's tainted, what's appropriate and what's
9 inappropriate. But there's no basis at all for the
10 impermissible, unconstitutional conduct of a solicitor or
11 a solicitor's staff member to go out and investigate new
12 crime.

13 In this case, that's exactly what they did. As we
14 have said before, the investigator took -- the
15 investigator from the Mount Pleasant Police Department
16 presented an arrest warrant to a magistrate, and Mr.
17 Arroyo was arrested and placed in jail on the basis of a
18 law enforcement investigation which charged him with lewd
19 act with a minor and criminal sexual conduct with a
20 minor.

21 Fifteen months later, as a result of the
22 investigator's own investigation, and specifically an
23 interview that the assistant solicitor who was
24 prosecuting this case interviewed the alleged victim on
25 April 13th, 2010, during which time the information was

1 disclosed that led to the indictment of penile
2 penetration.

3 Now, again, this has become the Solicitor's modus
4 operandi in these cases. And I believe, and I would
5 argue to this Court, that it's unconstitutional and --
6 and it's unconstitutional and it's impermissible. What
7 they then do, because they claim this is their
8 investigation, they hide behind attorney/client privilege
9 and work product.

10 Now, we have not seen any notes from this April
11 13th, 2010, interview. We don't know under what
12 conditions the interview took place. We don't know who
13 was present when it took place. We don't know the
14 motivation of the Solicitor. We don't know the
15 motivation of the potential witness. We don't know
16 anything about it.

17 Now, if they have a legitimate work product
18 argument, what they can do is just like we do every day
19 in the civil world, we provide a privilege log so that
20 when we go to the Supreme Court as we are likely to do in
21 this case, we have a basis for claiming that the
22 Solicitor's failure to produce was inappropriate. At a
23 minimum, they should be obligated to file a privilege log
24 and list out exactly what documents they have in their
25 file that they have not turned over to us because of what

1 they claim as privileged, work product doctrine or
2 whatever.

3 So, in summary, Judge, we object to the second CSC
4 indictment which we believe should be quashed. We
5 believe that it should be quashed on the basis of an
6 improper, unconstitutional investigation. If the Court
7 doesn't grant that, we believe that we're entitled to
8 full discovery. Which they have avoided the Rule 5,
9 they've avoid all the due process arguments that we've
10 made by claiming work product or attorney/client
11 privilege. And we believe that if the Court allows them
12 to do that, then at a minimum, they should file a
13 privilege log so that we can bring this matter before a
14 higher court at the appropriate time.

15 THE COURT: You're not alleging because of
16 constitutional violations on the relationship of the
17 investigator and the solicitor going out and
18 investigating expands Rule 5, or do you think it does
19 expand Rule 5?

20 MR. SAVAGE: No. But that's how they duck it.
21 Judge, when I argue to you, I hope that what the
22 Solicitor and the Court recognize is this is not a
23 personal matter.

24 THE COURT: Oh, I understand that.

25 MR. SAVAGE: It's principles of law, but not

1 against individuals.

2 THE COURT: I don't take anything personal you
3 say, Mr. Savage.

4 MR. SAVAGE: Thank you, Your Honor. It's just
5 something we're -- their position has expanded ---

6 THE COURT: In other words, what I'm asking is
7 this. Let's assume that, yes, you're entitled to that
8 because of the position being expanded, as you've put it.
9 But don't we still have to go back to Rule 5 to see if
10 you would be entitled to it initially, or do you think
11 ---

12 MR. SAVAGE: Well, you know, that's why I
13 didn't limit it to Rule 5 because I ---

14 THE COURT: I know. I'm trying to get a grasp
15 on why you didn't limit it to Rule 5.

16 MR. SAVAGE: Well, I don't mean to limit it to
17 Rule 5. I mean, it still constitutes the principles of
18 due process. Is it a *Brady* principle? Was she
19 encouraged to say this? Did she say that he didn't do
20 it? We know that she absolutely denied any penile
21 penetration for more than a year. So what was it about
22 the Solicitor and her staff and the encouragement and the
23 circumstances in which this revelation was made that's
24 unique, that we should be able to investigate, we should
25 be able to look at and have an expert evaluate it to see

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1 whether there was any improper conduct in terms of
2 anything? Which is a whole other issue, tainting the
3 testimony of a proposed witness.

4 Judge, I think one thing that we would ask the Court
5 to inquire is who testified in this indictment before the
6 Grand Jury. Because if it was the Mount Pleasant Police
7 Department, as it states on the back of the indictment,
8 we have not been provided with one document in which a
9 law enforcement officer outside the Solicitor's office
10 investigated this at all.

11 THE COURT: Well, have you been provided
12 anything from the Solicitor's office that their
13 investigator discovered or did anything at all?

14 MR. SAVAGE: Nothing.

15 THE COURT: Zero?

16 MR. SAVAGE: Well, we have been told in a pre-
17 trial conference ---

18 THE COURT: But you've been provided enough to
19 substantiate the second indictment? I guess that's my
20 question.

21 MR. SAVAGE: Other than the Solicitor's
22 statement that she interviewed the proposed witness and
23 that was revealed to her and a psychologist at or about
24 the same time. There's nothing that has been provided
25 from law enforcement regarding the situation. And you

1 will note that the only witness is the generic Mount
2 Pleasant Police Department witness that presented the
3 case to the Grand Jury. We think that the Solicitor was
4 obligated to tell us who appeared before the Grand Jury
5 so that we can determine whether it was constitutional or
6 whether it was impermissible. And then if it was
7 permissible, that is law enforcement, we would like the
8 documentation that the Mount Pleasant Police Department
9 relied upon in providing sworn testimony before the
10 Charleston County Grand Jury in July of 2011.

11 THE COURT: Okay. Thank you very much.
12 Anything else?

13 MR. SAVAGE: On that issue, that's all.

14 THE COURT: Okay. Thank you.

15 Solicitor?

16 MS. GORDON: May I respond, Your Honor? Your
17 Honor, with regards to the second indictment, Mr. Savage
18 has been provided the discovery of the child's therapy
19 notes that the child underwent at the Medical University
20 of South Carolina. Those relate to this disclosure that,
21 in fact, the abuse was more extensive than she had
22 initially disclosed.

23 THE COURT: Well, does the therapy notes reveal
24 that the child said it was penile penetration?

25 MS. GORDON: Yes, Your Honor. That therapy

1 note is dated April 12th of 2010. Where the therapist
2 notes that the child has disclosed that it went further.
3 In fact, the defendant put his penis inside her vagina,
4 and she also discloses that he performed oral sex on her
5 on that day. The following day, the mother and the
6 victim showed up at our office without an appointment
7 because the mother said she disclosed more information,
8 to which point we said, you know, that's not unusual in
9 child sexual assault cases.

10 That was -- the investigation was that. And then we
11 have the therapy notes and the child's statements, who
12 she'll come in and talk about it. So there is no
13 investigation that went on beyond that because that's how
14 a lot of these child sexual assault cases are. There are
15 only two people that know about it, the two people in the
16 room when it happened. So that's it. And then we have
17 the therapy notes where she disclosed it.

18 I understand that Josh Cheney was the officer who
19 submitted the case to the Charleston County Grand Jury
20 when he was with the Mount Pleasant Police Department.

21 THE COURT: Do you have any comment on his
22 constitution argument?

23 MS. GORDON: Briefly, I think Mr. Savage's
24 point would -- he would -- if his argument were correct,
25 there just wouldn't be any direct indictments. And we

1 allow direct indictments in this state. And that is when
2 the State finds additional evidence that would lead to an
3 additional indictment, it does not have to go through law
4 enforcement. The solicitor can submit a direct
5 indictment to the Grand Jury. And that's what we chose
6 to do in this case instead of having ---

7 THE COURT: Well, the problem is this, under
8 the case -- I don't remember the cite of the case where
9 the -- I don't remember the cite or the name of the case.
10 But basically the case said that the solicitor cannot
11 advocate and investigate for the grand jury. Does that
12 extend to the fact that the solicitor's investigator,
13 who's an agent of the solicitor and operating under the
14 solicitor's direction, appear before a grand jury and
15 offer testimony?

16 MS. GORDON: We didn't have anyone from the
17 Solicitor's office.

18 THE COURT: I understand that. I didn't ask
19 you if you had. I said does that give you the right to
20 appear before the grand jury and advocate your case for a
21 true bill?

22 MS. GORDON: Your Honor, I'd have to research
23 that issue. I just ---

24 THE COURT: Well, that's basically what he's
25 saying. I mean, you can't do that. So what you do is

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1 you give it to the Mount Pleasant Police, and then they
2 go testify about it because they can testify about
3 hearsay in a grand jury process.

4 MS. GORDON: That's true.

5 THE COURT: So you're coming in the back door.
6 Is that right or wrong?

7 MS. GORDON: I mean ---

8 THE COURT: Assuming you can't appear before
9 the grand jury?

10 MS. GORDON: That is correct. The Mount
11 Pleasant Police Department submitted it before the grand
12 jury.

13 THE COURT: The purpose of the investigator by
14 the Solicitor's office is to help you fully develop the
15 facts and present in the court for the crime that he'd
16 been charged with, not necessarily create another crime.
17 I know through the investigation other things come to the
18 forefront.

19 MS. GORDON: That is correct, and which is
20 exactly what happened in this case. I mean, we could --
21 you could do just one indictment for criminal sexual
22 conduct and not limit it to penile penetration or digital
23 penetration or anything else. And that's an option if
24 you're just not going to limit it. But it's the same
25 conduct. It just met another -- under another subsection

1 of that statute.

2 MR. SAVAGE: We believe the Solicitor's
3 resolution is appropriate.

4 THE COURT: Think what?

5 MR. SAVAGE: We believe the Solicitor's
6 resolution is appropriate, and we move to dismiss the
7 second count of CSC. She already has one count of CSC.

8 MS. GORDON: If you have no objection to us
9 proceeding under the one count of CSC but not limiting it
10 to the digital penetration, that it will now encompass
11 anything this child -- anything that comes before the
12 Court under a sexual battery, I have no objection to
13 that.

14 MR. SAVAGE: As long as we receive the notes of
15 the investigation that led to that.

16 Your Honor, one of the concerns that we have in this
17 case is that our defense, as you will see as it unfolds,
18 is that the mother of this child is the one who's made
19 these allegations. It gets kind of complicated. But
20 suffice it to say that our -- the thrust of our defense
21 is that these allegations arose and align with the
22 mother. So that if the mother attended the interview and
23 the witness, daughter, victim, made these statements in
24 front of the witness, reporting authority, mother, that
25 certainly taints the revelation of this penile

1 penetration. We haven't been able to explore that.
2 Until now, we didn't know Josh Cheney may have been the
3 witness before the Grand Jury. I want to talk to him,
4 and I want to ask him what was the basis for your
5 proposed testimony before the Grand Jury that led to this
6 indictment. I think at a minimum we're entitled to that
7 now that we know who the person was that appeared.

8 And what they're doing is they're just taking this
9 and transferring it over here so that it's not under the
10 Solicitor's name. It's effectively the same thing.
11 They're just avoiding the infamous lack of a solicitor
12 testifying. But it's not an independent investigation.
13 That's the key. Josh Cheney, did you independently
14 investigate this and provide those facts to the Grand
15 Jury, or are you just parroting what the Solicitor and
16 her investigator said? We believe that would be
17 inadmissible.

18 THE COURT: Go ahead. I'm sorry. Go ahead.

19 MS. GORDON: I was just going to say, he keeps
20 asking for the investigation. I think what he is -- what
21 this child disclosed is really not to the Solicitor. She
22 disclosed to her therapist. And that's where the
23 disclosure came to. We just received the information
24 that she had disclosed to the therapist and that she
25 confirmed that.

1 THE COURT: Well, do you have anything else
2 other than that? Do you have any notes from the
3 investigator?

4 MS. GORDON: Your Honor, it was a victim --
5 they showed up without an appointment. A victim advocate
6 sat in ---

7 THE COURT: Well, do you have any notes from
8 the victim advocate?

9 MS. GORDON: Yes. These are the victim
10 advocate's notes from 4/13 of 2010. And I'll present
11 those ---

12 THE COURT: All right. Do you have any notes,
13 do you have any notes from your investigator?

14 MS. GORDON: No, Your Honor. My investigator
15 was not there. It was a victim advocate that ---

16 THE COURT: So it was primarily the victim
17 advocate and not the investigator that looked into the
18 allegation presented to the psychologist?

19 MS. GORDON: That's correct.

20 THE COURT: A psychologist or psychiatrist?

21 MS. GORDON: She is a clinical psychologist.

22 THE COURT: Clinical psychologist. Is that
23 correct?

24 MS. GORDON: And she's a witness as well, the
25 clinical psychologist.

1 THE COURT: All right. The notes of your
2 victim's advocate, do you think they would be producible
3 to the Defendant?

4 MS. GORDON: They would not be producible under
5 Rule 5, no, Your Honor.

6 THE COURT: Okay. All right. Mr. Savage, why
7 do you think the victim advocate notes of the meeting
8 with the child ...

9 ... or the mother and the child?

10 MS. GORDON: There is a meeting with the child
11 and then a subsequent -- on the same day but meeting with
12 the mother.

13 THE COURT: Was there a separate meeting with
14 the child and the mother?

15 MS. GORDON: Yes.

16 THE COURT: Or they met together?

17 MS. GORDON: Separate.

18 THE COURT: Separate?

19 Why do you think you should be entitled to the
20 victim advocate's notes of that meeting of April the
21 13th, apparently is when it occurred?

22 MR. SAVAGE: The Grand Jury of Charleston
23 County have charged Mr. Arroyo with CSC second July of
24 2011. There has to be a basis for the Grand Jury and the
25 information that they received to produce and publish an

1 indictment. Certainly, due process would require that
2 the Defense can at least see and review what the witness
3 before the Grand Jury relied on to produce the
4 indictment.

5 THE COURT: Well, you've got the -- I haven't
6 seen it, so I don't know what's in it. But apparently
7 there's a statement from the clinical psychologist. I
8 understand you have that?

9 MR. SAVAGE: Yes, sir.

10 THE COURT: So you've got that information. I
11 don't know what's in it, but you've got that information.
12 Would that -- that alone wouldn't be sufficient to the
13 Grand Jury?

14 MR. SAVAGE: I don't know who all went to the
15 Grand Jury.

16 THE COURT: Okay. I don't either. But you
17 normally ---

18 MR. SAVAGE: I know that ---

19 THE COURT: Unfortunately, it's a secret
20 process, and I'm not sure you'd be entitled to it
21 regardless. Okay?

22 MR. SAVAGE: Well, there's no secrecy as to who
23 appears before the Grand Jury.

24 THE COURT: I understand that.

25 MR. SAVAGE: There's no secrecy about the

1 documents.

2 THE COURT: But there is secrecy as to what
3 transpired.

4 MR. SAVAGE: Yes. But not -- that doesn't
5 extend to the person who testified nor the documents
6 presented.

7 THE COURT: Okay. All right. Well, the only
8 thing I know to do at this point in time is to review
9 those notes and to see if the Court feels like there's
10 any *Brady* information because I don't think they will be
11 discoverable under Rule 5, to see if there's any
12 implication of *Brady* and they should be produced under
13 that theory. That's the only thing I know to do. And
14 she can do a privilege log if you want to call it that.

15 MR. SAVAGE: And the tainting aspect of it.

16 THE COURT: Okay. That's fine. That's the
17 only thing I know to do at this point in time, Mr.
18 Savage.

19 MR. SAVAGE: We're satisfied with that, Your
20 Honor.

21 THE COURT: All right. Let me see the notes.
22 If you'll get them and mark them as Court's Exhibit
23 Number 1, as to the motion for production on the
24 Solicitor's investigation concerning the second
25 indictment. And that number is, I believe, 2011-GS-10-

1 04790.

2 Is that correct, Mr. Savage?

3 MR. SAVAGE: 4790. Yes, Your Honor, the
4 indictment dated 7/13/2011.

5 THE COURT: Okay.

6 MS. GORDON: Your Honor, if I could ask that we
7 get a copy back. That's my only copy. It's just
8 handwritten notes.

9 THE COURT: I'll let you go get a copy before
10 you give it to me.

11 MS. GORDON: Okay. Thank you, Your Honor.

12 MR. SAVAGE: And who is the witness, please?
13 What's the name of the witness?

14 MS. GORDON: Josh Cheney?

15 MR. SAVAGE: No, no, the ---

16 MS. GORDON: The victim advocate? It doesn't
17 list on here, but I recognize this handwriting as Amy
18 Mack (phonic).

19 MR. SAVAGE: And she's a state witness?

20 MS. GORDON: She's a victim advocate for the
21 Solicitor's office.

22 MR. SAVAGE: Did I understand you to say she's
23 a state witness?

24 MS. GORDON: No, she is not. Maria Steenkamp,
25 the person that the initial disclosure went to is a

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1 State's witness.

2 THE COURT: Just -- if ---

3 MS. GORDON: I actually have a copy.

4 THE COURT: Have you got it marked? Have you
5 got a copy?

6 MS. GORDON: I'm going to give you the
7 original, and I've got a copy.

8 (WHEREUPON, Court's Exhibit Number 1 to the Motion
9 for Production of Solicitor's Investigation
10 Concerning Indictment 2011-GS-10-04790 was marked
11 for identification only.)

12 THE COURT: All right. I'll take your motion
13 under advisement until I have had an opportunity to
14 review Court's Exhibit Number 1 pursuant to your motion,
15 Mr. Savage, okay?

16 What's the next motion?

17 MR. SAVAGE: Judge, the next motion we have
18 would be J-1 in your index. It's entitled Motion to
19 Quash Indictments or in the alternative Motion for a Bill
20 of Particulars. It was filed by the Defendant on
21 September the 19th of 2011. I'll give the Court a
22 moment.

23 THE COURT: Give me a chance to just scan it
24 real quickly, please. This is concerning the indictment
25 itself. Is that correct? Both indictments?

1 MR. SAVAGE: Three indictments.

2 THE COURT: Pardon?

3 MR. SAVAGE: Three indictments.

4 THE COURT: All three indictments?

5 MR. SAVAGE: The basis would be the same as the
6 previous one.

7 THE COURT: Okay. I'll be glad to hear you,
8 Mr. Savage, concerning the quashing of the three
9 indictments.

10 MR. SAVAGE: Your Honor, I think that the
11 principle is pretty well established in South Carolina
12 that as long as the indictment places -- it's a notice
13 document. And as long as it notices the defendant the
14 allegations of which he is charged consistent with the
15 statutory definitions of those charges, that -- in most
16 circumstances that is adequate. We do not contest the
17 period of time of the alleged offenses nor do we contest
18 the statutory requirements under § 90 of the Code or the
19 case law that addresses that.

20 The unique facts of this case though are a little
21 bit different. Because the -- what the Supreme Court has
22 done is look to us to see if we're on notice. And we are
23 on notice. We're on notice that the State believes that
24 my client engaged in a lewd act. We believe that the
25 State believes he engaged in two different forms of

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1 sexual battery with a minor leading to the two CSC in the
2 second degree charges. But we don't know which ones
3 they're taking about.

4 For instance, the lewd act -- and you'll see the
5 dates on the lewd act, the 16th or 17th of the month, you
6 can read whatever it is. It's not on a date specific,
7 yet they've provided us with the discovery that initiated
8 this whole investigation. It appears -- I'm referring
9 now to the 529 indictment filed on January 26th by the
10 Clerk of Court. And the dates inclusive are July 1,
11 2008, and September 22nd, 2009. Well, it occurs to us
12 that this case, according to the report of the Solicitor,
13 was reported on September 20th of 2009, and we're
14 somewhat perplexed on how they can extend the time frame,
15 albeit two days. But nonetheless, it's an indication of
16 their diligence, their due diligence, in trying to narrow
17 the scope of the dates. And they've given us very
18 explicit discovery that the child was molested by
19 touching her breast on that day on a couch right in front
20 of her mother. So we do have very specific discovery
21 information of which we cannot complain regarding that
22 offense.

23 We then wonder what happened on July 1st of 2008 and
24 every subsequent day until September and through
25 September 19th of 2009. Are there other charges? Are we

1 on notice as to what those charges are? Will double-
2 jeopardy attach to prevent the State from bringing
3 forward additional charges in the future if the jury
4 comes back with a negative response to this charge?

5 They can shotgun under certain circumstances, for
6 instance, if the child doesn't remember a specific date
7 when the child specifically doesn't remember Mr. Arroyo
8 doing something. But in this case, we have a very
9 specific date, September 20th, 2009, in which third
10 parties will testify that they observed this molestation.

11 So the question is, what's he charged with? Is he
12 charged with the lewd act on a minor in this case
13 consistent with the discovery that's been presented, or
14 is there something else out there that we're unaware of
15 that we have not been provided with discovery? And we
16 would specifically object to that indictment on that
17 ground.

18 As to the two CSCs, the basis of our objection is
19 the same with the understanding that we would have to
20 grant a little bit more leeway to the State in
21 determining what the date is.

22 In addition to the date concerns, we're concerned
23 with the specific acts of misconduct. While this child
24 may not be able to have recollection of the specific
25 date, certainly there can be a recollection of where,

1 how, who was present, who was not present and under what
2 circumstances this offensive conduct took place.

3 So what we would ask is, while the State might claim
4 that they don't have to give us anything more specific in
5 the indictment, in order for us to prepare and do our due
6 process review of the allegations, certainly the State
7 has knowledge of a lot more factual information regarding
8 these instances of misconduct. And we believe they are
9 obligated then -- not just a shotgun. You know, he
10 digitally penetrated her sometime, somewhere, someplace
11 in Charleston County within a fifteen- sixteen-month
12 period. But they have knowledge of more specificity, and
13 we believe that they're required to provide us with that
14 so that we can effectively grant Mr. Arroyo the due
15 process that he's entitled to.

16 THE COURT: Okay. Thank you very much.

17 Solicitor?

18 MS. GORDON: Yes, Your Honor. In fact, Mr.
19 Savage has what he's asking for. Yes, there is one event
20 that occurred where the -- that precipitated going to the
21 police where the mom sees a lewd act being performed on
22 her child. That child is subsequently forensically
23 interviewed. That is videotaped. Mr. Savage has a copy
24 of that tape.

25 Subsequent to that, this child entered into therapy.

1 He has all of the therapy notes. In addition to that, as
2 a part of the therapy, the child was asked to write
3 journals about some of the -- some of the incidents after
4 disclosing, that this went on for approximately a fifteen
5 month period. So she has -- he has copies of specific
6 instances that the child recalls. And as Your Honor is
7 aware, in cases like this where it is a continued basis
8 of criminal sexual conduct against a child, the
9 requirement is not that the child remember each specific
10 instance on which specific day because that would not be
11 within the bounds of justice. We do not require children
12 to state that to that amount of specificity. But he has,
13 in fact, not only the child's -- the outcry of what
14 happened that night. He has the subsequent forensic
15 interview. He has all of the therapy notes. In addition
16 to that, he has the child's handwritten statements that
17 she wrote for therapy detailing some of those specific
18 instances.

19 THE COURT: Okay. Anything very briefly in
20 response?

21 MR. SAVAGE: She gives a very specific date of
22 September 20th, 2009, because if that is the date of the
23 lewd act, then if there's testimony regarding other areas
24 of misconduct, this Court then must analyze those other
25 instances of misconduct under 404 because they've not

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1 charged misconduct.

2 THE COURT: Well, can't that take place during
3 the trial and the testimony? I mean, isn't that the
4 appropriate ---

5 MR. SAVAGE: She can't ---

6 THE COURT: I understand she can't. Otherwise,
7 it's going to be bad acts. I mean, she's got ---

8 MR. SAVAGE: Yeah. It's either one way or the
9 other.

10 THE COURT: Can't we deal with that during
11 trial?

12 MR. SAVAGE: I trust you, Judge. Judge,
13 wherever you want to do. But I want to put the Court on
14 notice that there's a difference between charged and
15 uncharged.

16 THE COURT: I understand.

17 MR. SAVAGE: You know, it requires some
18 evaluation.

19 THE COURT: I understand. I agree with you on
20 that. I haven't heard the testimony, so I don't know.
21 And I haven't read everything you've read.

22 MR. SAVAGE: I get the Court's gist, and I
23 don't take objection to that. But I understand if the
24 Court reserves judgment on that.

25 THE COURT: As far as your motion to quash the

1 indictment on notice requirement, I'm going to deny that.
2 However, we'll have to deal with bad acts versus the
3 criminal acts he's charged with.

4 MS. GORDON: Your Honor, I do want to point out
5 the indictments cover -- each indictment covers multiple
6 acts. And I think that is allowed under South Carolina
7 case law.

8 THE COURT: Well, I understand. But I'll just
9 have to listen to the testimony and make a decision at
10 the appropriate time.

11 MS. GORDON: Thank you.

12 THE COURT: There's no way I can even address
13 that at this point in time.

14 All right. What's your next motion, Mr. Savage?

15 MR. SAVAGE: One moment, please. Judge, in
16 section E-1 ---

17 THE COURT: E-1?

18 MR. SAVAGE: E-1 which was filed September
19 19th, 2011, motion to sever indictments.

20 MS. GORDON: Your Honor, I believe that motion
21 has been heard and ruled upon who was then the
22 administrative, chief administrative judge. That was
23 Judge Jefferson. And if we proceeded that day, he would
24 not be required to go on the third indictment because Mr.
25 Savage was alleging he did not represent him on that

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1 indictment. But that if it was tried at a later date, he
2 would have to be -- he would be -- that Mr. Arroyo would
3 be tried on all the indictments at the same time.

4 THE COURT: So the motion to sever has already
5 been heard?

6 MS. GORDON: Whether or not he was being
7 represented by Mr. Savage or that he would represent
8 himself on that particular indictment.

9 THE COURT: On which indictment?

10 MR. SAVAGE: Right headline; wrong substance.

11 THE COURT: Pardon?

12 MR. SAVAGE: The motion of severance that Judge
13 Jefferson heard was on the basis of his attorney only was
14 retained to represent him on the January 2008
15 indictments. And I had a letter -- this case is off
16 track. Mr. Arroyo only paid me for the two original
17 charges. In my letter of representation, if there are
18 further charges forthcoming, he was going to have to pay
19 me additional money. I sent him to a half dozen lawyers.
20 He wasn't satisfied with them, and he came back to me.
21 His family, who are present here, came up from Puerto
22 Rico and, without paying additional funds, I might add,
23 had me represent him on this third indictment. But the
24 basis of that motion to sever at the time before Judge
25 Jefferson was not on this basis. It was on the basis

1 that I didn't represent him. This basis for this motion
2 is as outlined in the written motion. It's laid out
3 pretty succinctly. The very basic reasons starting with
4 *State versus Middleton* -- as Your Honor may recall that
5 rape case out of Charleston, rape and murder up on I-26
6 -- that these incidents are not proven by the same
7 evidence, even though the *Middleton* case, the murder, the
8 rape, the subsequent rape, was all within a matter of
9 hours. In this case, we don't have that. We have the
10 same victim, and that's all we have. And we believe that
11 there's undue prejudice arising from the combination of
12 these three separate indictments. The State can still
13 elect if they can show prior acts of misconduct. So if
14 they wanted to elect one of these charges, they certainly
15 are permitted to bring in evidence of the two other
16 indictments if they comply with 404(b).

17 THE COURT: Thank you.

18 Solicitor?

19 MS. GORDON: Thank you, Your Honor. In fact,
20 all of these allegations are proven by the same evidence,
21 one being Minor 1 . Two are the family members who
22 observed the inappropriate behavior and the therapist
23 that she saw, the person who forensically interviewed her
24 and the experts to talk about the dynamics of sexual
25 abuse, the grooming. The grooming is part of the lewd

1 act and the digital penetration which leads up to the
2 penile penetration. So this isn't an event that happens
3 here and an event that happens here. This is a
4 relationship that is the evidence of this case where the
5 Defendant begins fondling the child. It progresses to
6 digital penetration. It progresses to oral sex and
7 penile penetration. And that relationship is the crux of
8 the testimony of the child and the crux of the evidence
9 of this case. You can't try those separate and apart
10 because in order to prove how we got to penile
11 penetration, to prove how we got to digital penetration,
12 you have to know how the relationship progressed to get
13 there. And you would end up trying the same exact case
14 three different times, part and parcel, with all the same
15 witnesses.

16 THE COURT: Mr. Savage, anything briefly in
17 rebuttal?

18 MR. SAVAGE: Well, Judge, I noticed in the
19 State's motion for 404(b) -- and I know we'll get to
20 that. But apparently they haven't referred to *State*
21 *versus Douglas*, *State versus Jennings*, *State versus*
22 *McCurley*, all cases that have been within the last year
23 or so by the Supreme Court and Court of Appeals.

24 We're certainly going to object to any analysis by
25 any forensic interviewer which would bolster the

1 credibility of the witness. I don't know any basis under
2 today's case law that a forensic interviewer would
3 frankly be allowed to testify as to anything. The
4 videotape in this case is not going to come in.

5 It's statutorily impermissible. Any prior
6 statements she made would not be allowed to come in. Any
7 opinion of a so-called expert as to truthfulness,
8 believability, symptoms of post-traumatic stress
9 syndrome, symptoms of child abuse, it's all impermissible
10 under the current case law in South Carolina.

11 Again, Your Honor, I would cite to you *State versus*
12 *McCurley*, which is a Court of Appeals decision this year,
13 in which Judge Few was pretty emphatic, 397 S.C. 461;
14 *State versus Jennings*, 394 S.C. 473, a case from last
15 year; the *State versus Douglas*, a 2009 case, 380 S.C.
16 499. But I think if the Court takes a quick look at
17 *State versus ---*

18 THE COURT: Do you have copies of those cases?

19 MR. SAVAGE: Yes, I do.

20 THE COURT: Would you mind, at your
21 convenience, pass them up to me, or are they in my book?

22 MR. SAVAGE: I didn't give you a book of
23 authority, but I'll provide them to the Court.

24 THE COURT: Okay. Just those cases at some
25 point in time.

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1 MR. SAVAGE: I'll do that.

2 THE COURT: As far as your motion to sever,
3 that motion is denied.

4 MR. SAVAGE: Judge, the other -- I'm three
5 minutes past due.

6 THE COURT: I understand.

7 MR. SAVAGE: The other motions that I have, I
8 don't know that it's necessary to have them before the
9 jury is sworn. It's up to you. Whatever you want to do.

10 THE COURT: It doesn't matter to me. They're
11 your motions. I'll hear them whenever you feel it's
12 appropriate and convenient to your client.

13 MR. SAVAGE: I actually jumped in front of Ms.
14 Gordon because she had three motions that she wanted to
15 argue: a motion on 404(b), which I think we're going to
16 do as the case proceeds. And then there are two motions
17 in limine: one on rape shield and one on -- prior such
18 consensual acts of the victim and the rape shield
19 statute.

20 THE COURT: All right.

21 MR. SAVAGE: And depending on how the Court
22 rules on those, our motions may or may not go forward.

23 THE COURT: Okay. All right.

24 Ms. Rice, off the record, okay, for a second.

25 (Off record discussion)

1 MR. SAVAGE: Judge, thank you. I advised Mr.
2 Arroyo that once the case starts, that is when the jury
3 is sworn, that his bond is up. I told him that I would
4 ask permission of the Court to allow him to stay out ---

5 THE COURT: Did you tell him my position on
6 that generally?

7 MR. SAVAGE: I told him that you were not a
8 very friendly judge when it came to once the bond is up
9 because you'd been burned pretty far. Arroyo has been
10 out on bond, a hundred thousand dollar surety bond. He
11 has an ankle bracelet on. Hundred and fifty thousand.
12 I'm sorry. I short-changed him. A hundred-fifty-
13 thousand-dollar surety bond. Robinson Bonding Company is
14 the bonding company. He's been wearing an ankle bracelet
15 since his release by the magistrate. He has no
16 violations of the conditions of his bond. Over lunch --
17 hopefully we'll get a nice big lunch -- we'd ask the
18 Court to consider if we provide you with a written
19 document from the bondsman to allow him to stay out on
20 that bond once the jury is sworn.

21 THE COURT: Well, get me something from the
22 bondsman. If the bondsman understands that bond is going
23 to continue during this trial and he's responsible for
24 the bond just as if he was required to show up today.
25 Okay?

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1 MR. SAVAGE: Do you want him present, Your
2 Honor, or do you want something in writing?

3 THE COURT: However you feel more ...

4 Solicitor, do you want something in writing from him
5 or do you want him present here in the courtroom to put
6 it on the record?

7 MS. GORDON: A written document is fine with
8 the State, Your Honor.

9 MR. SAVAGE: We'll provide that this afternoon.

10 THE COURT: That's fine. Just get me something
11 from the bondsman where he understands that he has not
12 met the bond requirements. There's going to be a bond
13 requirement every day for him to show up.

14 MR. SAVAGE: Thank you.

15 THE COURT: Okay?

16 MR. SAVAGE: Thank you.

17 THE COURT: I'll go along with it this time,
18 with the bond and the bondsman's statement. Okay?

19 MR. SAVAGE: Thank you.

20 THE COURT: All right. We'll adjourn until
21 2:30.

22 (WHEREUPON, court stood at recess for a lunch
23 break.)

24 THE COURT: Mr. Savage, let's mark the bond as
25 a Court's exhibit, and I'll continue his bond during the

1 agree with the attorney that the evidence is not
2 presentable, and you will not hear it.

3 Now, occasionally, I may have to ask you to leave
4 the jury [sic] room when a motion is made. The reason
5 for that is I'm not permitted to comment on the facts
6 during the course of a trial. So I ask you to leave the
7 jury [sic] room so I'll be free to comment on the facts,
8 discuss the facts with the attorneys and listen to the
9 attorneys argument on the facts before I make a decision
10 as to whether the evidence is being presented or not
11 being presented.

12 Now, the Defendant has the right to a jury trial.
13 We are one of the few countries in the world that have a
14 jury, such as you, of your peers determine innocence and
15 guilt. Most countries do not use jury trials. The jury
16 trial was instituted in this country by the founders of
17 this country because in England they didn't have jury
18 trials. So we instituted a jury trial saying a person
19 needs to be determined, his innocence or guilt, by a jury
20 of his peers. And that's what we're doing. This is the
21 first opportunity that the Defendant has had to appear
22 before his peers.

23 And as I said earlier, the State does not -- the
24 State is required to prove the Defendant guilty beyond a
25 reasonable doubt. The Defendant is not required to prove

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1 his innocence. And that is primarily referred to as a
2 legal theory called presumption of innocence. And I will
3 explain the presumption of innocence and reasonable doubt
4 in more detail to you during the course of the trial.

5 Ready for opening statements?

6 MS. GORDON: The State's ready, Your Honor.

7 MR. SAVAGE: The Defense is ready, Your Honor.

8 MS. GORDON: May it please the Court.

9 OPENING STATEMENT

10 BY MS. GORDON:

11 Good morning. I just want to introduce myself
12 again. I know yesterday was a long day for you. My
13 name's Elizabeth Gordon, and I'm an Assistant Solicitor
14 for Charleston County. And assisting me will be Marian
15 Askins. She's also an Assistant Solicitor.

16 We've probably all heard the term, a wolf in sheep's
17 clothing. That's what this case is about. Erick Arroyo
18 is the wolf in sheep's clothing. To the outside world,
19 he was the model citizen. A navy veteran, an engineer, a
20 husband, a father, a decent neighbor. No one thought bad
21 of him. He was a good guy.

22 Minor I , his niece, knew the wolf inside. He
23 was a different Erick Arroyo to her. When she was twelve
24 years old, her mom moved to Charleston a little before
25 that. Her dad had died. They'd had some problems in

1 Florida. They moved to Charleston because her big
2 brother lived here. And Minor1's mom lost her job at some
3 point and he said, come, live with us for a while until
4 you get settled. Until you figure out where you can go,
5 come live with us. He was a great brother to let them
6 move in with her twelve-year-old daughter and her two
7 younger siblings.

8 But what Erick was doing was gaining access to
9 Minor1. This great guy that everybody admired and
10 everybody in the family looked up to started by just
11 rubbing her back, going a little further down, reaching
12 under the covers while she's sitting on the couch,
13 rubbing on the inside of her pants. And it became their
14 secret.

15 She was too afraid to tell. She thought she was
16 doing something bad. And then it progressed. And then
17 he would start putting his inside of her vagina. Then he
18 would start performing oral sex on her, and then he
19 started having sex with her. But he wasn't being a bad
20 guy. He was just teaching her. That's what he said. I
21 just want to teach you. I just want to make sure you
22 don't have to experiment with boys. I'm going to help
23 you through these difficult teenage years.

24 It didn't leave physical scars on Minor1, but the
25 emotional damage is real. But who would believe her?

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1 Well, Joyce Arroyo, the Defendant's wife of nearly thirty
2 years, thought he sure does show a lot of interest in our
3 niece, more than her little siblings, more than he ever
4 really did for his own children. He just seemed so
5 engrossed in Minor1.

6 And then one day she's cleaning up in the living
7 room and she finds massage oil on the couch. And she
8 says to her husband, what's this doing here? And his
9 response was, don't tell Minor1 you found that. That
10 didn't seem quite right.

11 So then another night, she's gone to bed and it's
12 late. And she remembers, oh, I forgot to do something
13 downstairs. We've all had those kind of moments. You go
14 downstairs. The lights are on, the TV's on. Erick
15 hadn't come to bed yet. She's like, well, where could he
16 be? Maybe he walked the dog. Maybe he's here. She
17 looks around the house for him. And she opens up the
18 garage door, and it's her worst nightmare. Minor1's
19 zipping her pants up. Erick's like standing by the
20 refrigerator. He pull -- they quickly open the doors.
21 Oh, what do you want for desert? Do you want some ice
22 cream? Joyce knew what she saw.

23 She sent Minor1 to her room and she confronted Erick.
24 And of course, he's like no one is going to believe you.
25 You're crazy. You've got a dirty mind. You're just

1 crazy. You're crazy. You're crazy.

2 Minor1 thinks it's her fault, that she's been caught
3 doing something wrong. When her aunt asked her, no,
4 nothing happened. Nothing happened. Nothing happened.
5 But Erick Arroyo knows, uh-oh, something could come of
6 this. I've got to do damage control.

7 So what does he do? He calls his sister Melina the
8 next day at work -- she's now working, she's gotten
9 another job -- and says, you know, Joyce is crazy. You
10 know that. You know Joyce is crazy. And if she calls
11 you and says that I've been molesting Minor1, you know
12 she's crazy. And of course, his sister is like, of
13 course, why would you that. That's ridiculous. That's
14 crazy. That's crazy. Because he's the person she's
15 admired her whole life. And she kind of puts that out of
16 her mind. It doesn't seem quite right, but she couldn't
17 believe that about her brother. She asks her daughter.
18 Of course, Minor1 was like, no, no, no, no, nothing
19 happened. Nothing happened. Because she still thinks
20 it's all her fault.

21 Joyce eventually leaves there, moves to Texas. I'm
22 done. I've washed my hands of this. No one believes me.
23 They all think I'm crazy. Everybody thinks Erick walks
24 on water. But Melina still has a relationship with him
25 because she thinks he walks on water too.

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1 So on a Sunday night, they're over at his house.
2 They're having dinner. They watch some TV. The football
3 game's going to start. And Melina falls asleep on the
4 couch. Minor1 was on the other couch, and the two little
5 children are also asleep on the floor. And Melina wakes
6 up. And her worst nightmare is true. Joyce isn't crazy.
7 She finds her brother on top of her daughter, lying on
8 the couch. The blanket, Minor1's got the blanket on her.
9 To her credit -- because Melina is a spirited woman.

10 They're Puerto -- they come from a Puerto Rican
11 culture. And she didn't go ballistic right that minute
12 because survival mode kicks in. She's got to protect her
13 children. She gets her children. She gets in the car.
14 She pretends like nothing's wrong to her brother. Why
15 are you leaving so fast? Why are you leaving? Nothing's
16 wrong. Nothing's wrong. I've just go to go. I've got
17 to go to work in the morning.

18 By this time, they've moved out. She's got another
19 job, and she's living in her own place. But Melina does
20 the right thing. She says to her daughter, I know
21 something happened. You've got to tell me. Minor1's
22 still like, Mama, nothing happened. Nothing happened.
23 And her mom says, well, you can either tell me or I can
24 take you to take a lie detector test at the police
25 department. Minor1 knows that the secret's out. She

1 still thinks it's her fault. But the secret's out.

2 That's how this case comes to the light of law
3 enforcement. Minor1 finally tells everything that's been
4 happening for over almost fifteen months. It took two
5 people to catch him in the act because no one could
6 believe that there really was this wolf in sheep's
7 clothing. But they exist.

8 And we ask you to listen to all of the evidence that
9 is presented before you today and through the remainder
10 of the week. And at the end of that, we will ask you to
11 find the Defendant guilty of what he did, which is
12 committing criminal sexual conduct with a minor which was
13 his niece Minor1 when she was between the ages of twelve
14 and thirteen and inappropriately touching Minor1 in a
15 sexual manner when she was under the age of fourteen.
16 She was under the age of -- anytime under the age of
17 sixteen. And that happened when she was twelve and
18 thirteen years old. Thank you.

19 THE COURT: Mr. Savage?

20 MR. SAVAGE: Ms. Gordon.

21 May it please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 OPENING STATEMENT

24 BY MR. SAVAGE:

25 Yesterday you sat through that lengthy, all-day-long

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1 process of selecting a jury. I guess the nice thing
2 about that is you know you're wanted. Both sides in
3 determining what would be a fair and impartial group of
4 citizens selected y'all -- you've seen that other people
5 were rejected for whatever reason -- because Ms. Gordon
6 and myself thought that you, based on your life's
7 experience, your education, your occupation, your family
8 situation, collectively can give justice to both Minor 1
9 and to Mr. Arroyo. So that's why you're here.

10 I suspect that what you will hear today is not too
11 different from what you hear every day in your life.
12 Maybe not the specifics of child abuse. But you'll hear
13 things about people, human beings, and their reaction to
14 events and how they perceive those events.

15 The nice thing about you is that there's a variety
16 of education that you represent. There's a variety of
17 cultures that you represent. There's a variety of
18 economic interests that you represent. So that your
19 decision will be collective, taking the best of what each
20 of you individually have to offer based on your
21 education, your family, your job experiences, and come up
22 with a conclusion about what happened.

23 I'm not sure that there's any more hair-raising,
24 embarrassing, disgusting allegation or action than child
25 abuse. It's insidious in our society. It must be

1 eradicated. And those who engage in the destruction of
2 young people's lives deserve to be in prison. But the
3 question is, did what we say we perceived happen? Reach
4 into your life's experience and think of those things
5 that both you and your loved ones or you and your friends
6 in watching something transpire in front of you, you have
7 two different views.

8 That's why we have baseball umpires. That's why we
9 have football referees. That's why we have basketball
10 referees. That's why we have different people who look
11 at the same thing with some objectivity, knowing the
12 rules, and make the right decision. And that's your role
13 today. People perceive in their mind based on their
14 life's experience. Whether it's education, whether it's
15 things that have happened to them in their lives, whether
16 it's their past history, that's how they perceive things.
17 So what I would ask you today is to keep that in mind.

18 You know, the Solicitor has given very specific
19 allegations about what happened. The question is whether
20 that's factual and whether that's accurate. Because the
21 remedy in this case, what you have at hand, is not if Mr.
22 Arroyo did these things that we're asking you to
23 compensate the injured party because if you were in an
24 automobile accident -- in an automobile accident, if
25 somebody's at fault, you only have to find them so much

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1 at fault.

2 In a criminal case because Arroyo will spend the
3 rest of his life in prison if this Judge chooses, the
4 burden in filtering out those observations is much
5 greater. It's called beyond a reasonable doubt. What is
6 that? What is something that is not subjective to the
7 human perception? Science. So in your experience you
8 know, well, not just in the field of legal expertise, but
9 in the field of medicine, they take blood tests. We
10 don't just look at a patient. We look and we analyze, we
11 filter through, find out what appear -- this person looks
12 like. Let's take a blood test. Let's do a CAT scan, PET
13 scan, whatever, to document scientifically so that we can
14 be sure beyond a reasonable doubt of what we perceive.

15 In child abuse cases, when there is no scientific
16 proof for whatever reason, either because the police
17 didn't act with dispatch to examine, to look for
18 evidence, scientific evidence, or because the medical
19 field, although in their protocol says there are certain
20 things we look for to document when there is penile
21 penetration, there's digital penetration. There's a
22 protocol. Don't accept the fact that scientific
23 examination was done. And then a scientist or a
24 physician would say to you, well, it really doesn't mean
25 anything. The fact that there's no -- the fact is that

1 we took these scientific tests and we did this physical
2 examination and we looked for scientific analysis, and we
3 didn't find anything. But that is consistent with penile
4 penetration or digital penetration for sexual abuse. The
5 question is, if you didn't take these scientific
6 experiments, why did you do that? Well, you did that to
7 determine the believability, the credibility, the
8 truthfulness of the witnesses who were subjected to human
9 behavior, who may have perceived something that wasn't
10 accurate. That's why there's a protocol. That's why the
11 Medical University of South Carolina spends enormous,
12 hundreds and thousands and millions of dollars to examine
13 these things. Do not accept the fact that they didn't
14 find anything that it's consistent with abuse. It just
15 doesn't make sense.

16 Fifty-four years old, bronze medal winner in
17 Afghanistan. A career, Air Force enlisted man. Navy
18 veteran. Highly respected in this community. Never been
19 in a courtroom in his life. Oh, except for the divorce
20 from one of the witnesses that the Prosecutor has told
21 you about that's being viciously fought and promulgated
22 by one of the witnesses who will testify. Otherwise,
23 never been in court.

24 MS. GORDON: Objection, Your Honor.

25 THE COURT: Overruled. Go ahead.

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1 OPENING STATEMENT

2 CONTINUED BY MR. SAVAGE:

3 So when you hear things like right now, don't take
4 it literally. Use that lifetime experience that you've
5 brought together collectively and debate, talk about it,
6 challenge each other. Well, she says she saw this. They
7 didn't find that. He says this. Wait, be patient.
8 Certainly by Friday -- and if the Judge has his way
9 probably a lot sooner than Friday -- this trial will be
10 over and you'll be able to go back into the jury room and
11 make this very -- probably not that difficult really when
12 it comes down to it -- decision, but certainly a very
13 important decision in the lives of the people who are in
14 the courtroom today, mr. Arroyo, his family from Puerto
15 Rico, his father, his mother, his brother, his sister and
16 others who are very interested in the outcome of this
17 proceeding.

18 Please be patient. And thank you for being here.

19 THE COURT: Solicitor, if you would call your
20 first witness, please.

21 MS. GORDON: Thank you, Your Honor. The State
22 calls Minor 1

23 Minor 1

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. GORDON:

2 Q. Good morning, Minor 1. Minor 1, how old are you?

3 A. Sixteen.

4 Q. What's your birthday?

5 A. .

6 Q. When was that, 1995?

7 A. 1995.

8 Q. 1995?

9 A. Yeah.

10 Q. Okay. I'm sorry. I didn't catch the date exactly.

11 A. .

12 Q. .

13 THE COURT: Solicitor, would you move the
14 microphone a little closer and get her to slide a little
15 closer so everybody can hear.

16 THE WITNESS: Okay.

17 THE COURT: Speak up, please?

18 THE WITNESS: Okay.

19 THE COURT: It may sound like you're yelling,
20 but speak up so everybody can hear?

21 THE WITNESS: All righty.

22 THE COURT: Okay. Thank you very much.

23 THE WITNESS: You're welcome.

24 Q. Minor 1, where do you live now?

25 A. I live in Omaha, Nebraska.

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- 1 Q. And when did you move there?
- 2 A. The beginning of January.
- 3 Q. Of this year?
- 4 A. Of this year.
- 5 Q. And prior to that, you lived in South Carolina?
- 6 A. Yes, ma'am.
- 7 Q. At some point you lived in Mount Pleasant; is that
- 8 right?
- 9 A. Yes.
- 10 Q. And did you live with your uncle for a little while,
- 11 your uncle and his family?
- 12 A. Yes.
- 13 Q. Do you remember when that was?
- 14 A. That was when I was in sixth grade going to seventh
- 15 grade, probably 2008.
- 16 Q. And when you moved in with them, was it the
- 17 summertime between the sixth and the seventh grade?
- 18 A. Yes.
- 19 Q. Who lived there when you lived at your uncle's
- 20 house?
- 21 A. His wife Joyce and him.
- 22 Q. Now, does he have other children?
- 23 A. Yeah.
- 24 Q. Okay. Where were they?
- 25 A. They were probably at school or living in their own

1 houses.

2 Q. So they're grown; they're much older than you?

3 A. Yeah.

4 Q. Now, did you -- you said you have a little brother
5 and sister?

6 A. Yes.

7 Q. How old were they?

8 A. They were probably six or five.

9 Q. And what are their names?

10 A. A. and G. (phonic).

11 Q. You said that Erick Arroyo is your uncle; is that
12 right?

13 A. Yes.

14 Q. When you first moved into his house, what was your
15 relationship like with him?

16 A. It was really good. Nothing bad.

17 Q. And what was your mom's relationship like with him?

18 A. She loved her brother.

19 Q. What did you call him at the time?

20 A. I called him Tio Erick.

21 Q. And is that Tio?

22 A. Yeah.

23 Q. And is that Spanish for uncle?

24 A. Yeah.

25 Q. How would you describe your Uncle Erick Arroyo's

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1 role in the family?

2 A. Everybody adored him. They thought he was like
3 number one.

4 Q. And did you like him?

5 A. Yeah.

6 Q. Did you like going to live at his house?

7 A. Yeah. I thought it was a pretty cool house.

8 (WHEREUPON, State's Exhibit Number 1 was marked for
9 identification only.)

10 Q. Minor 1, I'm going to show you what's been entered as
11 State's Exhibit 1 ...

12 MS. GORDON: ... I believe without objection?

13 MR. SAVAGE: Okay.

14 THE COURT: Thank you.

15 (WHEREUPON, State's Exhibit Number 1 was admitted
16 into evidence.)

17 Q. Well, I'm showing you what is State's Exhibit 1.
18 What is that?

19 A. That's his house.

20 Q. And was it a four-bedroom house or ---

21 A. Yeah, I think so.

22 Q. And where was that house located?

23 A. It was located in Sweet Grass in Mount Pleasant.

24 Q. And is that Charleston County?

25 A. Yes.

1 Q. At some point, Minor 1, did something happen that
2 changed the way you thought about Erick Arroyo?

3 A. Yes.

4 Q. Tell me what happened?

5 A. Well, my uncle, he started like rubbing my back, and
6 then he started like going down and towards the front of
7 my shirt. And he started going down and started touching
8 my privacies..

9 Q. Minor 1, where were you the first time you remember
10 your uncle touching you?

11 A. I was on his couch.

12 Q. Who else was there?

13 A. I think his wife and his daughters and him.

14 MS. GORDON: Could I get an exhibit sticker?

15 (WHEREUPON, State's Exhibit Number 2 was marked for
16 identification only.

17 Q. Minor 1, I'm going to show you what is marked as
18 State's Exhibit 2 ---

19 MS. GORDON: And I move to admit that, I
20 believe, without objection.

21 THE COURT: Is that correct? State's 2 without
22 objection? Is that correct, Mr. Savage?

23 MR. SAVAGE: Yes, sir.

24 THE COURT: Okay. All right. 1 and 2 are
25 admitted without objection.

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1 (WHEREUPON, State's Exhibit Number 2 was admitted
2 into evidence.)

3 Q. Minor 1, do you know what this represents?

4 A. Yeah. That's his living room.

5 Q. This is like a diagram. I'm going to put this up.

6 You said that you were sitting on the couch?

7 A. (No verbal response)

8 Q. Minor 1, I know this is hard. But if you can ...

9 MS. GORDON: Your Honor, may I ---

10 THE COURT: Yes, ma'am.

11 Q. Minor 1, do you want some water?

12 A. (No verbal response)

13 Q. Minor 1, if you can, I want you to turn around and
14 just show for the jury which couch you were on.

15 A. I was on this couch.

16 Q. And if you can, if you can turn the other way,
17 because I don't know if people will be able to hear you
18 so that you're ...

19 A. I was on this couch, sitting right there.

20 Q. And where was your uncle?

21 A. He was right there. He was right beside me. He was
22 right there.

23 Q. Was that -- you said your uncle was right beside
24 you?

25 A. Yeah.

1 Q. And then who was on the other end of the couch?

2 A. His wife.

3 Q. Joyce?

4 A. Yeah.

5 Q. And then who was on the love seat?

6 A. Other people. Probably his daughters.

7 Q. How were you sitting, Minor 1 ?

8 A. I was like this.

9 Q. Like with your legs up?

10 A. Yeah.

11 Q. And did you have anything on you?

12 A. Yeah. I had a cover.

13 MS. GORDON: Your Honor, may I ask her to use

14 this just as a demonstrative aid to show how she is

15 covered up on the couch?

16 THE COURT: You got any objection?

17 MR. SAVAGE: I have no objection.

18 THE COURT: That will be fine.

19 Q. Minor 1 , was it just kind of a couch cover similar ---

20 A. Yeah.

21 Q. --- not this one.

22 A. Not that, but something like that.

23 Q. Can you just demonstrate so the jury can see how you

24 were sitting on the couch?

25 A. I was like this (demonstrating) and like this.

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- 1 Q. And what did your uncle first do?
- 2 A. He started rubbing my back.
- 3 Q. I'll take that. She couldn't hear you Minor 1. Can
- 4 you say it again?
- 5 A. He started rubbing my back.
- 6 Q. And what did you think about that?
- 7 A. Well, like I got like goose bumps, like when you get
- 8 cold. I just didn't feel like it was right. I thought
- 9 it was really uncomfortable.
- 10 Q. And what did he do after he was rubbing your back?
- 11 A. He started going forward to like the front of my
- 12 shirt.
- 13 Q. How old you were you at this time?
- 14 A. I was twelve.
- 15 Q. After he -- you said he started moving forward. And
- 16 then where did he touch?
- 17 A. And then he started going down like in front of my
- 18 -- in front of my pants where the buckle and zipper was.
- 19 Q. Did he touch inside your pants that day?
- 20 A. Nope.
- 21 Q. Was it just on the outside that day?
- 22 A. Yeah.
- 23 Q. And what did he do when it stopped?
- 24 A. He turned with his leg.
- 25 Q. And what did you think about that?

1 A. I didn't know what to think. I was like this wasn't
2 happening. This wasn't real, but it was.

3 Q. Did you tell anybody what he did?

4 A. No. I told God and my dad.

5 Q. Now, you said your dad. Did you get to call your
6 dad up on the phone?

7 A. No. I talk to him, praying.

8 Q. By praying? Is your dad alive?

9 A. No.

10 Q. When did he die?

11 A. He died on January 8th, 2006.

12 Q. But sometimes you would talk to your dad in prayer?

13 A. Yeah.

14 Q. When is the next time that you remember your Uncle
15 Erick touching you?

16 A. Well, I remember when he did it, but I don't
17 remember like the time.

18 Q. I don't expect you to know a date or even
19 necessarily a month, but just the next event that you --
20 well, let me ask you this. Did it just happen one time
21 or did it happen lots of times?

22 A. It happened lots of times.

23 Q. How long did it go on before it was finally put an
24 end to?

25 A. About a couple of months, more than six months.

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1 Q. The first time you said he did something was in --
2 was before you turned thirteen, you were still twelve?

3 A. Yeah.

4 Q. And you turned thirteen in October 2008; is that
5 right?

6 A. Yeah.

7 Q. So sometime before then, after you -- did it happen
8 before or after you moved into his house?

9 A. After I moved into his house.

10 Q. So the first time is sometime after you moved into
11 his house. And you moved into his house in the summer of
12 '08?

13 A. Yeah.

14 Q. And then when did it finally get reported to the
15 police? Do you remember that date?

16 A. I remember that we -- it was on a Sunday. And we
17 were watching a football game. And me, my mom and my
18 siblings were there, and he had nobody there by his house
19 because everybody left him. And we went over there
20 because we felt bad because, oh, he's there in that house
21 and it's such a huge house. And we went there to like
22 eat dinner with him. And then we went on the couch, and
23 I was with my sister, my little sister, laying on the
24 couch.

25 Q. I'm going to stop you there. Do you remember if

1 that was like September of 2009?

2 A. That was September 2009.

3 Q. So sometime between like June or July of 2008 to
4 September of 2009?

5 A. Yeah.

6 Q. Now, I want to go back. Did it happen one time
7 between there?

8 A. No. It happened more than once.

9 Q. Did it happen many times? Could you estimate how
10 many?

11 A. It happened many times.

12 Q. Tell me the next event you remember of him touching
13 you after the first time.

14 A. Well, he kept doing what he did the first time, but
15 then he started touching inside of my underwear and
16 started touching my privacies.

17 Q. And where ---

18 A. He started putting his hands in my privacies.

19 Q. Did it happen in his house or somewhere else?

20 A. It happened in his house.

21 Q. Did it ever happen anywhere other than his house?

22 A. Yes.

23 Q. Tell me about a time that you remember it happening
24 somewhere other than his house?

25 A. It happened in his car.

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- 1 Q. Tell me what happened in his car?
- 2 A. He took me to Sam's Club, and he parked all the way
3 to the back. And he took me to the back and put me on
4 top of him, and then he put his penis in my vagina.
- 5 Q. Minor I, how did that feel?
- 6 A. It didn't feel good.
- 7 Q. How did it make you feel?
- 8 A. I felt like I was a nothing.
- 9 Q. Did you tell anybody?
- 10 A. No.
- 11 Q. Why not?
- 12 A. Because I thought people were going to judge me and
13 not believe me.
- 14 Q. Do you remember the first time that he tried to put
15 his penis inside your vagina?
- 16 A. Yeah.
- 17 Q. Can you tell us about that time?
- 18 A. I was watching TV on the couch in his living room,
19 and he kept rubbing -- he did like -- he like started
20 rubbing my back and then started putting his hands in my
21 privacies. And then he took my clothes off, and he
22 started taking his clothes off. And I didn't look at him
23 when he was doing that. I just stared away. And ---
- 24 Q. What were you thinking when this happened?
- 25 A. I thought something was wrong with me. Why was this

1 happening to me? And then -- and then he put me on the
2 floor, and then he started like trying to put his penis
3 into my vagina.

4 Q. What did you do?

5 A. I moved. I moved a little because it was really
6 hurting really bad. And he started trying to -- he tried
7 to do it again, and I moved away. And then he was like,
8 what's wrong? You shouldn't -- he said -- he started
9 acting nice. I don't remember what he really said, but
10 he started acting nice. And he got up and took me gently
11 -- like he grabbed my hands and took me gently to the
12 couch. And he was like, put your clothes on. Like, not
13 in a mean way, in like a nice way. And I put my clothes
14 on, and I just sat there and stared.

15 Q. Did you ever think about telling someone about what
16 was going on?

17 A. I tried. I told God, I'll tell someone tomorrow,
18 and then I wouldn't. And then I'll tell Him the same
19 thing, and then I wouldn't. And then I wouldn't.

20 Q. Why did you keep talking yourself out of it?

21 A. Because I didn't know how to say it.

22 Q. Was there ever a time that he used anything other
23 than his -- you told us that he put his fingers inside
24 your vagina.

25 A. Uh-huh (affirmative).

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- 1 Q. And then that he's put his penis inside his vagina
2 -- I mean, inside your vagina?
3 A. Yeah.
4 Q. Did he ever use anything else to touch you in your
5 private area?
6 A. He used his mouth.
7 Q. Can you tell us about that?
8 A. I really don't remember like all of it.
9 Q. Just tell us what -- any details you remember.
10 A. But he put his mouth on my vagina and -- do I have
11 to explain it all?
12 Q. I know it's tough, but I need you to explain what he
13 did.
14 A. And then he started like -- and then he started
15 moving his tongue. And then I just -- I just froze. My
16 body got frozen. And it was -- I was like, it was like
17 someone putting -- holding me there because I couldn't
18 move.
19 Q. Minor 1, did he ever tell you why he was doing this?
20 A. He said he was doing this so I wouldn't experiment
21 with other boys.
22 Q. And did he ever tell you how he felt about you?
23 A. He said he loved me.
24 Q. Did anyone ever see what was going on?
25 A. One day, someone caught him doing things to me.

1 Q. Who was that?

2 A. His wife Joyce.

3 Q. Tell me about when -- the time that Joyce caught
4 him.

5 A. I was doing my homework. I was on the couch doing
6 homework, watching TV. And he was like, come to the
7 garage, come to the garage. I was like, no, I have to do
8 this. I have to do this homework. I can't -- I don't
9 want to go to the garage. And then he was like, come to
10 the garage. I was like, no, I have to do my homework.
11 And then he grabbed me gently by the hands and like took
12 me to the garage, and he unzipped my pants and then
13 unzipped his pants and took his penis out and started
14 trying to put his penis into my vagina. And then all of
15 a sudden the door opens, and Joyce walked into the door.

16 Q. What did you think when Joyce opened the door?

17 A. In a way, I was happy. But then in a way, I was
18 scared. I was afraid that she wasn't going to listen or
19 she wasn't going to like try to stop it altogether.

20 Q. What happened after your aunt caught you?

21 A. I went to my room, and I closed the door a little
22 bit.

23 Q. Is this when you were still living at his house?

24 A. Yeah. I closed the door a little bit, and I
25 listened to what she was saying to him. Well, not all of

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1 it. But I listened to some of the things she was saying
2 to him, and then ---

3 Q. Were they yelling?

4 A. No, they weren't yelling because everybody in the
5 house was asleep. And I remember this. She -- he said,
6 how can I do that? Why would I do that to her? She's
7 like a daughter to me.

8 Q. How did that make you feel?

9 A. That made me feel like he was making it seem that my
10 father would do that to me, my perfect father who died
11 from cancer would do that to me.

12 Q. Did your aunt come to you?

13 A. Yeah. She asked me if I was ---

14 MR. SAVAGE: Objection to what she said, Your
15 Honor. Objection on the grounds of hearsay.

16 MS. GORDON: Your Honor, I'm just asking her if
17 her aunt came and then her response.

18 THE COURT: All right. Okay. Don't say what
19 your aunt said, okay?

20 Go ahead. Please proceed. I'll sustain it on
21 hearsay.

22 Q. Don't say what your aunt said to you. But just
23 answer did your aunt come to you regarding what she saw
24 in the garage.

25 A. Yeah.

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1 Q. And did you tell her what happened?

2 A. No.

3 Q. Why not?

4 A. Because I afraid she wouldn't believe me even though
5 she saw it. I was afraid she wouldn't say anything to
6 help me.

7 Q. Minor 1, did it continue even after you moved out of
8 the house?

9 A. Yeah. One more time after that.

10 Q. Tell us about that.

11 A. Well, my cousin, R. , he came into town. And
12 this was in July in 2009. And he and then my mom -- it
13 was her birthday and she was going out. So I asked her,
14 hey, mom, can I go to Tio Erick's house so I can hang out
15 with R. ? And she was like, yeah, sure, you can go.
16 You can stay over the night because I'm going to go out
17 to like have fun to celebrate my birthday. And well,
18 everything was fine. Nothing happened that day. But the
19 next morning, he -- I was asleep and I kind of noticed
20 like someone came in the room. And then like he tried to
21 put his penis into my vagina. And then he didn't. He
22 didn't do that because I like flinched and then ...

23 Q. Tell me about the night that you ended up going to
24 the police station.

25 A. Well, we were all -- everybody was -- after we

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1 finished eating dinner, after we went to his house, ate
2 dinner, we went to go watch the football game. And me
3 and my sister are on the couch, and my brother, G. ,
4 was ---

5 Q. You can use the diagram if you want to.

6 A. There's the table. There was a table in the middle
7 right there.

8 Q. Like a coffee table in the middle of the rug?

9 A. Yeah. And my brother's on the floor right there
10 with a pillow, and my mom's right there.

11 Q. On the love seat?

12 A. Yeah. And then my -- and then he says -- he tells
13 my sister -- or I ask my sister, A. , go get a pillow
14 so me and you can lay here, and like lay here and sit
15 down. And then she got a pillow, and we laid there. And
16 then he was like, A. , go with G. . Go with G. .
17 I was like, no, we're already lying here. Why does she
18 have to go lay on the floor? And he was like, A. , go
19 with G. . And I was like, A. , go with G. and
20 ...

21 Q. Did you know what was going to happen?

22 A. Somehow I kind of figured, but I wanted her to stay
23 there. But I didn't tell her to go with G. . I told
24 to stay by the couch right there so she can -- but then
25 he was like -- and then he told her, move over there with

1 G. . And then my mom fell asleep, and he started
2 touching me. And then he took his penis out and he
3 wanted me to -- he wanted my hand. He wanted to put my
4 hand on his penis. And I just left my hand there. I
5 didn't move it or anything. And then he started like
6 touching my breast. And then I think that's when my mom
7 woke up. And then he like -- he like went over me, like
8 got on top of me and was like total -- like not all the
9 way on top of me, like I was like this and he was like
10 that. And he was like, tell your mom that you were
11 giving me the control.

12 Q. The remote control?

13 A. The remote control.

14 Q. Minor 1, what he was doing, did it ever feel good?

15 A. Yeah. But I thought that I was wrong because I
16 thought I was wrong. I thought I was disgusting for
17 feeling that way, and I thought I was sinning.

18 Q. I'm sorry. You thought you were what?

19 A. Sinning.

20 Q. Sinning? Did you -- you said that you prayed about
21 this. What happened with your prayers?

22 A. God never stopped him.

23 Q. And did that have an effect on you?

24 A. Yeah. I stopped believing in God. Well, I didn't
25 stop believing in God. I just stopped praying and

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1 talking to God, stopped going to church. I was mean. I
2 was bitter. But I didn't show it to people. I acted as
3 usual, nice. All I did was smile.

4 Q. Did anyone notice?

5 A. My mom did.

6 Q. And did you tell her why you were stopping going to
7 church?

8 A. I said, I don't want to go to church. People there
9 always judge me.

10 Q. You've told us -- I know you said there were a lot
11 of times. Can you even remember every specific event
12 when it happened?

13 A. No, because it happened so many times.

14 Q. You've told us about certain times in the living
15 room and in the garage and in the truck. Did it ever
16 happen in any other room in the house?

17 A. Well, when he told me like ---

18 Q. And I'm sorry. You also said in the bedroom where
19 you were sleeping?

20 A. Yeah.

21 Q. Did it ever happen in any other room?

22 A. No.

23 Q. Did it ever happen in his bedroom?

24 A. Yeah.

25 Q. Did you tell me? I didn't write -- I may have

- 1 missed it we discussed the time or a time in his bedroom.
2 Do you remember a time in his bedroom specifically?
3 A. Well, it was basically what he would do was like put
4 his penis in my vagina, and that was it. And then I
5 would just put my clothes on and ...
6 Q. How did you know his penis was inside your vagina?
7 A. Because -- I don't know how to explain it, but ...
8 Q. How would he move?
9 A. He would move like in a -- he would move like not in
10 a rapid motion but he would move like slow and moderate,
11 and then he would like start going faster.
12 Q. Did it ever hurt?
13 A. Yeah. The first time he did it, it hurt.
14 Q. Did it always hurt?
15 A. No. But to me it hurt emotionally.
16 Q. Did you ever ask him to stop?
17 A. I would be like, can you please stop or tell him
18 stop. And but -- in some other ways I'd just move, like
19 flinch, and make it -- like show him I didn't want that
20 to happen.
21 Q. After you go to the police -- you end up at the
22 police station. Tell me about what happens when you
23 leave your uncle's house that night.
24 A. My mom looks at me, and she's like, what happened?
25 Tell me what happened. I'm like, mom, nothing happened.

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- 1 He was just getting the remote control, mom. Nothing
2 happened. And ---
- 3 Q. Why did you -- why couldn't you tell her?
- 4 A. Because I didn't know if she was going to -- I
5 didn't know if -- I just didn't know if she was like
6 going to go tell the police or go do something about it.
7 I thought she was just going to be like, well, we'll deal
8 with this in some way. And -- or just dismiss the fact
9 that he did that.
- 10 Q. So what happened?
- 11 A. She was like -- she told me -- she was like, if you
12 don't tell me, then you don't know if he's going to do
13 this to A. or G. . And I need to protect my
14 children. Because if you don't tell me and he does this
15 to them, then you're not going to protect them and you're
16 going to be in more trouble -- well, you're not going to
17 be in more trouble -- you're going to feel guilty for not
18 saying that he did this to you and I could have helped
19 you. And I told her -- I was like, well, he touched me
20 on my breast and ---
- 21 Q. Did you give her all the details you gave us today?
- 22 A. No, I couldn't do it. I was too scared. And I
23 didn't feel like hurting my mom all the way.
- 24 Q. Did Erick ever give you instructions about whether
25 to tell anybody?

1 A. He said, don't tell anybody. But I didn't -- I
2 didn't ask him why, why not tell anybody because I didn't
3 know if he was going to be like, if you tell someone,
4 then something bad is going to happen. But I didn't ever
5 ask him why I shouldn't tell anybody.

6 Q. Since this happened, do you have any contact with
7 your family anymore?

8 A. No. My family disowned me as their niece and
9 granddaughter. They're not my family. I only have
10 family from my father's side, and they will never be my
11 family.

12 Q. How has what happened affected you?

13 MR. SAVAGE: Objection to relevance.

14 THE COURT: Let me see the attorneys up here
15 just a second.

16 (WHEREUPON, a bench conference was held off the
17 record.)

18 Q. Minor 1, how did what your uncle did to you make you
19 feel about yourself?

20 A. To me, I felt like I was nothing. I felt like
21 nobody cared about me and that I was disgusting and that
22 I wasn't -- that I did something bad, that this was all
23 my fault, that I made him do this to me.

24 Q. How did it make you feel about your mom?

25 A. I didn't ---

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1 MR. SAVAGE: Objection again to relevance.

2 THE COURT: I'll sustain the objection.

3 Q. Minor I, have you forgiven your uncle?

4 A. Yeah, I forgive him.

5 Q. Tell me about how you came to that.

6 MR. SAVAGE: Objection again on the grounds or
7 relevance.

8 THE COURT: Overruled.

9 A. I went to church for our church retreat and --
10 because I went to church because I broke down. I
11 couldn't deal with all this stuff, like everything. And
12 there is this one event where you write down all the
13 people that you forgive that have hurt you in your life.
14 And I forgave him. I said to God -- and I told him --
15 well, spiritually, not face-to-face. But I said, I
16 forgive you for doing all those things to me that you
17 did. I forgive you for doing all those things, and I
18 just forgave him. And it's in God's hands to deal with
19 him now.

20 Q. Minor I, as a result of all of this, did you see a
21 therapist?

22 A. Yeah.

23 Q. Before you saw the therapist, had you ever told
24 anyone all of the details?

25 A. Yes. But I told her all of it.

1 Q. Who's the first person that you told?

2 A. I told my friend, Lori.

3 Q. And then when you went into therapy, how did that
4 help you be able to give the details?

5 A. Maria, the therapist, she told me to write it in a
6 notebook because I couldn't just talk to her about it.

7 So I wrote it in the notebook every other time I went to
8 her because after I wrote it, she made me read it like a
9 lot of times and read it and read it. And so I wrote
10 everything that I remembered about what happened to me.

11 And when I came in the next session, I read it out loud.

12 And then I read it, and then I read it again. And then

13 ---

14 Q. Was it hard to write that?

15 A. It was like definitely super hard.

16 Q. Why?

17 A. Because I didn't want to remember what happened. I
18 didn't want to -- I didn't want to just see it there
19 written down, all that happened. Just words that
20 happened to me.

21 MS. GORDON: The Court's indulgence. Nothing
22 further at this time, Your Honor.

23 THE COURT: Cross-examination?

24 MR. SAVAGE: May it please the Court.

25 (WHEREUPON, Defendant's Exhibit Number 1 was

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1 marked for identification only.)

2 MR. SAVAGE: Your Honor, this has been marked
3 as State's for identification only at this time ---

4 THE COURT: Defendant's Exhibit Number 1?

5 MR. SAVAGE: Yes, but for identification only.

6 THE COURT: All right. Go ahead.

7 MR. SAVAGE: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. SAVAGE:

10 Q. Good morning, Minor 1 .

11 A. Good morning.

12 Q. I don't believe we've met before.

13 A. No.

14 Q. I'm Andy Savage, and I'm an attorney. And I know
15 that you've spoken about this case a number of times
16 before, but not with anybody affiliated with me and my
17 office, I don't believe. Some of the people who've
18 spoken to you would include Ms. Gordon. How many times
19 have you spoken to her?

20 A. Maybe like three times like seeing face-to-face.

21 Q. And on the phone?

22 A. Yeah.

23 Q. And in fact, some of the things you testified today,
24 Ms. Gordon was one of the first people you told?

25 A. No.

- 1 Q. No? And who is this lady?
- 2 A. She's her assistant that she ---
- 3 Q. Have you spoken to her?
- 4 A. I have spoke -- every time I speak, I speak in front
5 of her, Elizabeth, her and Amanda.
- 6 Q. And some of these people back here, the lady sitting
7 next to the man with the blue shirt, have you spoken to
8 her?
- 9 A. She's -- I don't speak to her. I don't speak to her
10 when they're there -- when I'm talking to them.
- 11 Q. But this lady right here actually took a statement
12 from you ---
- 13 A. Yeah.
- 14 Q. --- on April the 23rd ---
- 15 A. I don't remember it.
- 16 Q. --- last year.
- 17 A. I don't remember it.
- 18 Q. And I don't see the other people here. But
19 certainly there are other people that you've spoken to
20 about this case?
- 21 A. Yes, I have.
- 22 Q. And did you have an opportunity with this lady back
23 here or Ms. Gordon tell you about testifying in court,
24 how difficult it was?
- 25 A. They told me it was going to be hard. They didn't

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1 tell me what to say, but they told me it was going to be
2 hard.

3 Q. But did they practice with you? Did they go through
4 what would happen?

5 A. They asked me questions, and I told them what my
6 answers.

7 Q. So they assisted you before you came here today in
8 rehearsing ---

9 A. They didn't rehearse it.

10 Q. --- instructing you on what to do, where to look,
11 what to wear?

12 A. They didn't tell me what to wear, where to look.
13 They didn't tell me what to do.

14 Q. Now, in addition to speaking to the Prosecutor, did
15 you ever speak to any police?

16 A. No, I didn't speak to the police, no.

17 Q. Have you ever spoken to anybody in law enforcement,
18 with the sheriff's department or State Law Enforcement
19 Division, Child Abuse Network, Mount Pleasant Police
20 Department?

21 A. I talked to the Children -- I don't know what it is,
22 but somewhere in downtown, where they asked me questions
23 about where he touched me. And they showed me a picture
24 of a man and a girl, and I pointed to the things that he
25 -- where he touched me and the places he touched me. And

1 that's it. And then ...

2 Q. Do you know whether any of those people you talked
3 to were police authorities?

4 A. They weren't police authority.

5 Q. Have you ever spoken to police authorities about the
6 acts that you've described to this jury?

7 A. No.

8 Q. Now, I'd like to show you this diagram and see if
9 you recognize it.

10 A. Yeah. That's what his house looks like.

11 Q. All right. I'm going to put this on the screen
12 behind you and then ask you some questions. The diagram
13 that's behind you right now, have you seen that before?

14 A. Yeah. The other day, Sunday.

15 Q. Where did you see that?

16 A. It was just like that.

17 Q. Where were you when you saw it?

18 A. I was in her office.

19 Q. Who is her?

20 A. Elizabeth.

21 Q. The Prosecutor?

22 A. Yes.

23 Q. And you went over that with her in preparation for
24 today?

25 A. No. She asked me if that's what the living room

- 1 looked like.
- 2 Q. And you didn't describe anything about it?
- 3 A. I told her that the couch -- I told her where the
- 4 couch positions were and everything and the TV and
- 5 everything.
- 6 Q. Did you get a chance to see this photograph?
- 7 A. No.
- 8 Q. Today's the first time you've seen that?
- 9 A. Today's the first time I've seen that photograph.
- 10 Q. Now, I don't believe you've seen this sketch before?
- 11 A. No, I haven't.
- 12 Q. You know, it's very hard for those of us who may not
- 13 have been in this room to really put ourselves in that
- 14 position. That's what I'd like, Minor I, for you to help
- 15 -- if you can imagine that the Judge or the jury wanted
- 16 to come to this house and buy the house and that you
- 17 wanted to explain to him or the jurors about the house.
- 18 Is this the first floor or the second floor?
- 19 A. That's the first floor.
- 20 Q. And the area where the couches are, is there a table
- 21 there?
- 22 A. Yeah, the coffee table.
- 23 Q. And that coffee table wasn't in the other diagram
- 24 you saw, but you talked about it.
- 25 A. Yeah.

1 Q. And does that represent where the lamps would be?

2 A. I guess so. I don't remember.

3 Q. And does that represent where the television would
4 be?

5 A. Yes.

6 Q. And does the round table with the four chairs on the
7 left represent where the table and chairs would be?

8 A. Yes.

9 Q. And was that a dining room area?

10 A. No. That was more like, like brunch or like dinner
11 like anything there.

12 Q. And is there a kitchen close-by?

13 A. Yeah. The kitchen is all the way to the left after
14 the table.

15 Q. Now, I'm counting five windows in that diagram and a
16 door.

17 A. Yeah.

18 Q. Are there other windows similar to that on the other
19 side of the house?

20 A. Yes.

21 Q. And when we saw the photograph of the house earlier,
22 State's Exhibit Number 1, you see where the flags are
23 flying. It doesn't actually show the outside of the
24 house where the couches are?

25 A. Well, I don't know why.

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- 1 Q. It doesn't show it at all in that photograph.
- 2 A. I don't know why.
- 3 Q. And if we had the photograph on the outside of the
- 4 house where this incident took place ---
- 5 A. There's not that many windows on that side. It's --
- 6 there's the -- it's the outside. And it's a window right
- 7 here for his room. And then I think -- no, I don't think
- 8 there's a window right there. And then the window for
- 9 downstairs for the living room. And then that's it.
- 10 Q. Well, let's look at State's Exhibit Number 1. You
- 11 said that ---
- 12 A. There's a tree right there, so you can't see
- 13 anything in the house because there's a huge tree right
- 14 there. So you couldn't see anything, so ...
- 15 Q. Minor 1, if you would, just let me ask the questions.
- 16 A. Uh-huh (affirmative).
- 17 Q. It might be a little bit easier. Is this the house
- 18 where the incident took place?
- 19 A. Yes, this is the house where I got raped.
- 20 Q. And does this photograph show the outside of the
- 21 house where you were in the den.
- 22 A. No, because that's the outside.
- 23 Q. And it's also the opposite side of the house,
- 24 correct?
- 25 A. Yes.

1 Q. And it does not show any windows ---

2 A. Because there's not that many windows. There's only
3 one window where the TV is where you showed me in the
4 other picture. And you can't really see it because
5 there's leaves coming over the fence covering the window.

6 Q. I haven't even gotten to that yet, but I know that
7 you're very smart and anticipating what I'm trying to do.
8 But let me ask the question and I'll be patient with you,
9 and you can answer it however you want. But the question
10 is, again, does this photograph, which is State's Exhibit
11 Number 1, show the Judge or the jury ---

12 A. No.

13 Q. --- the outside of the house where the incident took
14 place?

15 A. It doesn't show where the incident took place.

16 Q. And regardless of whether you can see in or out or
17 through or whatever, there are several windows that are
18 not shown?

19 A. Yes.

20 Q. Five that we saw, a glass door that we saw in the
21 den.

22 A. Uh-huh (affirmative).

23 Q. In addition to that, there are windows between this
24 home and the home next door?

25 A. Yes.

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- 1 Q. And how far away would the home next door be?
- 2 A. From the car, it would probably be like ten paces
- 3 after that.
- 4 Q. And on the other side?
- 5 A. There's no houses on the other side. It's a
- 6 railroad.
- 7 Q. And this is the front door?
- 8 A. Yes.
- 9 Q. When you open the front door, can you see into the
- 10 area of the home where you just described the events took
- 11 place?
- 12 A. Yes.
- 13 Q. Now, what were you watching on TV that night?
- 14 A. I don't remember.
- 15 Q. Well, you had earlier indicated that you went over
- 16 ---
- 17 A. I only remember Sunday because that's when my mom
- 18 told me -- that's when my mom took me to the police
- 19 station so she can tell the police what she saw.
- 20 Q. And do you remember what you were watching on
- 21 television that day?
- 22 A. We were watching a football game.
- 23 Q. And your mother was there?
- 24 A. Yes.
- 25 Q. And your mother was sitting on the couch closest to

- 1 the red lamp?
- 2 A. Yes.
- 3 Q. And you were on the couch from me looking at that,
- 4 Defendant's Exhibit Number 1, to the left?
- 5 A. Uh-huh (affirmative).
- 6 Q. Correct?
- 7 A. Yes.
- 8 Q. As I approach you, will you tell me how far away you
- 9 were from your mother that day?
- 10 A. Maybe ---
- 11 Q. Let me walk to you because I want the jurors to see
- 12 how far away you were from your mother.
- 13 A. Right about there.
- 14 Q. About this distance?
- 15 A. Uh-huh (affirmative).
- 16 Q. And what end of the couch on the left were you on?
- 17 A. I was closest to -- right there.
- 18 Q. You were closest to the couch with the red lamp?
- 19 A. Yeah.
- 20 Q. Wouldn't it be more accurate to say the distance I
- 21 am from you now is the distance you were from that couch?
- 22 A. Well, my mom said it wasn't there. My mom said it
- 23 was right here.
- 24 Q. So you're saying no, this is not correct?
- 25 A. That's not correct.

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- 1 Q. All right. Where was your mother sitting on the
2 couch in front of the red lamp?
- 3 A. She was -- her head was closest to that lamp right
4 there, and her legs were closest to the red lamp.
- 5 Q. So she was laying down?
- 6 A. Yes.
- 7 Q. So she was at this distance?
- 8 A. Yes.
- 9 Q. Where was your sister, A. ?
- 10 A. A. was -- if you put that table in the center of
11 the room, she was with my brother, G. , laying down on
12 a pillow.
- 13 Q. Let's describe from this photograph. Your sister,
14 A. , was next to your brother, G. ?
- 15 A. Uh-huh (affirmative).
- 16 Q. And they were in front of the couch to the left?
- 17 A. To this couch?
- 18 Q. Yes.
- 19 A. No. They were closest to this couch.
- 20 Q. Is that your recollection?
- 21 A. Yes.
- 22 Q. Are you positive about that?
- 23 A. I'm positive.
- 24 Q. Do you know whether or not your brother or your
25 sister have given a statement to police or to anyone?

1 A. No. They don't know anything about this. I don't
2 tell them anything because they don't need to know about
3 it.

4 Q. But they were right there in front of you and your
5 mother?

6 A. But they're ten and nine right now. They don't need
7 to know what happened to me.

8 Q. But they were there?

9 A. But they're too young. You don't need to kill their
10 innocence just like that.

11 Q. And that's a decision you made, your mother made or
12 the police made?

13 A. That's the decision I made because I don't want them
14 to be like, oh, my gosh. Our uncle that we thought was
15 amazing and cool did this to my sister, my big sister.
16 And look how my big sister is now, crying almost every
17 other weekend. No, they don't need to know that.

18 Q. So Minor 1, this experience you had you're crying
19 every weekend now?

20 A. It hurts me because I don't have a family. My
21 family doesn't care about us anymore.

22 Q. The indication was that this -- your testimony was
23 that this happened in a garage?

24 A. Yes.

25 Q. Do you have a photograph of the garage or has

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- 1 anybody reviewed that with you?
- 2 A. No.
- 3 Q. Do you know whether any of the investigators in the
- 4 courtroom that work for the Solicitor, any of these
- 5 lawyers, the victim witness people, all these people
- 6 sitting in the center of the room that have suits and
- 7 ties and nice clothes, have been to this house?
- 8 A. I don't think so.
- 9 Q. When you went in this garage, what time of day was
- 10 this?
- 11 A. This is at night.
- 12 Q. And from looking at State's Exhibit Number 1, how
- 13 many windows are in that garage?
- 14 A. There's no windows in that garage.
- 15 Q. And how would one see to get about the interior of
- 16 the garage?
- 17 A. There's a door.
- 18 Q. Are there lights?
- 19 A. Yes, there's lights in there.
- 20 Q. And were the lights on?
- 21 A. I think so.
- 22 Q. Well, either they were or they weren't.
- 23 A. They were on.
- 24 Q. They were on?
- 25 A. Yes.

1 Q. So that when Joyce looked in there, the lights had
2 been on?

3 A. Yes.

4 Q. And let me ask you if you recognize this photograph.

5 A. I guess that's what it looks like now.

6 Q. And you wouldn't know that because you haven't been
7 in the home?

8 A. Yeah. But it probably looks like that now.

9 Q. Well, what we can't do in the courtroom is do
10 probably and guessing at things. On the day of September
11 20th, 2009, did the garage in the home that you were
12 visiting look like this?

13 A. I don't -- I didn't go in the garage that day.

14 Q. On the day that you've testified, the day you don't
15 recall, did the garage look like this?

16 A. Yes.

17 Q. And for the benefit of the jury, where would this
18 photograph have been taken from inside the home?

19 A. In the garage.

20 Q. But where the person is standing ---

21 A. I don't remember the house. I don't remember it. I
22 fail to remember it because I don't want to remember it.

23 Q. So you don't remember anything about ---

24 A. I remember -- I know where all the rooms are and
25 where the garage is and the living room and the dining

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1 room and the computer room is. I know everything there,
2 but I don't remember each location and what pinpoint you
3 can take a picture from. No, I don't remember it like
4 that. But that's the garage, and that's where he -- his
5 wife saw him doing things to me. That's what happened.

6 Q. And what is in that garage?

7 A. There's a lot of crap in that garage. There is --
8 there's a washing machine, a dryer machine, a freezer, a
9 fridge, and then the rest is crap.

10 Q. All right. And what we see in State's -- excuse me
11 -- in this unmarked photograph is what you describe as
12 crap?

13 A. Yeah.

14 Q. And where would the refrigerator and freezer be?

15 A. Well, I don't know what angle it is, but we're ---

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

17 THE COURT: I'm sorry. What?

18 MS. GORDON: May we approach?

19 THE COURT: Yes, ma'am.

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 Q. Tell me again -- this is the garage. You don't
23 recall the washing machine and the dryer, the freezer,
24 the refrigerator, where they would be in that garage?

25 A. Well, I can tell you how it is from like when you

1 get in there. There's a door. You open the door. And
2 on your right, if you're standing this way, on your right
3 would be -- I think it would be the freezer. No. That
4 would be the refrigerator. And then after the
5 refrigerator is the freezer, and then by the freezer is a
6 washing machine, and by the washing machine is a dryer.

7 Q. And you testified to Ms. Gordon that when you were
8 in this garage one night that Mr. Arroyo had his pants
9 down and his penis out?

10 A. Yes.

11 Q. And that your pants were down?

12 A. My pants weren't all the way down, but he was trying
13 to do that.

14 Q. And was that the condition in which you were and he
15 was at the time that his wife entered the garage?

16 A. Yes.

17 Q. Were you standing, sitting or laying down?

18 A. I was standing.

19 Q. And you've indicated that was one of the times that
20 he tried to penetrate you with his penis?

21 A. Yes.

22 Q. Where is the bedroom?

23 A. Upstairs.

24 Q. And are there any bedrooms on the first floor?

25 A. No.

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- 1 Q. Are all the bedrooms upstairs?
- 2 A. Yes.
- 3 Q. And which bedroom, from the outside of the house,
- 4 were you in?
- 5 A. I was in that bedroom right there.
- 6 Q. You're pointing at the second floor above the
- 7 entrance door?
- 8 A. I was right here.
- 9 Q. Who was in the house on that occasion?
- 10 A. Nobody.
- 11 Q. Well, certainly you were there.
- 12 A. I was there but nobody else was there.
- 13 Q. Erick was there?
- 14 A. Yep.
- 15 Q. Where were the other members of the household at
- 16 that time?
- 17 A. I don't really remember.
- 18 Q. In the photograph that the State has, State's
- 19 Exhibit Number 1, do you recognize the vehicle?
- 20 A. Yes. That's his jeep.
- 21 Q. Is that the vehicle in which you were traveling when
- 22 you went to Sam's Club?
- 23 A. Nope. His truck was an F-150 King Ranch.
- 24 Q. Do we have -- have you seen a photograph of that?
- 25 A. It's a white truck. I know what it is. I don't

1 need a photograph.

2 Q. Well, the jury hasn't see it. I was wondering if
3 you have any ---

4 A. The truck is white, and it's an F-150 King Ranch.
5 And there's two seats in the front. And there's a full
6 back seat, and it's -- where you can put tools in and
7 everything. That's what it looks like.

8 Q. And is there a photograph of it?

9 A. No, there's no photograph of it.

10 Q. Did you say that you were in Sam's parking lot?

11 A. Yes.

12 Q. Sam's Club?

13 A. Yes.

14 Q. And is that the one in Charleston?

15 A. Yes.

16 Q. Whereabouts in Charleston?

17 A. I don't remember because I haven't, I haven't been
18 here for like months.

19 Q. How long ago did you tell the Solicitor, Ms. Gordon,
20 or anyone else about that incident?

21 A. A few months before we were going to go into our
22 first trial.

23 Q. Do you know -- I've seen a photograph. Have you
24 seen a photograph of that parking lot?

25 A. Yeah. I had to tell them exactly where the truck

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- 1 was.
- 2 Q. So they've shown you a photograph of Sam's?
- 3 A. Yeah, to tell them where it was.
- 4 Q. Do you know what time of day it was?
- 5 A. It was in the day. It was sunny outside.
- 6 Q. And this was in the parking lot?
- 7 A. In the parking lot.
- 8 Q. And did you see anybody else there in the parking
- 9 lot?
- 10 A. No, because it was all the way in the back.
- 11 Q. And when you told the Solicitor, did they tell you
- 12 there was surveillance cameras taking photographs twenty-
- 13 four hours a day, seven days a week, so that if this
- 14 event happened in that parking lot, it would be a visual
- 15 documentation of that?
- 16 A. No.
- 17 Q. They didn't show you any of those photographs?
- 18 A. No.
- 19 Q. Now, following these events, the Solicitor asked you
- 20 how you felt, and you told her you were very angry.
- 21 A. I didn't tell her that I was angry. I wasn't angry.
- 22 I was disgusted with myself.
- 23 Q. And as a result of these events, you went to the
- 24 Medical University of South Carolina?
- 25 A. Uh-huh (affirmative).

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1 Q. You went to the Lowcountry Children's Center?

2 A. Yes.

3 Q. And I think you said those were good experiences for
4 you in terms of what has happened?

5 A. Yes.

6 Q. You then went to another counselor in Mount
7 Pleasant?

8 A. Yes.

9 Q. And during these events or after these events, the
10 therapy, you were examined by a physician at the Medical
11 University?

12 A. I wasn't -- I was examined the week when my mom went
13 to the -- when we went to the police.

14 Q. Actually, they waited some two months?

15 A. No.

16 Q. November 17th of 2009?

17 A. They did it the week -- I was examined at the place
18 in downtown the week that it happened. I don't remember
19 being examined after that.

20 Q. Do you remember your doctor, your own physician,
21 examining you?

22 A. No, my own physician didn't examine me.

23 Q. Do you remember going to your physician in Mount
24 Pleasant?

25 A. No. I probably was sick, told my mom, I'm sick. I

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1 need to go to the doctor. And that's why we went to the
2 doctor.

3 Q. But do you remember going to the doctor ---

4 A. I don't remember going to the doctor.

5 Q. --- shortly after you reported these events?

6 A. Well, after we did, we did go to the -- we didn't go
7 to the doctor. We went to the place where I had to tell
8 them what happened to me.

9 Q. Now, during the course of your therapy, your mother
10 engaged in that therapy with you?

11 A. Because I had to tell her a new event that I didn't
12 tell anybody.

13 Q. The question was did your mother go to the Medical
14 University and tell Dr. Steenkamp about your life's
15 experiences, the problems that you had had prior to this,
16 relationships with family members, the death of your
17 father and other things that you had experienced in your
18 young life?

19 A. Probably. She probably did.

20 Q. And actually you were with her when she did that?

21 A. I wasn't in the room with her, but we -- she talked
22 to them -- we both talked to her, I guess, separately,
23 not with one in the room. The only time she was in the
24 room was when I had to tell her what other things had
25 happened that I didn't tell anybody.

1 Q. Did your mother tell you that several years before
2 this event, when you were very young ---

3 MS. GORDON: Objection, Your Honor. Hearsay.

4 THE COURT: I sustain that objection.

5 Q. Did Dr. Steenkamp ever ask you about your viewing of
6 pornography on the Internet?

7 A. No.

8 Q. Did she ever ask you about your mother having to
9 take ---

10 MS. GORDON: Objection, Your Honor. Hearsay.

11 Q. --- that away ---

12 MS. GORDON: Objection, Your Honor. Hearsay.

13 THE COURT: Let me hear the question before you
14 make your objection, please. Mr. Savage, would you
15 repeat the question, please, sir?

16 Q. In your therapy at the Medical University ---

17 A. We had talked -- we had a talk ---

18 THE COURT: Hold on. Hold on a second and
19 listen to the question first, okay? Let him ask the
20 question, then you can answer it, okay?

21 Q. During your therapy at the Medical University -- it
22 was a young lady, a young woman, a female doctor from
23 Boston. Did she ask you about your life's experiences?
24 Did she ask you about your life's experiences?

25 A. No. We only talked about what happened to me and

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1 how to deal with it and what things I can do to deal with
2 it. And that's all.

3 Q. Did she ever ask you about other events in your life
4 unassociated with what you've testified today? For
5 example, did she ask you about your sister's being taken
6 away by the courts before this event took place.

7 A. My siblings were never taken away from my mother.

8 Q. By DSS in Florida?

9 A. My siblings were never taken away from my mother.

10 Q. Did she ever ask you about violence in your home?

11 A. Nope.

12 MS. GORDON: Objection, Your Honor. These are
13 all hearsay.

14 THE COURT: Overruled.

15 Q. Did they ask you about violence in your home where
16 people were assaulted with knives ---

17 A. No.

18 Q. --- or kicking or anything like that?

19 A. No.

20 Q. Minor 1, are you sure of that?

21 A. I'm sure of that.

22 Q. Did they ever ask you about your viewing pornography
23 before these allegations came up?

24 A. No.

25 Q. Did you tell them that you had been in therapy at

1 the Medical University years before this?

2 A. I told her that I didn't like going to therapists
3 because I always had to go to therapists because I had to
4 deal with the fact that I don't have a father anymore.
5 And all these people in my family have fathers and I
6 don't. That's why I went to the therapist, because I had
7 to deal with the fact that I lost my father a couple of
8 years ago, and now going on six years. That's why I have
9 to go to therapy, to cope with the fact that I don't have
10 a father, that I can't just go call my dad, hey, dad,
11 what's up. This is what I'm doing. I'm playing soccer
12 and all this. The fact that my father doesn't -- wasn't
13 even here alive to know that I play sports. That's why I
14 go to therapy.

15 Q. Did you tell that to the therapist?

16 A. No. I don't need to tell the therapist that. The
17 therapist doesn't ---

18 Q. Have you told Ms. Gordon that you were in therapy
19 unrelated to these events?

20 A. What does me going to therapy have to deal with the
21 fact that I got raped?

22 Q. The question is, Minor 1, in therapy or since therapy,
23 have you talked to Ms. Gordon about problems you had
24 prior ---

25 A. No, I don't talk to anybody about my problems.

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- 1 Q. Well, you went to therapy ---
- 2 A. The only -- I went to therapy then, and then I
- 3 stopped going to therapy.
- 4 Q. --- when you were nine years old?
- 5 A. Yes, I went to therapy when I was nine years old
- 6 because a lot of things were happening to me then that
- 7 don't have to -- don't deal with what happened to me now.
- 8 Q. And part of that therapy was because of the violence
- 9 in your home?
- 10 A. No.
- 11 Q. Part of that was because of the pornography you were
- 12 watching?
- 13 A. Part of it was because I couldn't -- I was mean to
- 14 my siblings because my father was getting sick and he was
- 15 dying, and that's why. That's the reason why I went to
- 16 therapy. Not because of these other things. I went to
- 17 therapy because I didn't know how to deal with the fact
- 18 that my father was dying, and my mom didn't know how to
- 19 deal with the fact -- didn't know how to handle me
- 20 dealing with the fact that my father was dying because
- 21 she had her father the whole time she grew up. She still
- 22 has her father to this day even though he disowns her as
- 23 a daughter.
- 24 Q. So the question was, was the therapy for the
- 25 violence in your home and for you watching pornography?

1 A. No. It was for the -- well, most of what I was
2 going through with my father.

3 Q. Okay.

4 MR. SAVAGE: One moment.

5 Q. The night that you were watching the ball game ---

6 A. Uh-huh (affirmative).

7 Q. --- in the Sweet Grass Subdivision that you've
8 described for the jury, when you left the police station,
9 where did you go?

10 A. We went to my mom's boyfriend's house in
11 Summerville.

12 Q. Who tucked you in bed that night?

13 A. My mom's boyfriend because my mom was in shock. She
14 couldn't -- she didn't know what to do. And I was
15 crying. I kept crying, and I cried myself to sleep.

16 Q. Is that boyfriend Mr. Brown?

17 A. Yeah.

18 Q. Is that the same Mr. Brown that your mother had
19 arrested?

20 MS. GORDON: Objection, Your Honor.

21 THE COURT: What's your legal objection?

22 MS. GORDON: Relevance.

23 THE COURT: Overruled. Go ahead.

24 Q. Is that the same Mr. Brown that your mother had
25 arrested?

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1 A. Yes.

2 Q. Thank you.

3 THE COURT: Any redirect?

4 MS. GORDON: Yes, Your Honor. The Court's
5 indulgence.

6 THE COURT: All right. Ladies and gentlemen of
7 the jury, Mr. Foreman, we've been going for about an hour
8 and thirty-five minutes. We're going to take a break at
9 this time. If you need anything, let the bailiffs know.
10 If anybody's a smoker, let the bailiffs know. They'll
11 take you to the proper place for a smoke.

12 Please do not discuss the case amongst yourselves.
13 Don't talk to anyone about the case. We'll take about a
14 fifteen- or twenty-minute break. If you'll follow the
15 bailiff.

16 (WHEREUPON, the jury exited the open court at
17 approximately 11:18 a.m.)

18 THE COURT: Ms. Figueroa, if you'll step down
19 and go over by the Solicitor's table, please. Ms.
20 Figueroa, during the break, please don't discuss the case
21 with anybody, okay?

22 THE WITNESS: Okay.

23 THE COURT: All right. We'll take a fifteen-
24 or twenty-minute break.

25 MS. GORDON: Thank you, Your Honor.

1 (WHEREUPON, court stood at recess for a short
2 break.)

3 THE COURT: Anything from the State before we
4 bring the jury?

5 MS. GORDON: Nothing from the State, Your
6 Honor.

7 THE COURT: Anything from the Defendant?

8 MR. SAVAGE: No, sir.

9 THE COURT: All right. Bring us the jury,
10 please, sir.

11 MS. GORDON: Your Honor, could we put the
12 witness back on the stand?

13 THE COURT: Well, do you have any recross?

14 MS. GORDON: Yes. Redirect, Your Honor.

15 THE COURT: Or redirect.

16 THE BAILIFF: Bring in the jury.

17 THE COURT: Solicitor, not any new material.
18 Just replying to what was brought out on cross, and on
19 recross just whatever was brought out on redirect.

20 MS. GORDON: Yes, Your Honor.

21 THE COURT: Okay?

22 (WHEREUPON, the jury entered the open court at
23 approximately 11:38 a.m.)

24 THE BAILIFF: The jury's present, Your Honor.

25 THE COURT: All right. If everybody will -- I

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1 understand some of the jurors would like to take notes.
2 If you will put your name inside the note pad, please.
3 All right. When you leave the courtroom, leave the notes
4 in the courtroom in your chair. The Clerk will maintain
5 control of the note pads until the end of the trial at
6 which time I will charge you on note-taking and you'll be
7 able to take your notes into the jury room at that time.

8 Any redirect?

9 MS. GORDON: Yes, Your Honor.

10 THE COURT: Yes, ma'am?

11 REDIRECT EXAMINATION

12 BY MS. GORDON:

13 Q. Minor I, I just want to clear up a few things from the
14 cross-exam. First, regarding therapy, you went to a
15 therapist when you were, you said, nine years old?

16 A. Uh-huh (affirmative).

17 Q. And what was that for?

18 A. That was probably because I was like sad all of the
19 time, mad with my mom.

20 Q. And was that related to your father's passing?

21 A. Yes.

22 Q. Did you stay in therapy continuously until you were
23 thirteen or fourteen or fifteen?

24 A. No.

25 Q. So at some point that therapy stopped?

1 A. Yes.

2 Q. And then when did you go to therapy again?

3 A. When I -- when my mom told me that I had to talk
4 about it with someone, what happened to me.

5 Q. Talk about what?

6 A. About me getting raped.

7 Q. And what was that therapy for?

8 A. So I knew how to deal with it and know how to
9 confront it instead of hiding and like just leaving it in
10 my head.

11 Q. Minor 1, I want to talk about the incident in the
12 living room when your mom saw something happening between
13 you and your Uncle Erick.

14 MS. GORDON: Andy, do you have the exhibit?

15 MR. SAVAGE: Pardon me?

16 MS. GORDON: Okay.

17 Q. Minor 1, I want to just get the details of exactly
18 where you were, where your head was ---

19 THE COURT: Solicitor, do you have a marker she
20 can use, a pointer or something?

21 MS. GORDON: I have a pointer.

22 Q. Minor 1, I'm going to give you this. If you just
23 touch this red button, a little red dot should point.

24 Can you describe where you were positioned on the
25 night that your mom caught you -- caught your uncle doing

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- 1 something to you?
- 2 A. I was right here.
- 3 Q. Okay. Where was your head?
- 4 A. It was right there.
- 5 Q. And tell -- describe how you are positioned?
- 6 A. I was laying down.
- 7 Q. Were you laying on your back or on your side or on
- 8 your stomach?
- 9 A. On my back.
- 10 Q. And were you covered with anything?
- 11 A. Yes, with a cover.
- 12 Q. With like a couch blanket?
- 13 A. Yes.
- 14 Q. Similar to what you used earlier?
- 15 A. (Nodded head up and down in the affirmative)
- 16 Q. And where was your uncle?
- 17 A. He was over there.
- 18 Q. And where was his head?
- 19 A. His head -- he was sitting up.
- 20 Q. Okay. When your mom caught you, where was he?
- 21 A. He was standing up right here.
- 22 Q. And can you show us how he was positioned to be
- 23 touching you?
- 24 A. He was ---
- 25 Q. Where were his feet? Where was his legs?

1. A. He was standing up.
2. Q. Okay. So are he -- is he completely ---
3. A. He was facing towards the kitchen.
4. Q. Okay. And where's the kitchen?
5. A. He was facing towards this way.
6. Q. Okay. I don't see the dot. I don't see the dot.
7. A. He was facing this way.
8. Q. Okay. So is he -- that means he's not on the couch
9. at this point?
10. A. No.
11. Q. Okay. Is he like kneeled down or standing totally
12. straight up?
13. A. Standing totally straight up.
14. Q. And is he leaned over or ---
15. A. Yeah.
16. Q. So he is leaned over you. And describe exactly what
17. he's doing at that point when your mom wakes up.
18. A. Well, he like freaks -- well, he doesn't freak out.
19. But he flinches and he comes over me and like starts
20. pretending that he's looking for the control.
21. Q. What was he doing before your mother woke up?
22. A. He was trying to make me touch his penis.
23. Q. And where were your clothes? Were your clothes on
24. or off?
25. A. My clothes were on.

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- 1 Q. And how were his clothes?
- 2 A. He had his shirt on, and he had his pant -- his
- 3 zipper undone, but his pants were kind of sort of on in a
- 4 way.
- 5 Q. So did he have it -- were his pants pulled down at
- 6 all, or were they up and just had his ---
- 7 A. Yeah.
- 8 Q. So his pants were all the way up?
- 9 A. Yeah. And then his zipper was down.
- 10 Q. Was your mom -- when your uncle started touching you
- 11 or trying to get you to touch his penis that night, was
- 12 your mom awake or asleep?
- 13 A. She was asleep, but she was facing towards the TV
- 14 like -- she was like this.
- 15 Q. Was she laying on her back or side or ---
- 16 A. She was laying on her side.
- 17 Q. And was she covered in a blanket or ---
- 18 A. Yes.
- 19 Q. And then your brother and sister, were they awake or
- 20 asleep?
- 21 A. They were asleep.
- 22 Q. The night that your mom caught you, did he -- was he
- 23 inserting his penis in your vagina?
- 24 A. No.
- 25 Q. That night, what was he doing?

1 A. He was touching me, and then he was like -- he told
2 me to like put his hand on -- my hand on his penis. And
3 I didn't want to move it, and I just laid it there.

4 Q. Where -- when you said he was touching you, tell me
5 exactly where he was touching you?

6 A. He was touching me right here.

7 Q. I'm going to ...

8 MS. GORDON: May I approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 (WHEREUPON, State's Exhibit Number 3 was marked for
11 identification only.)

12 Q. Minor 1, I'm going to show you what's marked as
13 State's Exhibit 3. Do you recognize this?

14 A. Yes.

15 Q. Okay. What is this?

16 A. That's his house from the corner.

17 MS. GORDON: Your Honor, I move State's Exhibit
18 3 into evidence.

19 MR. SAVAGE: Without objection.

20 THE COURT: State's Number 3 admitted without
21 objection.

22 (WHEREUPON, State's Exhibit Number 3 was admitted
23 into evidence.)

24 THE COURT: Thank you, sir.

25 Q. Minor 1, is this -- you said this is another view of

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- 1 the house?
- 2 A. Yes.
- 3 Q. Okay. Where -- can you point using that pointer on
- 4 this picture where the living room would be?
- 5 A. The living room would be right there where that tree
- 6 is.
- 7 Q. So it's on the side of this -- that end of the
- 8 house?
- 9 A. Yes.
- 10 Q. And are there two trees on that side of the house?
- 11 Is that right? Both of those trees, were they there when
- 12 you lived in that house?
- 13 A. Yeah, but they were smaller.
- 14 Q. Are there windows on that side of the house?
- 15 A. Yes, but you can't see them.
- 16 Q. And do those -- do you know if those windows have
- 17 blinds or curtains?
- 18 A. There's only one, and it's the one that's in the
- 19 living room. But they have blinds.
- 20 Q. Is this the window that you're talking about that's
- 21 in the living room?
- 22 A. Yeah, that one.
- 23 Q. And I'm referring to State's -- I mean Defendant's
- 24 Exhibit 1. And then I'm going to refer back to State's
- 25 Exhibit 3. Is this one of the windows? Is that a

1 window?

2 A. I don't know if that's a window. It doesn't look
3 like it.

4 Q. Okay. Was this television positioned in front of
5 those two windows?

6 A. Yes.

7 Q. And then this couch is positioned so that the back
8 of the couch is in front of that door?

9 A. Yes.

10 Q. Minor 1, I'm now ...

11 MS. GORDON: Your Honor, may I approach the
12 court reporter?

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, State's Exhibit Number 4 was marked for
15 identification only.)

16 Q. Minor 1, I'm now going to show you what's marked as
17 State's Exhibit 4. Do you know what that is?

18 A. That is the parking lot at Sam's.

19 MS. GORDON: Your Honor, I move State's Exhibit
20 4 into evidence.

21 THE COURT: Any objection?

22 MR. SAVAGE: No objection.

23 THE COURT: State's Number 4 admitted without
24 objection.

25 (WHEREUPON, State's Exhibit Number 4 was admitted

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1 into evidence.)

2 Q. Minor 1, can you point for the jury -- does this
3 photograph depict the location where your uncle parked
4 the truck the day that something happened in the Sam's
5 parking lot?

6 A. Well, he -- well, I don't know what position you're
7 -- the ---

8 Q. Well, can you show the area where his truck would
9 have been parked?

10 A. If it's the back, then it would have been parked
11 right over here, all the way to the back parking spaces.

12 Q. And it's hard to get a picture of the entire area,
13 but -- can you describe that parking lot?

14 A. It's really big because there's like a Wal-Mart and
15 a Sam's there. So the parking lot is big, and there's
16 lots of cars but in the main parking lot where normal
17 people park. And they don't park in the back. But then
18 there's woods in the back, and then there's woods where
19 the Sam's Club ends and -- yeah ...

20 Q. Were you out in the middle of the parking lot where
21 people who were going in and out of Sam's park?

22 A. Nope.

23 MS. GORDON: May I have that marked?

24 (WHEREUPON, State's Exhibits Number 5 and 6 were
25 marked for identification.)

1 Q. Minor 1, I'm going to show you what's marked as

2 State's Exhibits 5 and 6. Can you tell me what those

3 depict?

4 A. That's the parking lot closest to the front.

5 Q. Okay. That's Number 5, shows the front area of the

6 parking lot?

7 A. And that shows like the entire parking lot.

8 Q. Okay. Would this be the front where Sam's is?

9 A. Yes.

10 Q. And looking back towards the back area?

11 A. Yes.

12 MS. GORDON: The State moves State's Exhibit 5

13 and 6 into evidence.

14 THE COURT: Any objection?

15 MR. SAVAGE: No objection.

16 THE COURT: 5 and 6 admitted without objection.

17 (WHEREUPON, State's Exhibits Number 5 and 6 were

18 admitted into evidence.)

19 Q. Minor 1, this is number 5. What is this?

20 A. I don't remember. It looks like Wal-Mart.

21 Q. You can't tell what that would be?

22 A. No.

23 Q. Okay. Is that -- but you think that's part of the

24 parking lot?

25 A. Yeah.

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1 Q. Okay. And then can you see what this is or tell
2 what that is?

3 A. Yeah. This is the front right here, and that's the
4 back.

5 Q. And what we looked at in State's Exhibit Number 4,
6 would that circle around to the back from here and then
7 circle around to the back?

8 A. Yes.

9 Q. Okay. And then does this picture depict an area
10 where your uncle would have parked?

11 A. Yeah. He would have parked way in the back parking
12 spaces back there.

13 Q. Now I want to talk about the garage. Is there a
14 door from inside the house that leads to the garage?

15 A. Yes.

16 Q. And where does that door -- if you're in the house,
17 what room are you in if you walk from the house into the
18 garage?

19 A. You either can go through the computer room to go to
20 the door or through the kitchen to go to the door.

21 Q. When you're in the garage the night that your aunt
22 walks in, where are you standing in the garage?

23 A. I am standing closest to the -- I think closest to
24 the freezer.

25 Q. If you come out of the garage, is the freezer and

1 refrigerator -- do you go to your right or to your left?

2 A. When I'm coming out, I go to my left.

3 Q. So if you come in, it's on this side?

4 A. If I come in, it's on my right.

5 Q. Okay. So it's on your right?

6 A. Yeah.

7 Q. If you're facing it?

8 A. Yeah.

9 Q. If you're walking out, you walk to your right?

10 A. Yeah.

11 Q. And then on the other side of the -- you said -- is
12 that the refrigerator or that's the freezer?

13 A. It would go the refrigerator and the freezer and
14 then the washer and the dryer.

15 Q. The refrigerator, is that a standup refrigerator?

16 A. Yeah.

17 Q. And where were you positioned? Were you closest to
18 the door to the kitchen, or were you -- or was your uncle
19 between you and the door of the kitchen?

20 A. He was ---

21 Q. There [sic] would have been the first one -- if you
22 remember. Did I ask that correctly?

23 A. Well, I remember that when Joyce walked in, he went
24 to the freezer and then, I think, sort of walked to the
25 like refrigerator.

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- 1 Q. Okay. Where were you before she walked in?
- 2 A. I was closest to the freezer. So he was between the
- 3 door -- me and the door.
- 4 Q. He was between you and the door before she walked
- 5 in?
- 6 A. Yes.
- 7 Q. And when she walked -- were you standing, sitting,
- 8 laying down?
- 9 A. I was standing.
- 10 Q. Were your clothes on or off?
- 11 A. My clothes were on.
- 12 Q. Describe the position of your clothes before your
- 13 aunt walked in.
- 14 A. Well, my zipper was undone, and my shirt was still
- 15 on.
- 16 Q. And what about your uncle? What were the position
- 17 of his clothes?
- 18 A. His hands were like kind of down and his zipper was
- 19 down.
- 20 Q. When you say down, were they all the way down around
- 21 his ankles?
- 22 A. No. They were like ---
- 23 Q. Were they down, just around below his waist? Were
- 24 they down to his knees?
- 25 A. Just below his waist.

1 Q. And what -- you said your aunt walked in. What
2 happened when your aunt walked in?

3 A. I don't really remember, but I know she told me to
4 go to my room. And ---

5 Q. What I'm asking is what did you do when she walked
6 in?

7 A. I kind of like was in shock and like -- still. And
8 like I started putting my -- zipping up my pants.

9 Q. And what did your uncle do?

10 A. He was like, oh, what -- what do you want from the
11 freezer?

12 Q. Did he have to move to the freezer, or was he
13 already looking at the freezer?

14 A. He was already looking at the freezer.

15 Q. I mean, was he -- before she walked in, was he ---

16 A. No.

17 Q. Tell me what he was doing before she walked in.

18 A. He was trying to put his penis into my vagina.

19 Q. And when she walked in -- or I guess when the door
20 opens, I should say, because ---

21 A. Yeah.

22 Q. --- was there a moment between the door opening and
23 her coming in?

24 A. (Nodded head up and down in the affirmative)

25 Q. Describe what happens in that moment when you hear

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- 1 the door open.
- 2 A. He walks to the freezer, and I kind of just stand
3 there.
- 4 Q. And you said you zipped up your pants?
- 5 A. Yeah.
- 6 Q. What does he do with his pants?
- 7 A. I think he's trying to zip his pants up. I don't
8 know because the door is blocking.
- 9 Q. Did you go out there that night to get ice cream?
- 10 A. No.
- 11 Q. Did you go out there that night to get a desert?
- 12 A. No.
- 13 MS. GORDON: The Court's indulgence:
- 14 Q. Minor 1, when that door opens -- or before that door
15 opens, describe where you're standing and where your
16 uncle is standing and what position you're in?
- 17 A. I'm standing up and ---
- 18 Q. What are you -- are you standing against something,
19 or are you standing out in the middle of the floor?
- 20 A. I'm standing up in the middle of the floor.
- 21 Q. Are you leaning on anything?
- 22 A. No.
- 23 Q. Okay. Where is he standing?
- 24 A. He's standing in front of me by the refrigerator.
- 25 Q. Is he leaning on anything?

1 A. No.

2 Q. And are you facing each other or ---

3 A. Yes, we're facing each other.

4 Q. Do you remember where his -- where his hands were?

5 A. His hands were trying to get his penis out of his
6 pants.

7 Q. Did he ever -- that day, did he get his penis to
8 your vagina?

9 A. He was trying to.

10 Q. And what happened to stop it?

11 A. The door opened.

12 MS. GORDON: Court's indulgence. Nothing
13 further.

14 THE COURT: Mr. Savage, any recross?

15 MR. SAVAGE: Very briefly, Your Honor.

16 THE COURT: Yes, sir.

17 RECROSS-EXAMINATION

18 BY MR. SAVAGE:

19 Q. Minor 1, the photographs that Ms. Gordon showed you,
20 the ones that we just saw in the courtroom, did you ever
21 see Sam's Club in those photographs?

22 A. No, but it looked like the parking lot and the area.

23 Q. But that could be the Citadel Mall, that could be
24 over at Mount Pleasant. It could be ---

25 A. That doesn't look like the Citadel Mall.

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1 Q. --- Omaha, Nebraska.

2 A. That wasn't -- why would they come to Omaha,
3 Nebraska?

4 Q. I don't know what they're doing in a lot of these
5 cases. But did you go with them when they took the
6 photographs?

7 A. No. I was in Omaha, Nebraska, going to school.

8 Q. Well, how did you -- how are you able to say that
9 that's the location?

10 A. Because that looked like the location that I was at
11 at that time.

12 Q. And what in that photograph allowed you to make that
13 identification?

14 A. The parking lot.

15 Q. And didn't the Solicitor show you that photograph
16 and say, these are the photographs that we took that we
17 think are Sam's parking lot?

18 A. No. She asked me if this was the place that it
19 happened. She didn't say this is the place.

20 Q. But you don't see anything in those photographs that
21 you recognize other than it's a parking lot.

22 A. Okay.

23 Q. Right?

24 A. Yeah.

25 Q. Did they show you an aerial from the top down so you

1 could see Sam's and the parking lot and then you could
2 tell them where it happened?

3 A. No.

4 Q. They didn't show you that?

5 A. Well, they showed me other areas where I knew that
6 it was Sam's Club.

7 Q. Did you go in Sam's Club that day?

8 A. No.

9 Q. Was there a reason for going to Sam's Club?

10 A. No.

11 Q. And Sam's Club is in North Charleston?

12 A. Yes.

13 Q. And what time of day was this?

14 A. In the day, like afternoon.

15 Q. And you drove from Mount Pleasant to the north area?

16 A. Yes.

17 Q. And the only thing you did on that trip was engage
18 in the sexual activity you've described?

19 A. Yeah. And then after that, my mother called and I
20 was like -- because she was making things for church,
21 cookies and stuff, because they were going to have a bake
22 sale. And she was like, okay, well, let's just -- I was
23 like -- I told my mom, well, we're going to go over there
24 so he can go pick up the stuff so he can take it back to
25 the house so you don't have to take all this stuff in the

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1 car.

2 Q. All right. But the purpose that you left Mount
3 Pleasant to go to the north area was for no purpose at
4 all?

5 A. I didn't know -- I didn't know where we were going.

6 Q. What were you wearing that day?

7 A. I don't remember.

8 Q. Do you remember whether you were wearing jeans or
9 not?

10 A. I don't remember what I was wearing that day.

11 Q. Do you remember when you were in the garage what you
12 were wearing?

13 A. I was wearing jeans.

14 Q. Were they pretty tight jeans?

15 A. I don't remember what the jeans were, but I remember
16 I was wearing jeans.

17 Q. Well, if you were going to take your clothes off ---

18 A. I wasn't going to take my clothes off. I didn't
19 plan on taking my clothes off.

20 Q. If y'all had engaged in sexual activity standing up
21 in the garage and you had tight jeans on ---

22 A. I did not -- I didn't say I had tight jeans on. I
23 said I had jeans on. I didn't say whether they were
24 tight or whether they were loose. I just said I had
25 jeans on.

1 Q. Well, tell us whether they were tight or loose?

2 A. I don't know if they were tight or not. I don't
3 remember what I was wearing. I don't remember what I was
4 wearing three weeks ago. I don't remember what I was
5 wearing. I know I was wearing jeans.

6 Q. Were you raped three weeks ago?

7 A. No, I wasn't raped three weeks ago. Three weeks ago
8 ---

9 Q. The night that he attempted to rape you ---

10 A. Uh-huh (affirmative).

11 Q. --- do you recall whether you were wearing night
12 clothes if this was at night?

13 A. No, because I still hadn't taken a shower because I
14 was going to do my homework.

15 Q. But you recall that you were wearing jeans that
16 night?

17 A. Probably, because I came from school.

18 Q. Did you ever show the Solicitor the clothes that you
19 were wearing?

20 A. No. I gave my clothes to Goodwill for people that
21 needed it because they didn't fit me anymore.

22 Q. Well, the police never investigated this, but did
23 the Solicitor ever ask you about the clothing that you
24 were wearing ---

25 A. No.

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- 1 Q. --- or how you were standing ---
- 2 A. All we talked about all the things I remember, I
- 3 told her and explained them to her. And then I took --
- 4 gave her the notebooks that I wrote things in about what
- 5 happened.
- 6 Q. And you met with the Solicitor over the weekend this
- 7 past weekend?
- 8 A. I met her Sunday. And we only talked to her about
- 9 an hour and forty-five minutes, and then I left.
- 10 Q. And did they ask you to go out to the Sam's Club to
- 11 see the parking lot to be sure?
- 12 A. No. I went to my mom's friend's house, and we ate
- 13 chicken and steak and beans, and then we started laughing
- 14 and talking. That's what I did after that.
- 15 Q. On Sunday?
- 16 A. On Sunday.
- 17 Q. But the question was did you ever show the police --
- 18 and I understand that you never talked to the police.
- 19 But did you ever show these investigators that are
- 20 sitting right here in the courtroom -- you know them, the
- 21 Solicitor's investigators?
- 22 A. Uh-huh (affirmative). Did I ever show them what?
- 23 Q. Did they ever take you out to Sam's Club ---
- 24 A. No.
- 25 Q. --- out to see whether there was a surveillance

1 camera there or to see what that parking lot looked like
2 during the week time and where the employees parked or
3 anything?

4 A. No.

5 Q. Nothing?

6 A. Nothing.

7 Q. Thank you.

8 MR. SAVAGE: Nothing further.

9 THE COURT: Okay. You may step down. Thank
10 you very much.

11 THE WITNESS: You're welcome.

12 THE COURT: Solicitor, if you'd call your next
13 witness, please, ma'am.

14 MS. GORDON: The State calls Melina Arroyo.
15 Your Honor, may we approach for scheduling purposes?

16 THE COURT: Yes, ma'am.

17 (WHEREUPON, a bench conference was held off the
18 record.)

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen of the jury, normally I break at one o'clock,
21 but apparently this next witness is going to be rather
22 lengthy. Rather than start the testimony and stop it in
23 the middle, we'll just take a lunch break at this time.

24 Please leave your note pads in the chairs and please
25 do not discuss the case amongst yourselves or with anyone

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1 else. And I would instruct you again, don't get on your
2 iPad or any electronic device, computer or anything else
3 and do any research about this case. I want you to make
4 your decision on what you hear in the courtroom, not what
5 you read outside the courtroom. The testimony that comes
6 from the witness stand is what you're supposed to base
7 your decision on, not somebody making a face in the
8 courtroom, not what happens at the Defense table or what
9 happens at the State's table. It's what happens at the
10 witness stand and your evaluation of the credibility of
11 the witnesses testifying. That's the evidence in this
12 courtroom coming from the sworn testimony. If somebody
13 stands up and collapses or makes a face, that doesn't
14 have anything to do with this case.

15 So your job is to evaluate the witnesses and make a
16 decision. Please don't discuss the case, don't take any
17 electronic measures or talk to anyone about the case.

18 It is now ten minutes after twelve. Let me see. If
19 you'll be back at one thirty-five. Now, normally, I take
20 an hour and a half for lunch, and that's what I'm taking
21 today. I do that for two reasons. Number one, if you
22 have to run some errands, that'll give you time to do it.
23 Number two, that gives these attorneys an opportunity --
24 they're not going to be out lounging around, taking a big
25 lunch. It gives them an opportunity to get prepared for

1 this afternoon. And if they are prepared, things will
2 move a lot smoother. So I generally give the attorneys
3 an hour and a half at lunch.

4 Be back at that time and we'll get started at that
5 time. Have a good lunch.

6 (WHEREUPON, the jury exited the open court at
7 approximately 12:10 p.m.)

8 THE COURT: All right. We'll adjourn until --
9 what did I say, one-forty?

10 MR. SAVAGE: I have one matter.

11 THE COURT: Yes, sir. I'm sorry. What do you
12 have?

13 MR. SAVAGE: I've been told that the mother and
14 child, the two witnesses, are hugging and crying together
15 in the courtroom in front of the jury.

16 THE COURT: Now, who was hugging and crying?

17 MR. SAVAGE: The last witness and the next
18 witness.

19 THE COURT: Okay.

20 MR. SAVAGE: It was done in the presence of the
21 jury in the courtroom in violation of the Court's order.

22 THE COURT: Well, I don't know. I didn't see
23 it. I just instructed the jury whatever happens in the
24 courtroom doesn't affect -- they're not going to make a
25 decision. I mean, what are you asking the Court to do?

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1 MR. SAVAGE: Instruct ---

2 THE COURT: I didn't see it, so I don't know
3 what transpired.

4 MR. SAVAGE: First of all, I didn't see it and
5 so I'm only repeating what I heard.

6 THE COURT: Well, who saw it?

7 MR. SAVAGE: Mr. Rode did.

8 THE COURT: All right. What did you see?
9 Where were they?

10 MR. RODE: They were in the front pew behind
11 the -- just behind the jury box.

12 THE COURT: Okay. What were they doing?

13 MR. RODE: They were hugging and ---

14 THE COURT: I'm sorry?

15 MR. RODE: They were just hugging and showing
16 affection.

17 THE COURT: Okay. All right. What's your ...

18 MR. SAVAGE: Reminder instruction that it's not
19 a proper thing to do.

20 THE COURT: I understand. I will do that. And
21 I will instruct the jury not to -- anything that happens
22 from that witness stand forward they're not to take into
23 effect as far as the innocence or guilt of the Defendant.
24 I will tell them that again.

25 MR. SAVAGE: Thank you, Your Honor.

1 THE COURT: Now, is there anything else you
2 would like for me to tell them?

3 MR. SAVAGE: No, sir. That's satisfactory.

4 THE COURT: Okay.

5 MR. SAVAGE: Thank you, Your Honor.

6 THE COURT: And I assume -- we had a
7 conversation in chambers about sequestering witnesses.
8 And I assume both parties have instructed their witnesses
9 not to tell each other what transpired and not
10 communicate about it. Is that correct, from the State?

11 MS. GORDON: That's correct, Your Honor.

12 THE COURT: Is that correct from the Defense?

13 MR. SAVAGE: You made it very clear we're
14 responsible for them.

15 THE COURT: Okay. I made that very clear. So
16 I would suggest, Solicitor, that you talk to your
17 witnesses again, okay?

18 MS. GORDON: Your Honor, I ---

19 THE COURT: And I want you to tell them I'm not
20 going to put up with any outward display of emotion,
21 crying or anything in this courtroom that's going to
22 distract this jury. If they can't maintain their
23 emotions, then they can leave the courtroom. I will have
24 them out of the courtroom. Okay?

25 MS. GORDON: Yes, Your Honor.

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1 THE COURT: I know it's a very emotional trial
2 for everybody involved from the Defense's standpoint and
3 the State's standpoint. I'm not going to have someone
4 showing and displaying a lot of emotion in this courtroom
5 trying to influence this jury. Okay? So please tell
6 your witnesses.

7 Mr. Savage, if you would please do the same.

8 MR. SAVAGE: I will, Your Honor.

9 THE COURT: All right. We'll adjourn until one
10 forty. See you then.

11 (WHEREUPON, court stood at recess for a lunch
12 break.)

13 THE COURT: Anything from the State before we
14 bring the jury?

15 MS. GORDON: Nothing from the State, Your
16 Honor.

17 THE COURT: Anything from the Defendant?

18 MR. SAVAGE: The Defendant's ready, Your Honor.
19 Thank you.

20 THE COURT: Okay. Bring us the jury, please,
21 sir.

22 (WHEREUPON, the jury entered the open court at
23 approximately 1:46 p.m.)

24 THE BAILIFF: The jury's present, Your Honor.

25 THE COURT: Thank you very much.

1 All right. You may call your next witness, please.

2 MS. GORDON: The State calls Melina Arroyo.

3 **MELINA ARROYO,**

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. GORDON:

7 Q. Good afternoon, Melina. Can you tell us, how old
8 are you?

9 A. Thirty-five.

10 Q. And where do you live now?

11 A. In Nebraska.

12 Q. Are you employed?

13 A. Yes.

14 Q. Who do you work for?

15 A. Wells Fargo.

16 Q. At some point you lived in the Charleston area; is
17 that right?

18 A. Yes, ma'am.

19 Q. When did you move from Charleston to Nebraska?

20 A. This past December.

21 Q. What was the -- why choose Charleston? Well, let me
22 back up. Before you lived in Charleston, you lived in
23 Florida?

24 A. Yes, ma'am.

25 Q. And then you were going to leave Florida and you

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- 1 moved to Charleston. Why Charleston specifically?
- 2 A. My brother lived here, so I moved here.
- 3 Q. And what was your relationship like with your
- 4 brother prior to October -- prior to September of 2009?
- 5 A. He was great.
- 6 Q. Did you look up to him?
- 7 A. (Nodded head up and down in the affirmative)
- 8 Q. You have to answer out loud because the court
- 9 reporter won't be able hear you. She can't write it
- 10 down.
- 11 A. Yes, yes.
- 12 Q. Explain the relationship you had with your brother?
- 13 A. Well, he was my best friend. He was like a father
- 14 to me, you know.
- 15 Q. Is he a good bit older than you?
- 16 A. Yes.
- 17 Q. At some point after you moved to Mount Pleasant, I
- 18 understand you lost your job and that you moved in with
- 19 Erick; is that right?
- 20 A. Yes. They closed the company I used to work for,
- 21 and I moved in with him, yes.
- 22 Q. And how did that come about that you moved in with
- 23 him? Who made that offer?
- 24 A. He said that he has rooms in his house because the
- 25 girls were off in college, you know. And one of the

1 girls lived with her boyfriend. And he said he had some
2 rooms in his house. And I said I could rent them, and so
3 I paid him for us living there.

4 Q. And how were you -- what kind of -- how were you
5 getting money at that time?

6 A. Unemployment.

7 Q. And you paid him rent from your unemployment?

8 A. Yes.

9 Q. Now, did Erick and Joyce have children?

10 A. Yeah. They have three daughters -- well, four with
11 Minor 2 .

12 Q. And were those three children living in the house
13 when you moved in?

14 A. No.

15 Q. Okay. When you moved in with Erick and Joyce, who
16 else lived in the house?

17 A. For a little while, Gina. She was ready to go to
18 college.

19 Q. When you moved in, do you remember if it was the
20 summertime or the wintertime?

21 A. About summertime. Maybe like May, June, something.

22 Q. Okay.

23 A. Well, yeah. About that, yeah.

24 Q. And do you remember what year that was?

25 A. 2008.

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- 1 Q. So the summer -- sometime in the summer of 2008, you
2 moved in with your brother Erick?
- 3 A. Uh-huh (affirmative).
- 4 Q. And then Gina goes back to college in August; is
5 that fair?
- 6 A. Yes.
- 7 Q. In the house who shared a room? What kind of
8 bedrooms? What was the living arrangement?
- 9 A. He had one, two, four bedrooms, and I think on the
10 FROG -- I was in the FROG and there was two other small
11 bedrooms and then it was a master bedroom where he would
12 share with his wife. And right beside that was another
13 bedroom that I was planning to put my son. And then, you
14 know, Minor1 and I would share a bedroom. But he said
15 that Minor1 should sleep alone because she was growing, so
16 he didn't allow me to put the two girls together. And so
17 I put the boy and the girl together and left Minor1 alone.
- 18 Q. And how old were -- that's G. and A. ?
- 19 A. Yes, ma'am.
- 20 Q. How old were they at that time?
- 21 A. (No verbal response)
- 22 Q. How old are they now?
- 23 A. They're ten and nine.
- 24 Q. And so this was in 2009?
- 25 A. 2008.

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1 Q. 2008. So that was four years ago.

2 A. Okay. Yeah.

3 Q. So they were four years younger?

4 A. Uh-huh (affirmative).

5 Q. Maybe five and six or so?

6 A. Probably six or six or seven because they turn eight
7 in June, so only one.

8 Q. Okay. What was Erick's relationship like with his
9 wife Joyce when you first moved in?

10 A. Depending on who was there. Sometime it was good;
11 sometime it was bad.

12 Q. What did you -- what was your relationship like with
13 Joyce?

14 A. It was fine.

15 Q. At some point, did your opinion of Joyce change?

16 A. Yes.

17 Q. Tell me what made your opinion of Joyce change?

18 THE COURT: Hold on a second.

19 Yes, sir?

20 MR. SAVAGE: I don't mean to interrupt, but I
21 can't see the witness. The podium's been moved.

22 If you'd just stay there, I can see her. Thank you.

23 Q. What changed your relationship with Joyce? What
24 changed your opinion?

25 THE COURT: Can you see now?

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1 MR. SAVAGE: Yes. Thank you, Your Honor.

2 THE COURT: Okay. Please proceed.

3 Q. What changed your opinion?

4 A. Joyce, she was just mad and I couldn't tell why. I
5 thought she was just having problems with her husband.

6 Q. Did Erick ever say anything to you about Joyce?

7 A. She's crazy.

8 MR. SAVAGE: Objection on the grounds of
9 hearsay.

10 THE COURT: I believe you said Erick, the
11 Defendant, right?

12 MR. SAVAGE: That's correct, Your Honor.

13 THE COURT: Overruled. Go ahead.

14 Q. Did the Defendant, Erick Arroyo, ever say anything
15 to you about Joyce?

16 A. Yeah, that she's crazy, that she's alcoholic, always
17 have issues.

18 Q. And what did you think? Did you believe your
19 brother?

20 A. Well, the way she was reacting I thought it was
21 true. I mean, you know, I was like, I don't know why
22 she's upset, so you might think she was crazy.

23 Q. So something happened that she -- her attitude
24 changed?

25 A. Uh-huh (affirmative).

1 Q. At some point, do you remember when Joyce left
2 Erick? You don't have to remember the date. But do you
3 remember the event of her leaving?

4 A. Yeah.

5 Q. Did your brother call you or tell you about her
6 leaving?

7 A. Call me -- I don't think he called me the same day,
8 but he called me a few days after. I was at work.

9 Q. And what did he say about Joyce leaving?

10 A. Well, the whole conversation when he called me?

11 Q. Yes.

12 A. Okay. Well, I was at work. I work at Wal-Mart as a
13 manager. And it was early in the morning. I had just
14 finished the morning meeting, and my brother called me.
15 And I was like, this is weird because nobody in my family
16 calls me at eight or nine in the morning. So when Erick
17 called, I ask him, are you okay? He's like, oh, yeah,
18 I'm fine. Is my dad okay? Because those are the only
19 things that were going through my mind. Oh, yeah, yeah.
20 And he's like, are you busy? And I was like, trying to
21 work. He said, well, I need you to sit down. I was
22 like, what? I need to sit down? I was like, okay,
23 whatever. I go to my office and sit down. I said, okay.
24 So just stop because I have to work. And he's like,
25 Joyce left me. And I said, well, about time, you know.

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1 Are you happy? And she's left you like five times
2 before. I don't know how many times. I was like, you're
3 always complaining that you're not happy and everything,
4 so maybe this is time for you to move on, you know. And
5 he said, but there's something more to it. And I was,
6 okay, like what, Erick? And he said, this is very
7 serious. And I was like, okay, so just say it. She's
8 accusing me of molesting Minor1.

9 Q. And what did you think at that moment?

10 A. I said, why would she say that? I was like, that's
11 serious, you know. Like she's crazy. Why would she even
12 say something like that? And I told him, Erick, that's
13 serious. And then I said, did you do something to my
14 daughter. He was like, oh, no. I would never do
15 anything to Minor1. I love that girl like she was my own.
16 I love her. I was like, okay. Well, hold a second, and
17 hung up the phone on him.

18 Q. Who did you call next?

19 A. Minor1.

20 Q. And did Minor1 tell you that anything had happened?

21 A. Minor1 was very jumpy. I was really in the middle of
22 my work, and all of this happening unexpectedly in the
23 morning. And so I said, Minor1, you know, I need to --
24 are you close to the kids? And she's like, yeah. I
25 said, I need you to go to the bedroom or something, you

1 know. I need to talk to you, ask you a couple of
2 questions. And she's like, okay, Mom. And I was like,
3 has your -- I asked her straight out. Has your uncle
4 touched you in your private places? No. Are you sure?
5 No. Has he said something, you know, something that's
6 inappropriate? No. I said, are you sure? And she's
7 like, Mom, no way. I promise. Okay? And I was like,
8 okay. So I hung up, and that was it with Minor1. And I
9 called him back. And when I call him back, he's like, so
10 what did she say? What did she say? I said, wait. What
11 do you think she should say? All he said she say nothing
12 happened. Oh, because, you know, nothing happened
13 because, you know, Joyce is just blackmailing me. She
14 wants me to give her all my stuff or she will go to the
15 news and everybody and say that I've done this to Minor1.
16 And I was like, well, you didn't do it. You have nothing
17 to worry about.

18 Q. After that, sometime after that, I guess Joyce --
19 did she leave and move to Texas?

20 A. Uh-huh (affirmative).

21 Q. And did you maintain contact with Joyce after she
22 moved?

23 A. No.

24 Q. Did you maintain a close relationship with your
25 brother?

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- 1 A. I visit him, but not as close because that
2 conversation raised flags.
- 3 Q. And at some point, you move out of their house; is
4 that right?
- 5 A. Uh-huh (affirmative).
- 6 Q. And you get your own place again?
- 7 A. Uh-huh (affirmative).
- 8 Q. And on September 20th of 2009, do you remember that
9 day?
- 10 A. I remember that day.
- 11 Q. What day of the week was that?
- 12 A. Sunday.
- 13 Q. And what had you done that morning?
- 14 A. I'd gone to church.
- 15 Q. And then what about in the afternoon?
- 16 A. I changed the kids and went to my brother's house.
- 17 Q. What were you going to do over at your brother's
18 house?
- 19 A. Have Sunday dinner and watch football.
- 20 Q. Did you have dinner?
- 21 A. Yeah.
- 22 Q. So was this like dinner like evening dinner?
- 23 A. Uh-huh (affirmative).
- 24 Q. And do you remember what you had?
- 25 A. I remember everything.

1 Q. This day sticks out in your memory pretty clear?

2 A. For the rest of my life, yes, ma'am.

3 Q. Tell me, what did y'all have for dinner?

4 A. We had steak, salad, potato, bread and something to
5 drink.

6 Q. Do you remember about what time it was when you got
7 to your brother's house?

8 A. Late afternoon, six or seven.

9 Q. And did you have any alcoholic beverages while you
10 were there?

11 A. When I got into the house, just getting out of my
12 car, he received me with shot of some liquor. And he
13 said -- because he knew I was, you know, arguing with my
14 boyfriend. And he said, here. And I was like, oh, I
15 need that. And then he say, here so you can loosen up.
16 And I was like, okay. So I took it, yeah.

17 Q. And did you have any other alcohol that night?

18 A. After that, he already had another drink prepared
19 for me, already prepared with like vodka and some other
20 stuff.

21 Q. And then you had dinner?

22 A. Then we had dinner, yes.

23 Q. And was that a big dinner?

24 A. No, not really. It was okay.

25 Q. Steak and baked potato and salad?

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- 1 A. And salad, yeah.
- 2 Q. And after dinner, where does everybody go?
- 3 A. To the living room.
- 4 Q. And where -- Melina, I'm going to show you
- 5 Defendant's Exhibit Number 1. And if you would turn
- 6 around and take a look at this. Have you ever seen this
- 7 before, that diagram or that specific one?
- 8 A. No.
- 9 Q. Do you know what that is supposed to be a diagram
- 10 of?
- 11 A. His living room.
- 12 Q. I'm going to give you this pointer, and I'm just
- 13 going to ask you -- you press this red button and that
- 14 should make a little red dot. And if you can point on
- 15 there -- did y'all have dinner at the table that's noted
- 16 in this diagram, or did y'all have dinner in the dining
- 17 room?
- 18 A. No. That table.
- 19 Q. Okay. And then after dinner, what is everybody
- 20 doing? Melina, can you -- I'm sorry, can you turn so
- 21 when that you're speaking that the jury will be able to
- 22 hear you and hopefully we'll all be able to hear.
- 23 A. Okay.
- 24 Q. But just so your voice will carry.
- 25 A. Okay. I had dinner on that table.

1 Q. And then after dinner, who all's there?

2 A. G. I and A. , my youngest daughter and son.

3 Q. And where are they?

4 A. We were all here.

5 Q. And at some point in the night, do you move?

6 A. Yeah. I moved here.

7 Q. Okay. Why was that?

8 A. Because I was falling asleep.

9 Q. And when you moved to the love seat, where was

10 Minor I ?

11 A. She was here with A. .

12 Q. And did you fall asleep?

13 A. Who, me?

14 Q. Yes?

15 A. Yeah. I fell asleep over here.

16 Q. Do you remember what y'all were going to be watching
17 that night?

18 A. Football.

19 Q. Do you remember anything specific about it?

20 A. The Cowboys versus the Colts, the inauguration of
21 the new Dallas Cowboys stadium.

22 Q. After you laid down on that love seat, can you tell
23 me where your head was and where your feet were?

24 A. My head was right here. My feet were right here.

25 Q. Okay. And were you covered up with anything?

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- 1 A. Yeah.
- 2 Q. What was that?
- 3 A. With one of those covers. You know, a throw.
- 4 Q. A throw? What's the next thing you remember after
- 5 falling asleep on the couch.
- 6 A. The next thing I remember after falling asleep on
- 7 the couch, I felt very cold, freezing, but my body was
- 8 sweaty. I remember something touching me and telling me,
- 9 wake up, wake up. You need to wake up now.
- 10 Q. Like somebody physically touching you to wake up?
- 11 A. I don't know. Like God, like some big hands on my
- 12 body like telling me, you need to wake up. And then I
- 13 woke up and opened my eyes. When I open my eyes, I see
- 14 my brother leaning on my daughter like with his face on
- 15 her chest and her boobs and her head. I saw him, I saw
- 16 him.
- 17 Q. What did you do, Melina? Did you lose it?
- 18 A. I did not lose it.
- 19 Q. What did you do?
- 20 A. I stand up and say, I have to go. And he ---
- 21 Q. Why didn't you just attack him right there?
- 22 A. Well, I could have killed him. I could have. But I
- 23 have two other kids that I have to protect too. So I
- 24 really wanted to kill him. Okay? I really wanted to
- 25 kill him very bad, burn him alive. But I had two kids,

1 and I have a daughter that her eyes were so big and she
2 was so scared. I had to take them out of there. So I
3 just took them out of there and took them out of there.

4 Q. When you woke up, where were A. and G. ?

5 A. They were -- when I fell asleep, A. was in this
6 couch with Minor1. But when I woke up, they were over
7 here in the floor, like right here.

8 Q. And how did you all leave the house? Did you just
9 walk out? Did you wake up your kids?

10 A. I grab one of the kids. And Erick said, don't
11 leave. You can stay here, Marina. I was like, no, I
12 want to go now. He said, are you okay? I said, I'm
13 okay. I just want to go now. So I grab G. . And he
14 said -- I grab -- I was going to grab both of them. He
15 said, no, let me help you with A. . So I just let him
16 help me with my daughter. But they were asleep, so he
17 put them in the car. He's like, are you really okay?
18 And I was like, why shouldn't I be okay? So I took my
19 kids and put them in the car. And the last thing he said
20 to me was, Melina, I love you. And I look at him, and I
21 say, yep, I love you too.

22 Q. And where did you go when you left that house?

23 A. To the cops.

24 Q. And where is his house located?

25 A. In Bend.

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- 1 Q. Is that in Mount Pleasant?
- 2 A. Mount Pleasant.
- 3 Q. Is that located on Rifle Range Road?
- 4 A. Yes.
- 5 Q. And then you went from there straight to the Mount
- 6 Pleasant Police Department?
- 7 A. Yes.
- 8 Q. And what happens on the ride to the Mount Pleasant
- 9 Police Department.
- 10 A. Since Minor1 got in the car, she was in shock. And I
- 11 say, I want you to tell me what happened in there. And
- 12 she said, nothing, mom. But I gave birth to this girl,
- 13 so I know when she lies. She couldn't look at me. And I
- 14 say, Minor1 something happen. I'm not stupid. I'm your
- 15 mother. And something happened, and I want you to tell
- 16 me what happened. And she said, Mama, nothing happened.
- 17 And I was like, Minor1 -- I was very upset. I was like so
- 18 mad. I was like, Minor1, listen to me. If you don't tell
- 19 me what the hell has happened to you, how the hell I'm
- 20 going to take care of A. and G. ?
- 21 MR. SAVAGE: Judge, I have an objection.
- 22 THE COURT: What's your legal objection?
- 23 MR. SAVAGE: Rule 801(d)(1)(d).
- 24 THE COURT: I'm sorry, what, 801?
- 25 MR. SAVAGE: 801(d)(1)(d).

1 THE COURT: Okay.

2 MR. SAVAGE: Time, place and location.

3 THE COURT: Let me see the attorneys up here
4 just for a second.

5 (WHEREUPON, a bench conference was held off the
6 record.)

7 Q. Melina, explain what you're saying to Minor 1 on the
8 way to the police station.

9 A. I'm begging her to tell me the truth. She's just
10 scared. She's crying. She's frozen. I'm screaming,
11 please tell me the truth. I know something happened.

12 Q. Did she eventually disclose that something happened?

13 A. Yes.

14 Q. Did she tell you where it had happened?

15 A. She only told me some things. She didn't tell me
16 everything. She told me that he was -- that, yes, he was
17 touching her in her breast.

18 Q. Now, you can't say exactly what she said.

19 A. I'm sorry.

20 Q. You can only -- you're limited in this particular
21 thing.

22 A. Okay.

23 Q. You can only say if she told you where it happened
24 and when it happened. Did she tell you where it was when
25 it happened?

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1 A. She just told me about that. She didn't tell me
2 anything else.

3 Q. So she told you about an incident that night?

4 A. Uh-huh (affirmative).

5 Q. And that would have been at your brother's house?

6 A. Yes.

7 Q. When you get to the Mount Pleasant Police
8 Department, what do you do?

9 A. I kept telling her, you need to tell me more. I
10 told her, if you don't tell me anything, I'm going to put
11 you through a lie detector test in the police department,
12 and it will be very embarrassing for people that don't
13 know you to hear all this stuff. But here I am, your
14 mother. And if I cannot help you, protect you, how we
15 going to get through this. So when we parked there at
16 the police department, she actually realized that I was
17 being serious. And then she started telling me a bunch
18 of stuff.

19 Q. Do you find a police officer?

20 A. Yeah. I got out of the car, and I was out of my
21 mind. I was yelling and screaming. And the police
22 officer was like, are you okay? And I was like, no, no.
23 My brother just did all these things to my daughter, and
24 I'm about to kill him. I'm just going to go kill him.

25 Q. After that night, did the Mount Pleasant police --

- 1 were they finally able to get you to calm down?
- 2 A. Yes.
- 3 Q. A little bit?
- 4 A. A little bit.
- 5 Q. Did you go home that night?
- 6 A. No.
- 7 Q. Where did you go?
- 8 A. I went to my ex-boyfriends house in Summerville.
- 9 Q. And did you send Minor1 to school the next day?
- 10 A. No.
- 11 Q. Did you -- did the police -- did the Mount Pleasant
- 12 Police Department contact you again?
- 13 A. Yes.
- 14 Q. And was that a detective at that point?
- 15 A. Yes.
- 16 Q. Do you know what time it was when you showed up at
- 17 the Mount Pleasant Police Department?
- 18 A. It was during the day. I don't remember, but it was
- 19 during the day and ---
- 20 Q. I mean, the night when you left your brother's
- 21 house?
- 22 A. Oh, it was at like eleven something because I
- 23 remember I look at the garage. It was like ten fifty or
- 24 ten fifty-two when I saw him. So by the time I got to
- 25 the police department, it was like eleven fifteen or

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1 eleven thirty, something like that.

2 Q. So that night they're able to get some initial
3 information from you?

4 A. Yeah. But the cop said that he needed to transfer
5 it to a detective and they will contact me.

6 Q. And so did a detective contact you?

7 A. Yes, ma'am.

8 Q. And did that detective -- was that Detective Bacon?

9 A. Yes.

10 Q. Did she arrange for Minor 1 to give an interview?

11 A. Yes.

12 Q. To disclose what had happened?

13 A. Yes.

14 Q. Did she also -- was there also a -- did you take
15 Minor 1 for a medical exam?

16 A. Yes.

17 Q. What relationship have you had with your brother
18 since that night?

19 A. Nothing.

20 Q. What about the rest of your family? What was their
21 reaction?

22 A. What family?

23 Q. Tell me what happened with the rest of the family?

24 MR. SAVAGE: Object, Your Honor, on the basis
25 of relevance. The family's not involved.

1 THE COURT: I'll sustain -- lay a little
2 foundation where you're headed, please, ma'am, okay?
3 I'll sustain the objection on the form of the question,
4 okay?

5 Q. Have you had any contact with your other family --
6 with the remainder of your family since this happened?

7 A. No, ma'am.

8 Q. What about Joyce?

9 A. No.

10 Q. Have you seen her like in the courthouse?

11 A. Yes, ma'am.

12 Q. But have you -- did you -- have you talked to Joyce
13 all the time about this?

14 A. No.

15 MR. SAVAGE: Object to the form of the
16 question.

17 THE COURT: Overruled. Go ahead.

18 Q. Did you immediately call Joyce after this?

19 A. No.

20 Q. What about Minor 1? How has your relationship changed
21 with Minor 1?

22 A. It's a hard road. She have her good days and her
23 bad days, but, you know, I will always be here for her.
24 She went from a sweet innocent child to Minor 1.

25 Q. Do you feel like you treat her differently now?

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1 A. I protect her more. I should have done it. I
2 should have protected her more.

3 MS. GORDON: The Court's indulgence.

4 Q. Melina, I may have failed to ask you one thing
5 regarding where Minor1 was this night on September 20th.
6 You said you were laying here and your head was at this
7 end of the sofa, the love seat?

8 A. Yes.

9 Q. Is that right?

10 A. Yes.

11 Q. And when you woke up, Minor1 -- can you show -- point
12 on there where Minor1's head was and her legs were?

13 A. Her head was here, and her -- I mean, her head was
14 here, and her legs was somewhere around in here.

15 Q. And how was -- what was her expression? How did she
16 look when you saw her when you woke up?

17 A. She was panicked. She had big eyes. She was frozen
18 like this, looking at me. It was the eyes of somebody
19 that's very frightened.

20 Q. Had you ever seen her look like that?

21 A. Never.

22 MS. GORDON: Nothing further at this time.

23 THE COURT: Cross-examination?

24 MR. SAVAGE: I beg the Court's indulgence one
25 moment. Beg the Court's indulgence.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. SAVAGE:

4 Q. Good afternoon, Ms. Arroyo. I'm Andy Savage. I
5 don't believe we've ever met.

6 A. Good afternoon.

7 Q. Pardon me?

8 A. Good afternoon.

9 Q. We've never met was the question.

10 A. Never.

11 Q. Have you and I met?

12 A. Never.

13 Q. And have you ever spoken to anybody from my office?

14 A. Never.

15 Q. Prior to your testimony here today, I assume that
16 you spoke to law enforcement and you spoke to the
17 Solicitor's office and their staff?

18 A. Yes.

19 Q. Is that correct?

20 A. Uh-huh (affirmative).

21 Q. And you reviewed your testimony that you gave us
22 here today with them to ensure the accuracy and the
23 memory and completeness of what you recall?

24 A. Yes.

25 Q. And you said before you went to live in Mount

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- 1 Pleasant with your brother, you enjoyed a good
2 relationship with him and whatnot?
3 A. What do you mean?
4 Q. I don't know what I mean. What I'm asking you is
5 about your testimony.
6 A. Okay.
7 Q. And what you meant by your testimony. In terms of
8 prior to moving to his home, you enjoyed a good
9 relationship with him?
10 A. I did.
11 Q. And when you moved into his home, you engaged in a
12 business transaction, not in a family transaction?
13 A. Business transaction like?
14 Q. Like you would do if you moved into an apartment
15 building, you would sign a lease?
16 A. Yes.
17 Q. And in moving into your brother's home, you actually
18 signed a lease?
19 A. Yes.
20 Q. So it wasn't as if this was a family reunion; this
21 was a business deal?
22 A. Yes.
23 Q. Did you tell the Solicitor that?
24 A. They never asked me.
25 Q. Did you tell the Solicitor your life background and

1 relationship to these family members that are here and to
2 your brother Erick?

3 A. Not all of it.

4 Q. Did you know whether or not they shared with you the
5 letter that you wrote on the Internet on Facebook about
6 your life history, your relationship with your family,
7 your relationship with your daughter and your
8 relationship with Erick Arroyo?

9 A. My life history is so big that I can't write it in a
10 single page (phonic).

11 Q. You attempted, didn't you?

12 A. I can't do it. I still have more time to do it.

13 Q. In fact, you did write your life history ---

14 A. Uh ---

15 Q. --- not with -- excuse me. Not with the Solicitor,
16 not with the psychologist, psychiatrist, law enforcement,
17 but from the privacy of your own home, you wrote details
18 of your life history?

19 A. I wrote what I felt at that moment, yes.

20 Q. And then in the course of this proceeding you shared
21 the most intimate details of your life with a
22 psychologist at the Medical University about your life
23 and how your life affected Minor1?

24 A. About my life, how it affected me.

25 Q. And how your relationship, based on your life's

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- 1 experiences, affected Minor 1 ?
- 2 A. About how my life affected me.
- 3 Q. Yes. That's part one. Part two is how your life's
- 4 experiences, when you became a mother and during the
- 5 course of your lifetime as a mother, your relationship
- 6 with men and whatnot, how that affected your relationship
- 7 and observations of your daughter, Minor 1
- 8 A. How life affects me obviously are going to affect my
- 9 children, yes.
- 10 Q. And going back to the earliest days in terms of your
- 11 important life history -- is your father in the
- 12 courtroom?
- 13 A. My father was the man I trusted the most my whole
- 14 life.
- 15 Q. My question was, is he in the courtroom?
- 16 A. Is he what?
- 17 Q. Is he in the courtroom?
- 18 A. My father is -- there he is.
- 19 Q. And is your mother in the courtroom?
- 20 A. No.
- 21 Q. And would it be fair to say that your birth was out
- 22 of wedlock in a relationship that your father had with
- 23 your mother while he was married?
- 24 MS. GORDON: Objection, Your Honor, relevance.
- 25 THE COURT: Let me see the attorneys.

1 (WHEREUPON, a bench conference was held off the
2 record.)

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury, I'm going to have to listen to the
5 attorneys make some arguments. I going to have to listen
6 to some testimony from this witness to make a
7 determination whether or not it's admissible under our
8 rules of evidence. So I'm going to ask you to go to your
9 jury room. Again, leave your note pads in the chairs.
10 Please don't discuss the case amongst yourselves.

11 (WHEREUPON, the jury exited the open court at
12 approximately 2:26 p.m.)

13 THE COURT: All right. The State had an
14 objection to relevancy, and we had a discussion at the
15 bench conference. Mr. Savage, do you want to put it on
16 the record?

17 MR. SAVAGE: Yes, Your Honor, and I appreciate
18 ---

19 THE COURT: And it needs to address the issue
20 of the relevancy.

21 MR. SAVAGE: Judge, I appreciate the manner in
22 which this Court has addressed this situation, as you
23 have everything from the beginning. Our position in this
24 ---

25 THE COURT: Let me say one thing first. I want

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1 to make sure I'm correct on my thinking. I don't want to
2 be sitting here thinking one thing and it's not correct.
3 My understand is when she said she woke up she saw the
4 Defendant leaning over her daughter but could not
5 determine what he was doing. But he was leaning over her
6 daughter, and her daughter appeared to be scared. Her
7 eyes were big and she was panicked. Other than that,
8 that's the only thing I heard her say as far as any
9 conduct that she may have observed the Defendant doing.
10 Is that correct or incorrect?

11 MR. SAVAGE: That is correct.

12 THE COURT: Okay. Thank you.

13 MR. SAVAGE: She also testified about
14 conversations that she had with her daughter about prior
15 conduct between her daughter and the brother.

16 THE COURT: And I think we limited it to time
17 and place?

18 MR. SAVAGE: Yes. Our position in the defense
19 of Mr. Arroyo is that her life's experience have affected
20 the way she views the world. She has said under oath
21 that she views the world through those life's
22 experiences, including her relationship with her
23 daughter. I would like to have the jury hear some of
24 those life's experiences which may have warped her view
25 of life and events, and particularly the relationship

1 with her daughter.

2 She has also testified under oath in response to the
3 Solicitor's question about her relationship with her
4 daughter and how these events have affected that
5 relationship. Our position is clearly -- well, it's
6 maybe not clear yet to the Court. In my mind it's clear
7 that basic relationship, which was a troubled
8 relationship long before these incidents, is a troubled
9 relationship today. And we have the facts that support
10 that, both from the witness herself as well as from the
11 psychologist that treated her daughter and the reports
12 that were made. Those life events start from her birth,
13 her -- this is the current witness' anger towards her
14 family. They include the child molestation of her and
15 her cousin. They include a long history of unstable
16 relationships with men, multiple arrests of lovers, both
17 before and after this incident, all of which we believe
18 directly affects her view of life. The Department of
19 Social Services in Massachusetts, the court in
20 Massachusetts, took these children away from her. The
21 children went to live with their father in Puerto Rico.
22 The Department of Social Services in Florida took the
23 children away. Those reports, she made herself to the
24 psychologist at the Medical University. The so-called
25 death of the father and the cause of all of this distress

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1 is not consistent with the reports we obtained from the
2 Medical University in terms of the child's behavior prior
3 to this incident. The psychological intervention prior
4 to this information, the physical examination that took
5 place three weeks after September 20th in a private
6 physician's office and as well as the psychological
7 intervention after the Medical University with a private
8 counselor in Mount Pleasant, all of this is inconsistent
9 with these allegations of abuse. We have the documents
10 to support that. We're not just guessing at this. But
11 we've either got the documents in her handwriting, the
12 documents of the medical examiner -- the medical
13 documents from the Medical University, the Lowcountry
14 Children's Center, from -- what's the name of the place?
15 Marie Carter Counseling in Mount Pleasant. We have the
16 medical records from her primary care physician for her
17 examination that took place in October of 2008. We have
18 the court records from the court in Massachusetts where
19 the children were removed from her. These are not
20 speculative things. These are actual documented events
21 in her life that we believe affected her observations and
22 her attitude towards the daughter and this so-called
23 abuse.

24 THE COURT: Okay. Time frame wise, are you --
25 what are you -- what time frame wise are you going to ---

1 MR. SAVAGE: Her ---

2 THE COURT: I mean, my problem, some of that
3 may become relevant at some point in time. It depends on
4 what transpires in trial. But today, all she's testified
5 is she saw the Defendant leaning over her daughter.

6 MR. SAVAGE: Well, she's testified more than
7 that because she's testified about -- the Solicitor
8 opened the door when she said, what is your relationship
9 with your family? And she said, none.

10 THE COURT: I think you objected to that and I
11 think I sustained the objection.

12 MR. SAVAGE: I believe that's ---

13 THE COURT: And told the Solicitor to lay some
14 foundation and there were no more objections.

15 MR. SAVAGE: I believe -- we can read it back.
16 But clearly she was hammered -- well, not hammered -- she
17 was asked by the Solicitor, as was Minor 1, the
18 relationship with her family. Now, I understand that
19 their intent to show that there's a distant relationship
20 with Joyce so that Joyce wouldn't have a motive to come
21 in and say what she proposes to say. But the fact is
22 that the relationship with the family has been insinuated
23 to this jury that it's been damaged by these allegations.
24 The truth is that relationship didn't exist from her
25 birth.

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1 MS. GORDON: Your Honor, may I respond?

2 THE COURT: Hold on just a second. I mean, I'm
3 going to allow you to respond, but I want to look at
4 something first, please.

5 All right. Mr. Savage, if you would, pull up 404,
6 please. And I just want to ask you -- obviously, you
7 want to go into the character or the trait of the
8 character. And 404 says it's not admissible and it gives
9 some exceptions to that making this -- three exceptions.
10 And I don't know how you can judge the testimony you want
11 to go into other than character.

12 Now, if she's been evaluated by a professional that
13 has a professional opinion as to her truthfulness or her
14 personality defect, if there is one, that's a different
15 story. But that hasn't happened at this point in time.

16 MR. SAVAGE: Judge, this is not a 608 issue.
17 This is not reputation and evidence of character traits.

18 THE COURT: Well, what else is ---

19 MR. SAVAGE: This is a 607.

20 THE COURT: I'm sorry, what?

21 MR. SAVAGE: This is a 607.

22 THE COURT: All right. You think it should
23 come in under 607?

24 MR. SAVAGE: Yes.

25 THE COURT: On impeachment?

1 MR. SAVAGE: Yes. The credibility of a witness
2 may be attacked by any party, including the party calling
3 the witness. And what I am doing is impeaching ---

4 THE COURT: I have no problem with you asking
5 her for impeachment purposes. Okay?

6 MR. SAVAGE: Yes, sir.

7 THE COURT: But I will instruct the jury that
8 those questions are just for impeachment purposes.

9 MR. SAVAGE: Yes, sir. Not for character.

10 THE COURT: Not for character. All right. I
11 mean, where are we going? Let's listen -- let me hear
12 where you're headed first. I really don't know yet.
13 Okay? I'm trying to get a gist of where you're coming
14 from, under what rule you think you're allowed to do
15 this.

16 MR. SAVAGE: I am impeaching her ability to
17 objectively observe human behavior ---

18 THE COURT: Well, an impeachment ---

19 MR. SAVAGE: --- including sexual human
20 behavior based on her personal crises in her life that
21 are endless when it comes to sexual abuse.

22 THE COURT: But that's not necessarily 607.
23 607 goes to the credibility for truthfulness.

24 MR. SAVAGE: Yes.

25 THE COURT: Not because they have a mental

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1 defect where they skew things through a different schism
2 than a normal person. Now, maybe a psychologist or
3 psychiatrist can offer that. I'm not saying they
4 couldn't. But right now we're talking about cross-
5 examination.

6 MR. SAVAGE: Yes.

7 THE COURT: And I just want to make sure I
8 understand where you're coming from.

9 MR. SAVAGE: It's the opposite of what the
10 State -- the State in its direct testimony tried to show
11 there was this closeness in the relationship with her
12 brother. What we're doing is attacking that inference
13 that's been given to the jury that this relationship was
14 bonafide.

15 THE COURT: That may be, but ---

16 MR. SAVAGE: The first question we asked was
17 about the business relationship. This was not a sister
18 moving in with her brother.

19 THE COURT: Well, that may be true. But what
20 does losing the children in Massachusetts have to do with
21 the relationship with her brother?

22 MR. SAVAGE: Anger.

23 THE COURT: Anger?

24 MR. SAVAGE: Anger.

25 THE COURT: Well, okay. Anything else you want

1 to tell me? Do you want to ask the questions so I can
2 see where you're headed?

3 MR. SAVAGE: It also casts doubt on what she
4 has testified as this close relationship with Minor 1.

5 THE COURT: I mean, I don't have any problem
6 with you impeaching her for the purpose of impeachment
7 and credibility, i.e., did the welfare services in
8 Massachusetts remove your children?

9 MR. SAVAGE: She lost her children because of
10 ---

11 THE COURT: I mean, I think that would probably
12 be appropriate testimony, impeachment testimony. If she
13 says yes, that's the end of it. If she says no, then
14 you're entitled put up testimony that shows that she lied
15 about it. That's impeachment.

16 MR. SAVAGE: Yes, sir.

17 THE COURT: Correct?

18 MR. SAVAGE: Yes, sir.

19 THE COURT: Okay.

20 MR. SAVAGE: And we're prepared to do that.

21 THE COURT: Okay. That's fine. And I have no
22 problem if you're going to impeach her, but I do have a
23 problem with trying to insinuate that, hey, this lady has
24 a skewed outlook on the world based upon prior conduct or
25 prior character.

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1 MR. SAVAGE: We have what she has admitted she
2 wrote on Facebook.

3 THE COURT: Well, that's fine. Ask her about
4 it. I have no problem with you asking her about that.

5 MR. SAVAGE: That's what I was asking her about
6 in terms of the father, how she was born. She gives her
7 detailed life history, and it starts out with her birth.

8 THE COURT: I have no problem with you handing
9 it to her and asking her did she write it.

10 MR. SAVAGE: So the Court will know that I'm
11 not ---

12 THE COURT: I understand.

13 MR. SAVAGE: This is what she wrote. I have
14 always been clear that my family is dysfunctional. My
15 father cheated on his wife and from there I came. And
16 since that day I was born, born were my sorrows. So what
17 this is saying contradicts her direct testimony about her
18 objectivity with respect to ---

19 THE COURT: I think it would be fine if you
20 want to hand it to her and ask her to identify it and
21 what does it say. I don't have any problem with that for
22 impeachment purposes. Okay?

23 MR. SAVAGE: Well, she's agreed with me so far.

24 THE COURT: I understand.

25 THE WITNESS: No. I agree with some parts.

1 THE COURT: Be quiet. Ma'am, you be quiet.

2 You understand?

3 Yes, sir, go ahead.

4 MR. SAVAGE: I think I understand the Court's
5 ruling. I shouldn't ask anything I can't back up. And
6 if she denies proof of this is what I ask her ---

7 THE COURT: You're free to offer testimony to
8 impeach her and show she lied under oath. I don't have
9 any problem with that. I do have a problem with trying
10 to get into the psychological end of it unless we're
11 going to have a psychiatrist who's evaluated her or at
12 least something -- I just think that's an area that ---

13 MR. SAVAGE: Here's what I would like to do if
14 the Court would permit.

15 THE COURT: Okay.

16 MR. SAVAGE: If the Court would allow me to ask
17 these questions, and if I cannot tie it up through the
18 psychologist as an impact on her psychological ability,
19 then we can strike it. Now, I know that the Solicitor
20 might not agree to that because ---

21 THE COURT: Well, let's listen to some
22 testimony. But before we get to that, the Solicitor's
23 about to have a fit to say something. Okay? So let me
24 listen to her. I told her I would listen to her. And
25 then we will listen to some testimony, okay, Mr. Savage?

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1 MR. SAVAGE: And there's some law students
2 here. Can they get credit for evidence?

3 THE COURT: I'm sorry, what?

4 MR. SAVAGE: There's some law students looking
5 for credit for evidence.

6 THE COURT: I don't know about that, either.

7 Yes, ma'am?

8 MS. GORDON: Your Honor, the problem with this
9 evidence is that it is irrelevant. And what Mr. Savage
10 indicated is that we talked about her relationship with
11 her family. But he objected. You sustained it. And I
12 limited the question to what was her relationship with
13 her brother, what was her relationship with Joyce and
14 what was her -- how it had affected her relationship with
15 Minor 1. Whatever relationship she had with everybody else
16 from the time she was born until today is irrelevant as
17 to what happened in that room. Had she been the only one
18 to perceive that and nobody else could corroborate what
19 happened in that room, then this might go somewhere. But
20 Minor 1's already corroborated it. So his argument that
21 he's going to work his way around to show that that
22 skewed her view of what happened has already been blown
23 out the window because Minor 1, who he did not say he had
24 ---

25 THE COURT: Well, that's going to go to the

1 weight and sufficiency. I don't know whether it's
2 admissible or not.

3 MS. GORDON: But he's trying to get in through
4 impeachment things that are irrelevant. For impeachment
5 it still has to be relevant.

6 THE COURT: How many trials have you been
7 involved in where lawyer's don't try to do that?

8 MS. GORDON: And I'm trying to stop it.

9 THE COURT: Okay?

10 MS. GORDON: If it's relevant, it should come
11 in. But how that is -- he hasn't shown that ---

12 THE COURT: But impeachment testimony doesn't
13 necessarily have to be relevant. It goes to the
14 credibility.

15 MS. GORDON: If it goes to the credibility.

16 THE COURT: Right.

17 MS. GORDON: But what he's trying to do is
18 offer impeachment on things that she hasn't disagreed
19 with.

20 THE COURT: Then she can't be impeached. Yes
21 or no?

22 MS. GORDON: I just don't see how it is
23 relevant to how we ever get to impeachment if the items
24 that you're asking about are totally irrelevant to the
25 trial. You just don't get to ask every witness

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1 everything that they've ever done ---

2 THE COURT: I don't think relevant -- I mean,
3 impeachment -- I don't think relevancy of the case we're
4 trying is the issue. The issue, does it go to
5 credibility of the witness?

6 MS. GORDON: But I don't think you get to ask
7 this witness, did you ---

8 THE COURT: If there's some basis for asking
9 the question.

10 MS. GORDON: Right. Did you write a term paper
11 ---

12 THE COURT: I mean, you can't ask somebody,
13 hey, are you a prostitute, and you don't have any
14 evidence that she's a prostitute. But if it goes to the
15 credibility -- and I don't think that has anything to do
16 with relevancy as to the case. Now, I understand you
17 can't get too far out in left field.

18 MS. GORDON: As long as it goes to credibility.

19 THE COURT: Right.

20 MS. GORDON: But I don't think that's where
21 he's going.

22 THE COURT: Well, I haven't heard it yet. I
23 don't know where he's going.

24 Mr. Savage? And I haven't ruled yet. I'm trying to
25 decide what to do. So go ahead and ask some questions

1 and let's see where we're headed.

2 MR. SAVAGE: What the Solicitor says is
3 correct, but that's not the full story. The full story
4 is that Minor1 actually denied any misconduct. It wasn't
5 as the Solicitor would like to say that it was -- it's
6 common testimony about the events that transpired. This
7 witness has testified that she confronted Minor1 and she
8 said, nothing happened. And this witness has then
9 testified that she threatened her daughter with police
10 intervention, with polygraph examinations and kept
11 threatening the child until the child changed her
12 testimony. Now, I'm sure they'll bring in evidence later
13 on from a psychologist that that's typical or whatever.
14 But for purposes of this witness, our position is that
15 this witness controlled the thought process of the child
16 at that time. Correctly or incorrectly, that's our
17 position. Okay? And we believe we're entitled to show
18 why she was so strong in attacking her child when God
19 told her or whoever woke her up on that cold night when
20 she was sweating about what was going on. I mean, I
21 think her testimony itself lends itself to that defense.
22 THE COURT: Well, I'm going to let you go into
23 some of that. But let's hear where you're headed. Okay?
24 And then I'll make my ruling. All right? I haven't
25 decided yet. I'm still open to suggestions.

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1 MR. SAVAGE: Did you want me to proffer that
2 now, Judge?

3 THE COURT: All right.

4 MR. SAVAGE: Would you want me to continue?

5 THE COURT: Yes, sir. I want to see where
6 you're going and what type of questions we're talking
7 about. I know you may not be able to duplicate them in
8 front of the jury, but we'll see how close we can get.

9 IN-CAMERA EXAMINATION

10 BY MR. SAVAGE:

11 Q. The question I'd asked you earlier was whether or
12 not you had gone back through any conferences with law
13 enforcement, the Solicitor, or anybody associated with
14 the prosecution of this case, any writings that you
15 submitted to your friends on Facebook. Have you done
16 that?

17 A. No, I haven't because when I did my writings, my --
18 the Solicitor said, you shouldn't write anything about
19 anything that is happening because it would be bad for
20 the courts. And I deleted it, so I really don't know
21 what I wrote. But it might have been something very
22 angry because I did discover my brother on top of my
23 daughter.

24 Q. But the question I asked was have you discussed with
25 the Solicitor your writings that you wrote on Facebook?

1 A. And I said I haven't because I don't have them.

2 Q. You have not?

3 A. I have not because I don't have them.

4 Q. Do you agree that you did those writings?

5 A. I have to see what you have because I don't have
6 them.

7 Q. Do you agree without seeing them that you wrote
8 about those facts in your life history on Facebook?

9 A. I don't know what I wrote. But if you show them to
10 me I will say, yes, I agree or no, I don't agree.

11 Q. The question is, without looking at the details of
12 what you wrote about, do you recall making entries on
13 Facebook about how this event affected your life?

14 A. Yes.

15 MR. SAVAGE: May I approach the witness?

16 THE COURT: Yes, sir.

17 Q. I'm going to ask you to take a look at that. Don't
18 read it out loud. Read it privately, and then answer the
19 question whether or not you recognize the document?

20 MS. GORDON: Your Honor, could we have a copy
21 of what they're referring to?

22 THE COURT: I'm sorry, what?

23 MS. GORDON: We don't have a copy of what
24 they're referring to.

25 THE COURT: Mr. Savage, would you give the

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1 State a copy, please, sir?

2 (Pause while the witness reviewed document.)

3 THE COURT: Mr. Savage, are you ready to
4 proceed?

5 MR. SAVAGE: I'm just waiting for the witness,
6 Your Honor.

7 Q. Ms. Arroyo, have you had a chance to review that
8 four-page document?

9 A. It was in Spanish when I wrote it.

10 Q. Have you had an opportunity to review the four-page
11 document that I provided to you?

12 A. Yeah.

13 Q. Is it in Spanish, for two pages?

14 A. Two pages in Spanish that I wrote.

15 Q. And is it in English for two pages?

16 A. That somebody translated, yes.

17 Q. And do you recognize the document in either Spanish
18 or English?

19 A. I do, uh-huh (affirmative).

20 Q. Is that the document that you recall writing in
21 September of 2009?

22 A. Yes.

23 Q. Do you recall making an entry on your profile for
24 Darkness to Light that you want to keep that in a secret
25 compartment in your Darkness to Light profile?

1 A. You got it wrong. It was not Darkness to Light.

2 Q. Well, I'm sorry. Why don't you tell me what it was?

3 A. Minor1 and I made a page called Imahi (phonic)

4 Foundations, so we started posting things that happened

5 regarding rape and sexual abuse so we can teach others

6 about rape and sexual abuse.

7 Q. And so you recall then writing it?

8 A. Yes.

9 Q. Have you had a chance in this recess to review the

10 translation, and does it fairly and accurately depict

11 what you originally wrote in Spanish?

12 A. Yes, uh-huh (affirmative).

13 MR. SAVAGE: Your Honor, at this time, I'd ask

14 to mark this four-page exhibit for identification

15 purposes. Let me substitute that for a clean copy.

16 (WHEREUPON, Defendant's Exhibit Number 2 was marked

17 for identification only.)

18 Q. If you want to review that and make sure it's the

19 same because it's not as highlighted.

20 A. (Reviewed document).

21 Q. Any question that's the same document that you ---

22 A. It's the same.

23 Q. And so you agree then, do you not, that that is a

24 document that you created in electronic form in Spanish

25 in 2009, September of 2009?

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1 A. Yes.

2 Q. Okay. And it's been translated, not by you but by
3 some third-party and it appears to be materially
4 accurate?

5 A. Yes, uh-huh (affirmative).

6 Q. Now, this was something that you wrote following the
7 items that you disclosed on September the 20th of 2009?

8 A. It doesn't say everything that he did. It only says
9 how I feel about finding out what my brother did to my
10 daughter. But I don't disclose any specifics.

11 THE COURT: Let me stop right now. I see where
12 you're headed on this. Where else do you want to go? I
13 think that she's acknowledged it and she's seen it. And
14 if we go through that in front of the jury, you can ask
15 her questions about it. Okay?

16 MR. SAVAGE: Yes.

17 THE COURT: I have no problem with that. But
18 where else do you want to go along these lines with this
19 witness?

20 MR. SAVAGE: Well, this would be the first
21 event. We would cover some of the items that she talks
22 about in here. Then we would go to Carlos Figueroa. We
23 would go to the D.S.S. involvement. We would go to her
24 relationships with him. We would go to the documents
25 from the Commonwealth of Massachusetts. We would go to

1 Angel Alvarez, the relationship with him. We'd then go
2 to Ruben Reyes Barbados (phonic).

3 THE COURT: And what does the relationship of
4 whoever you just mentioned have to do with her
5 credibility?

6 MR. SAVAGE: These are the men ---

7 THE COURT: Under 407 -- excuse me. 702, I
8 think.

9 MR. SAVAGE: These are the men in her life and
10 the relationships that she had with them that directly
11 affected Minor1, the daughter of this witness, who is the
12 subject of this prosecution. And that is all well
13 documented in her psychologist's report.

14 THE COURT: Well, it may be. And the
15 psychologist may be able to testify to it, but we're not
16 talking about that at this point in time. Are you
17 planning on calling the psychologist?

18 MR. SAVAGE: Well, the State has listed her as
19 a witness. They tell me she's here from Boston, but they
20 did list her.

21 THE COURT: I'm sorry. What?

22 MR. SAVAGE: I understand she's on the State's
23 witness list. We have not -- she's an out-of-state
24 resident. We didn't subpoena her, but relying on the
25 State if they're going to call her.

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1 THE COURT: Well, I mean, isn't that the right
2 person to ask about all of this?

3 MR. SAVAGE: I think you've got to lay the
4 foundation though through this witness so that the expert
5 witness can comment on it.

6 THE COURT: Well, the expert witness can state
7 certain documents she talked to her, and if she hasn't
8 seen these documents, you can give her the documents to
9 review and say, does that change your opinion.

10 MR. SAVAGE: Maybe what we can do is ---

11 THE COURT: I mean, that's the way I view it
12 that it needs to be handled is through the psychologist
13 as to their opinion. Because I just don't think her
14 relationship with another man, regardless of how abusive
15 it was or anything else, has anything to do with her
16 credibility under ---

17 MR. SAVAGE: Because it's the basis for her
18 psychological intervention, not this event.

19 THE COURT: Well, that may be true, but I just
20 don't think this is the witness that needs to bring it
21 out.

22 MR. SAVAGE: This is the ---

23 THE COURT: I've got no problem if you're
24 asking about anything that goes to the credibility and
25 her character.

1 MR. SAVAGE: The Solicitor has brought out
2 through the daughter and the mother that there was
3 psychological intervention in the -- they have inferred
4 that it's because of this event. We disagree with that.
5 And we have the documentation to support that the
6 psychological intervention, remember, preceded these
7 events in 2006. Before that there was DSS intervention.
8 Before that there was violence in the home. It was a
9 pretty horrendous situation.

10 THE COURT: But none of that has anything to do
11 with the relevancy in this case. It may have something
12 to do with the relevancy of the opinion that the
13 psychologist is going to render or the psychiatrist is
14 going to render. And I think it's very appropriate to
15 bring that out to the psychiatrist, but not through this
16 witness unless it goes to the credibility or the
17 truthfulness of the witness. I think you could go into
18 the losing of the children. I think that's character
19 related. But whether she was in an abuse relationship
20 with a man that beat her, I don't think it has anything
21 to do with character. I mean, tell me -- I mean, I'm not
22 -- I'm trying to understand where you're headed. I know
23 where you're headed, but I'm not sure it's the
24 appropriate way to do it.

25 MR. SAVAGE: What we may have to do then is

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1 take the expert testimony and subject her and her
2 daughter to recall.

3 THE COURT: I have no problems if you want to
4 do that. I would allow you to recall her. I'm just not
5 sure this is the witness to do what you want to do
6 because rule 404 says you don't go into character period.
7 And there's some exceptions to it, and 407 is one of
8 them. I mean, you're a good lawyer. You know what I'm
9 saying. I know you don't like it, but -- you want to do
10 what you want to do, but I understand that.

11 MR. SAVAGE: 404 allows someone to attack your
12 character for credibility and believability and
13 truthfulness. Right? We're not doing that. We are
14 saying is that her prism of life, regardless of her
15 choice, is affected by outside influences of which she
16 was subjected to. And that her believability and
17 credibility then is affected by these very unusual,
18 continuous, life events that she suffered that are not
19 common to anyone else.

20 THE COURT: I don't have any problem with that
21 approach. I just don't think this is the witness that
22 you need to do that with.

23 MR. SAVAGE: But she's the observing witness.

24 THE COURT: Pardon?

25 MR. SAVAGE: She's the observing witness.

1 She's the one that says she witnessed this.

2 THE COURT: I understand. I understand.

3 MR. SAVAGE: You know, this is the one that God
4 interfered with.

5 THE COURT: I have no problem with the
6 character issue on removing the children. I do have a
7 problem with the relationship with some man regardless
8 how abusive it was. I don't think that has anything to
9 do with character. It might have something to do with
10 the psyche. And what else -- you mentioned several.

11 MR. SAVAGE: All of the above.

12 THE COURT: All of the above? The only thing I
13 know to do, okay, is get the jury out here and we'll just
14 go through them one at a time, okay?

15 MR. SAVAGE: I don't want to do something to
16 ---

17 THE COURT: I mean, if you understand where I'm
18 coming from. And I'm not trying to tie your hands. Go
19 ahead and ask the questions, and the Solicitor can object
20 and I'll make my ruling.

21 MR. SAVAGE: I'll try to not be as specific or
22 more generic about those questions.

23 THE COURT: I mean, I think if you are generic,
24 that may make a difference.

25 MR. SAVAGE: I'll do my best.

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1 THE COURT: But anything that affects her
2 character or you want to impeach her with, have at it.
3 I'm not trying to prevent that. I think that's
4 appropriate.

5 MR. SAVAGE: Thank you, Judge.

6 THE COURT: Solicitor, you were standing up.
7 What did you want to say?

8 MS. GORDON: Just that it -- we object to this
9 on the grounds of 608(b), that he's trying to introduce
10 specific instances of conduct to attack her character
11 which do not go to her credibility. Even specifically
12 having whether or not the children were removed is ---

13 THE COURT: Well, I thought that's what I've
14 been arguing with him about.

15 MS. GORDON: Right. But I just want you ---

16 THE COURT: Specific instances of conduct,
17 that's what I think I've been arguing with him about.
18 Showing it by extrinsic evidence is what he wants to do,
19 and that's what I've been saying he can't do.

20 MS. GORDON: Okay. Thank you, Your Honor.

21 THE COURT: I mean, is that incorrect,
22 Solicitor?

23 MS. GORDON: Well ---

24 THE COURT: Tell me what you mean?

25 MS. GORDON: Yes, that's correct, Your Honor.

1 THE COURT: Huh? I mean, he wants to ---

2 MS. GORDON: I think the answer is that they're
3 only admissible if it is probative for her truthfulness.

4 THE COURT: Right. I understand. And that's
5 what 608(b) says.

6 MS. GORDON: And whether or not her children
7 were removed, whether or not that happened, doesn't go to
8 her truthfulness. That's just a specific ---

9 THE COURT: Doesn't go to what?

10 MS. GORDON: To her truthfulness because that's
11 just a specific instance that he's trying to get in
12 trying to say she has bad character. And that's not
13 relevant.

14 THE COURT: I disagree with you on the children
15 removals.

16 All right. We're going to take a break and we'll
17 get back and bring in the jury. And we'll just sort of
18 plow through it, okay?

19 MS. GORDON: Thank you, Your Honor.

20 THE COURT: Okay. Thank y'all.

21 MS. GORDON: May the witness step down during
22 her break?

23 THE COURT: Yes, ma'am. You may step down.
24 During the break, please don't discuss the case with
25 anyone.

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1 (WHEREUPON, court stood at recess for a short
2 break.)

3 THE COURT: Anything from the State before we
4 bring in the jury?

5 MS. GORDON: Nothing from the State, Your
6 Honor.

7 THE COURT: If you'd get the witness ...
8 If you'd come around and have a seat, please, ma'am.
9 Anything from the Defense before we bring in the
10 jury?

11 MR. SAVAGE: No, but we'd ask if we're going to
12 have the opportunity to recall the witnesses as to this
13 witness?

14 THE COURT: Yeah, I'll let you recall the
15 witness.

16 MR. SAVAGE: Can we ask them to be sequestered
17 then, Your Honor?

18 THE COURT: I'm sorry, what?

19 MR. SAVAGE: Can we ask the continuation of
20 sequestration of these witnesses.

21 THE COURT: Of this witness?

22 MR. SAVAGE: And of Minor 1.

23 THE COURT: You want to recall Minor 1, too?

24 MR. SAVAGE: Yes. It depends on how the
25 answers go.

1 THE COURT: Okay.

2 MS. GORDON: Your Honor, this is the mother and
3 daughter who I mentioned ---

4 THE COURT: I think the daughter can stay in
5 the courtroom since she's the victim under the rules,
6 even under sequestration. And I'll allow the mother to
7 stay. Okay?

8 MR. SAVAGE: Thank you.

9 THE COURT: But as far as you recalling them,
10 you can recall them if you so choose.

11 MS. GORDON: And your Honor, we had discussed
12 in chambers that they're staying in the same hotel room
13 and that they're limited to they cannot discuss the
14 testimony or the case.

15 THE COURT: I'm sorry? What now?

16 MS. GORDON: This is a mother and her minor
17 daughter, and they're staying in the same hotel. They're
18 in from out of town. And so they have to kind of be
19 together because she's her guardian, but they have been
20 instructed not to discuss the testimony or the case at
21 all.

22 THE COURT: Okay. All right. Anything else?
23 Anything else from the Defendant?

24 MR. SAVAGE: No, sir.

25 THE COURT: All right. Bring us the jury,

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1 please.

2 (WHEREUPON, the jury entered the open court at
3 approximately 3:19 p.m.)

4 THE BAILIFF: The jury's present, Your Honor.

5 THE COURT: All right. Does everybody have the
6 right notepads?

7 Mr. Savage, you may continue cross-examination.

8 MR. SAVAGE: Yes, sir. May it please the
9 Court. Thank you.

10 CROSS-EXAMINATION

11 CONTINUED BY MR. SAVAGE:

12 Q. Ms. Arroyo, I was asking you prior to the break
13 about your use of the Internet, particularly social
14 media, and whether or not at or about the time of these
15 events that you put a diary or you put an explanation of
16 the events out in the social media?

17 A. I did not put a diary.

18 Q. All right. I'm sorry. You did not put a diary?

19 A. No.

20 Q. Did you put a statement about some life events that
21 you recalled at that time that were important to you in
22 terms of the events that the jury heard about today?

23 A. Yes, I put a statement.

24 Q. And did those events include, among other things,
25 the effect of observations you made of prior child abuse,

1 victimization of yourself and child abuse, the basis for
2 your coming into this world and things that sort of
3 affected you, your own views and the abuse of your
4 cousin?

5 A. I mentioned some, yes.

6 Q. And now, moving to Minor 1, her father, as I
7 understand from your testimony, died of natural causes?

8 A. Cancer.

9 Q. Cancer. And at that time, were y'all married?

10 A. No.

11 Q. How long had you been either separated or divorced,
12 no longer living with him at the time of his ---

13 A. 1997.

14 Q. Put that in context if you would, please. When
15 these events occurred, would that have been eight years
16 since you had lived with him?

17 A. What events?

18 Q. The events that brought you here today to testify
19 about what happened in your brother's house?

20 A. So he -- I divorce him in 1997 and these events
21 happened in 2009.

22 Q. So was Minor 1 born when you divorced?

23 A. Yes. Minor 1 was two years old.

24 Q. So 2009, 1997. Nine and three, would be twelve?

25 A. Minor 1 was born in 1995.

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1 Q. So she was two years of age at the time when you

2 left her father?

3 A. Yes.

4 Q. Now, at that time, where were you living?

5 A. What time?

6 Q. 1997.

7 A. I was living in Massachusetts.

8 Q. And were you divorced in Massachusetts?

9 A. Yes.

10 Q. And was your husband's name Carlos Figueroa?

11 A. Yes.

12 Q. Did you go to the Commonwealth Courts in

13 Massachusetts?

14 A. Yes.

15 Q. And did you file for a complaint for divorce there?

16 A. Yes.

17 Q. And did the court order custody to Carlos for some

18 four months?

19 A. Prior to the divorce, yes.

20 Q. And it was during those times that he went back to

21 Puerto Rico?

22 A. He went back to Puerto Rico after we got divorced.

23 Q. Yes. With Minor 1?

24 A. Without Minor 1.

25 Q. And you stayed in Massachusetts?

1 A. Well, when I got divorced and he would ask me, can I
2 take Minor1 with me for Christmas or something, I would
3 allow him.

4 Q. But he was actually given custody by the court?

5 A. Prior to the divorce.

6 Q. And during that time, did he return to Puerto Rico?

7 A. (No verbal response)

8 Q. Did Carlos Figueroa and Minor1 go to Puerto Rico
9 during the pendency of your divorce?

10 A. No.

11 Q. Where were they?

12 A. During the pending to my divorce, the court was
13 looking for Carlos to return Minor1 to me.

14 Q. But there's no question that Carlos was granted
15 custody from July to December of that year?

16 A. That's not true. When we got a divorce, my daughter
17 was given to me the same day I got a divorce.

18 Q. Excuse me. Did the court order custody to Carlos on
19 August 22nd of 1997, the District Court in the
20 Commonwealth of Massachusetts?

21 A. (No verbal response)

22 Q. And the question is, in that time period did he go
23 to Puerto Rico or did he stay in Massachusetts?

24 A. Okay. When I got divorced that day at eight in the
25 morning, he was given -- my daughter was given to me. If

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1 it was 1997 when I got a divorce -- maybe it was 1998.

2 Okay? But at some point the court gave Carlos custody of
3 Minor1, then revoked it and gave it to me the day of my
4 divorce.

5 Q. The question was -- Ms. Arroyo, I don't mean to
6 argue with you. But did the child and the child's father
7 leave Massachusetts and go to Puerto Rico ---

8 MS. GORDON: Your Honor, I have an objection.
9 Relevance.

10 THE COURT: What's your legal objection?

11 MS. GORDON: Relevance, Your Honor.

12 THE COURT: Overruled. Go ahead.

13 Q. If you don't recall that's fine. Just ---

14 A. Not under his custody. I allowed her to travel with
15 her father after we got divorced. Not under his custody.
16 I had the custody of Minor1 -- actually, we shared joint
17 custody after our divorce, but she was living with me.

18 Q. And then he developed an illness?

19 A. He what?

20 Q. He developed this illness, cancer?

21 A. No. He had an illness since I was six-months
22 pregnant.

23 Q. So at the time Minor1 was born, he had cancer?

24 A. Yes.

25 Q. And you lived with him how long after he developed

- 1 cancer?
- 2 A. Until 1996.
- 3 Q. Okay. And then you stayed in Massachusetts?
- 4 A. Yes.
- 5 Q. And then following whatever domestic resolution
- 6 there was, you moved to Florida?
- 7 A. No.
- 8 Q. Where did you move next?
- 9 A. Puerto Rico.
- 10 Q. And how long were you in Puerto Rico?
- 11 A. About a year and a half to two years.
- 12 Q. And when you left Puerto Rico, where did you go?
- 13 A. Florida.
- 14 Q. And where in Florida did you live?
- 15 A. Tampa.
- 16 Q. Were you married at that time?
- 17 A. No.
- 18 Q. Were you living with somebody at that time?
- 19 A. Yes.
- 20 Q. And who was that?
- 21 A. The father of my two young kids.
- 22 Q. Now, did you move from -- you said, Tampa?
- 23 A. Uh-huh (affirmative).
- 24 Q. Did you move from Tampa?
- 25 A. Yes.

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- 1 Q. How long were you living in Tampa?
- 2 A. Months. Not even a year, I think.
- 3 Q. And you moved to where next?
- 4 A. Orlando.
- 5 Q. How long were you in Orlando?
- 6 A. Oh, two, three years.
- 7 Q. During that time period when you were living in
- 8 Florida, is that when the younger children, G. and
- 9 his sister, were born?
- 10 A. Yes. No. A. was born in Puerto Rico. G.
- 11 was born in Orlando, Florida.
- 12 Q. And the father of these two children was the same
- 13 person?
- 14 A. Yes.
- 15 Q. And that's who you were living with in Florida?
- 16 A. Yes. And eventually got married.
- 17 Q. And you married him?
- 18 A. Yes.
- 19 Q. And then how long were you married?
- 20 A. I don't remember when we married. 2004 to 2006.
- 21 Q. Now, in that marriage in Florida, have you written
- 22 about the violence that Minor1 observed in your home?
- 23 MS. GORDON: Objection, Your Honor, relevance.
- 24 THE COURT: I'll sustain [sic] the objection.
- 25 THE WITNESS: Should I answer?

1 THE COURT: Answer the question.

2 THE WITNESS: Oh.

3 A. The father of my two younger -- he wasn't violent.

4 He was just a drunk.

5 Q. Did you discuss that when it came to Minor1's
6 addressing her psychological problems at the Medical
7 University?

8 A. I've address everything that has to deal with my
9 life.

10 Q. Not with your life, with Minor1's life.

11 A. With Minor1's life, yeah, sure. Why not?

12 Q. And was it reported that she observed significant
13 violence in the home?

14 A. There was not significant violence in the home when
15 I was married. That's incorrect.

16 Q. Was that after you were married?

17 A. After I was married.

18 Q. With another man who was not your husband?

19 A. Yeah. Absolutely, right.

20 Q. And was that involving punching, kicking ---

21 MS. GORDON: Objection, Your Honor, relevance.

22 Q. --- and knives and guns and ---

23 THE COURT: I'll sustain the objection as far
24 as the specifics.

25 Q. Did Minor1 observe that in the home?

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1 A. Observe what?

2 MS. GORDON: Object, Your Honor. You've
3 already ruled.

4 Q. Did you report to the Medical University of South
5 Carolina during the treatment of your child that she had
6 observed, and that the observations had affected her, the
7 violence in your home?

8 A. Yes.

9 Q. In fact, you grabbed a gun out of that house and
10 traveled to Mount Pleasant ---

11 MS. GORDON: Objection, Your Honor, relevance.

12 THE COURT: Is that the question? You grabbed
13 a gun out of the house?

14 Q. Did you report during the therapy of your child
15 specific instances of violence that she, as a young child
16 -- how old was she at this time?

17 THE COURT: Is the question, how old she is?

18 Q. How old was Minor1 when you lived in Florida?

19 A. Minor1 was between -- oh, goodness -- eight to eleven
20 maybe. I don't remember exactly.

21 Q. What is the father's name of the two younger
22 children?

23 A. Angel Alvarez.

24 Q. Now, when you separated from him, you were still in
25 Florida?

- 1 A. Yes.
- 2 Q. You married him in 2002?
- 3 A. Married him in 2004.
- 4 Q. And during that time, you were hospitalized?
- 5 MS. GORDON: Object, Your Honor, relevance.
- 6 THE COURT: Overruled.
- 7 Q. Were you hospitalized at that time?
- 8 A. Hospitalized in what manner?
- 9 Q. Well, you would recall. I wasn't there. Were you
- 10 hospitalized in that time frame?
- 11 A. Hospitalized for what because I don't remember being
- 12 hospitalized for being sick.
- 13 Q. For a psychiatric illness?
- 14 A. Yes, uh-huh (affirmative).
- 15 Q. And following your discharge from that, did you then
- 16 separate from the children's father and live with another
- 17 person?
- 18 A. No, it wasn't like that.
- 19 Q. At some time did you live with Miguel Allela
- 20 (phonic)?
- 21 A. Yes.
- 22 Q. And how long was that after the babies were born?
- 23 A. After my last son, two and a half years. My son was
- 24 two and a half years when I separated their father.
- 25 Q. And when you were living with Miguel Allela -- is

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- 1 that the correct pronunciation?
- 2 A. Sure.
- 3 Q. ... were law enforcement people involved in settling
- 4 situations within the home?
- 5 A. What situation?
- 6 Q. You called law enforcement?
- 7 A. My best friend called law enforcement.
- 8 Q. And that's where the instances -- again, not
- 9 reflecting on you and your observations, but on Minor1 s.
- 10 That's where the violence took place in terms of beatings
- 11 and showing of weapons and kicking ---
- 12 A. Well, you tell me that Minor1 was there, but when
- 13 Miguel Allela hit me, Minor1 wasn't there. Minor1 was
- 14 visiting Puerto Rico.
- 15 Q. Did she observe violence in the home?
- 16 A. She did.
- 17 Q. Was that during the time that you lived with Miguel?
- 18 A. Yes.
- 19 Q. Did you, at some point in time, leave Miguel and
- 20 move to South Carolina?
- 21 A. Yes.
- 22 Q. Did you take a gun with you?
- 23 A. I took a gun with me, yes.
- 24 Q. Was that gun turned in to the Mount Pleasant Police
- 25 Department?

1 A. Yes.

2 Q. So at the time that the police intervened in 2008,
3 September 20th, you had had at least one contact with the
4 police department in Mount Pleasant?

5 MS. GORDON: Objection, Your Honor. Relevance.

6 THE COURT: I'll sustain the objection.

7 Q. Prior to the 2008 -- in 2008 on September 20th, that
8 evening, you reported to the Mount Pleasant Police
9 Department; is that correct?

10 A. September -- the day that this incident happened?

11 Q. September 20th, 2008?

12 A. 2009.

13 Q. 2009. I apologize.

14 A. I went to the police department.

15 Q. And that was the Mount Pleasant Police Department?

16 A. That was the Mount Pleasant Police Department.

17 Q. That was the report that you made with the police
18 department?

19 A. What report I make? The one that we're discussing
20 here?

21 Q. Was there another one?

22 A. Okay. No, this one.

23 Q. And on the way to the police department that night,
24 you asked Minor¹ what happened and she denied anything had
25 happened?

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1 A. Uh-huh (affirmative).

2 Q. And you then threatened her to go to the police
3 department. And you asked her in your car repeatedly,
4 tell me what happened?

5 A. If you consider that a threat, me asking my daughter
6 when I know -- because I give birth to this child -- when
7 she's lying, if you consider that a threat, then I will
8 answer yes.

9 Q. Well, that's how it came about. I don't want to use
10 the term threat. You were questioning her.

11 A. I was questioning her.

12 Q. You were quite upset and loud and somewhat
13 disturbing; is that correct?

14 A. Well, if you see your brother, your fifty-two year
15 brother on top of your daughter, on her breast, I'm sure
16 you'd be quite upset.

17 Q. So what you actually saw that night ---

18 A. I saw what I said I saw.

19 Q. We'll get along a lot better if I can ask the
20 question and then you can answer, all right? If you
21 think I'm being rude to you or insincere, just tell the
22 Judge. I don't mean to.

23 Are you saying that you saw your brother on top of
24 your daughter on the couch that night?

25 A. Yes.

1 Q. So he wasn't standing up?

2 A. No. He was very comfortably touching my daughter
3 with his face on her breast.

4 Q. The question I asked was so he wasn't standing at
5 the time?

6 A. No, he wasn't.

7 Q. He wasn't kneeling on the side of the couch?

8 A. No.

9 Q. He was on top of her?

10 A. On top of her.

11 Q. With his hands touching her breast, correct?

12 A. With her [sic] mouth and her [sic] face on her
13 chest, and God knows what else he was doing with his
14 hands.

15 MR. SAVAGE: Court's indulgence.

16 Q. I've been trying to get this worked out. What I've
17 been asking about the Mount Pleasant Police Department,
18 you were familiar with them, the Mount Pleasant Police,
19 before you went there that night? You knew where the
20 police station was. You had spoken to them on previous
21 occasions?

22 A. I lived behind the Mount Pleasant Police Department.

23 Q. Well, it wouldn't have taken you twenty-five or
24 thirty minutes then to get there?

25 A. From his house to the Mount Pleasant Police

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1 Department and me driving like a maniac trying to get my
2 daughter to react, I would have taken ten thousand years
3 to get there.

4 Q. Okay. And then when you got there, you didn't go in
5 the police department; you actually spoke to the police
6 in the parking lot?

7 A. I was crazy, yelling, somebody help me.

8 Q. And when you left your brother's house, you had a
9 cell phone with you?

10 A. I might have had cell phone.

11 Q. You didn't have a cell phone?

12 A. I might have, yeah. I mean ...

13 Q. Okay. And you used that cell phone to make phone
14 calls that night; is that correct?

15 A. I don't remember.

16 Q. Do you remember this location that's behind us?

17 A. Yes, I do.

18 Q. Do you have the ---

19 A. Oh, this thing, yeah.

20 MR. SAVAGE: May I approach?

21 THE COURT: Yes, sir.

22 Q. As we look at Defendant's Exhibit Number 1, now,

23 it's my understanding that you testified that your

24 daughter's head was on this couch while you were resting

25 on this couch. So this is where your daughter Minor 1's

- 1 head would have been?
- 2 A. Uh-huh (affirmative).
- 3 Q. And was she on her stomach?
- 4 A. No.
- 5 Q. She was on her back?
- 6 A. Uh-huh (affirmative).
- 7 Q. And you were over here?
- 8 A. Uh-huh (affirmative).
- 9 Q. And was this where -- I know this is tough, Melina.
- 10 And I don't mean to embarrass you. But was your brother
- 11 on this couch?
- 12 A. Yes.
- 13 Q. Right there?
- 14 A. Yes.
- 15 Q. And the children were right here, the two young
- 16 children?
- 17 A. Yes.
- 18 Q. And the TV was right where it is?
- 19 A. Uh-huh (affirmative).
- 20 Q. And you were on this couch?
- 21 A. Yes.
- 22 Q. Did you call out to her?
- 23 A. Huh?
- 24 Q. Did you call out to your daughter?
- 25 A. No. I opened my eyes and I was -- I was in shock.

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- 1 And then she saw me and she look like this, all scared.
- 2 And he rolled over the couch like -- said something to
- 3 her. I don't know. He was close to her face and making
- 4 believe that he was looking for something.
- 5 Q. Where was the remote TV?
- 6 A. They're all on top of the table.
- 7 Q. Was it on the table that night?
- 8 A. All of the remote controls were on top of the table.
- 9 Q. You recall that?
- 10 A. All of the remote controls were on top of the table.
- 11 Q. You saw them?
- 12 A. Yes. The same thing I saw ten fifty-two on the
- 13 clock.
- 14 Q. So if somebody had said to somebody that they were
- 15 looking for the remote controls over there, it would have
- 16 been very obvious that they weren't there?
- 17 A. Well, I'm sure you wouldn't be looking with your
- 18 face on my daughter's breast for a remote control.
- 19 Q. Because he was lying down on top of her?
- 20 A. He was on top of my daughter.
- 21 Q. Now, you didn't confront him at that time?
- 22 A. I could have kill him.
- 23 Q. But you didn't?
- 24 A. But I could have kill him.
- 25 Q. But you didn't?

1 A. I didn't confront him.

2 Q. And you picked your children up and walked with your
3 brother to your vehicle?

4 A. I walked away from my brother, from his house, with
5 my children to my vehicle.

6 Q. With your brother?

7 A. Away from my brother.

8 Q. Did your brother go with you to your vehicle?

9 A. He tried to help me with my kid.

10 Q. Now, do you recall the time ten fifty-two?

11 A. I remember it. Never forget it.

12 Q. Do you recall the telephone number that you had at
13 that time? Was it 843- - ?

14 A. Maybe, yeah. Uh-huh (affirmative).

15 Q. And I'm not sure -- I can't read the numbers from
16 here. Can you read the numbers in the ---

17 A. I can't read them either.

18 Q. You cannot?

19 A. Uh-uh (negative).

20 MS. GORDON: Your Honor, may we see what
21 they're referring to?

22 THE COURT: I'm sorry. What?

23 MS. GORDON: The State would ask that we be
24 provided a copy of what they are referring to.

25 THE COURT: Mr. Savage, would you give the

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- 1 State a copy of the -- please?
- 2 Q. Do you recall having the phone number 843- -
- 3 with Verizon service?
- 4 A. Maybe, yeah.
- 5 Q. Let me show you to see if that's something you would
- 6 recognize.
- 7 A. Okay. Uh-huh (affirmative).
- 8 Q. Now, do you recognize the numbers that are
- 9 highlighted?
- 10 A. Uh-uh (negative).
- 11 Q. Do you recognize 843- - ?
- 12 A. I don't remember.
- 13 Q. Do you remember that perhaps you called that number
- 14 twelve times that day?
- 15 A. That day after nine or after -- that might be my ex-
- 16 boyfriend's number. I don't know.
- 17 Q. If you look at the left column at the top, can you
- 18 read that word?
- 19 A. Uh-huh (affirmative).
- 20 Q. Date?
- 21 A. Yeah. But I don't remember the number, so it might
- 22 be my ex-boyfriend.
- 23 Q. All I'm asking at this time is about this document.
- 24 Does this give the date?
- 25 A. Uh-huh (affirmative).

- 1 Q. Does this give the time?
- 2 A. Uh-huh (affirmative).
- 3 Q. And does this give the number?
- 4 A. (No verbal response)
- 5 Q. Does this give where the phone call originated?
- 6 A. Uh-huh (affirmative).
- 7 Q. And does this give the phone call where it was
- 8 placed?
- 9 A. Yeah, uh-huh (affirmative).
- 10 Q. So the first number, whatever that is, I think it's
- 11 six nineteen at six thirty p.m. for that number. It was
- 12 from North Charleston to Charleston. And I'm sure you
- 13 looked at these bills as they come in. Are you familiar
- 14 with this document?
- 15 A. Yeah. They're the bills from my phone company.
- 16 Q. Now, we've talked about these numbers that are
- 17 highlighted in yellow. Let's look at the first one
- 18 that's highlighted. It appears to be on September 20th.
- 19 That would be the same day you reported this to the
- 20 police department?
- 21 A. Uh-huh (affirmative).
- 22 Q. At twelve forty-two in the morning?
- 23 A. Uh-huh (affirmative).
- 24 Q. Correct?
- 25 A. Yeah.

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1 Q. And it was from Mount Pleasant to a location in

2 Charleston.

3 A. Okay.

4 Q. If we move it a little farther over, we can see how

5 long that phone call was.

6 A. Okay.

7 Q. It was just under an hour, correct?

8 A. Uh-huh (affirmative).

9 Q. And then if we go down these other yellow markings,

10 we can tell that that same number had been called

11 repeatedly during that day. And you don't recall whose

12 number that is?

13 A. No, I don't because that was in 2009. So I don't

14 recall.

15 Q. Okay. The night of September 20th, do you recall

16 what you were watching on television?

17 A. Sure.

18 Q. And do you recall -- that's a great score right

19 there -- that the New York Giants were playing the Dallas

20 Cowboys and the game started at eight eastern time?

21 A. Uh-huh (affirmative).

22 Q. And you correctly remember that it was at the new

23 stadium?

24 A. The new stadium, yes.

25 Q. That's the event we're talking about. That's the

1 event that you were talking about?

2 A. Yeah, uh-huh (affirmative).

3 Q. Now, have you ever reviewed this in your
4 conversations with the police or the Solicitor's office?

5 A. No. I just said I was -- there was a football, I
6 remember, and it was at Cowboys new stadium.

7 Q. Do you remember about what time you fell asleep?
8 Was it the first quarter, second quarter, third quarter?

9 A. To tell you the truth, I don't really like watching
10 football, so I just saw the introduction and everybody
11 looking at the President. I might have fell asleep about
12 second quarter. I wasn't really paying attention to it.
13 I was on the phone maybe.

14 Q. Okay. Well, let's go back to the phone then to see
15 if we can refresh your recollection. Those that are
16 marked in blue would have been after the game started,
17 correct?

18 A. Yes.

19 Q. And after the game started, we can tell whether you
20 were on the cell phone because those are your records?

21 A. Uh-huh (affirmative).

22 Q. And who you were talking to?

23 A. Uh-huh (affirmative).

24 Q. And what time you were talking to them?

25 A. Uh-huh (affirmative).

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- 1 Q. And this phone call right here is after ten o'clock
2 at night?
- 3 A. Uh-huh (affirmative).
- 4 Q. Same number.
- 5 A. Uh-huh (affirmative).
- 6 Q. Ten minutes.
- 7 A. Uh-huh (affirmative).
- 8 Q. Do you recall where you were when you made that
9 phone call?
- 10 A. I was in the couch.
- 11 Q. Were you awake?
- 12 A. I was sleepy. And I told him, I cannot talk to you
13 right now. I'm taking a nap.
- 14 Q. Well, were you talking to him before you took the
15 nap, during the nap or after?
- 16 A. I was talking to him before I was taking a nap. And
17 I was mad at my ex-boyfriend because he was lying to me.
18 And then I said, I don't want to talk to you anymore. So
19 I hung up and took a nap. And then he might have called,
20 and I was like, oh, my, God, I'm trying to take a nap, so
21 whatever. So I moved, and that's when I moved the other
22 way.
- 23 Q. Were you arguing with your boyfriend at that time?
- 24 A. I was, yes.
- 25 Q. Were you upset with him at that time?

1 A. I wasn't really upset. I was just like, you know,
2 dude, you're a liar, so whatever.

3 Q. But it wasn't a good-night-sweetheart conversation.
4 It was an angry ---

5 A. It wasn't an angry conversation.

6 Q. --- wound up, mad conversation because he was lying
7 at ten -- after ten o'clock that night.

8 A. Sir, it wasn't an angry, mad conversation. I was
9 just asking him why he lied about his daughter being his
10 niece. And that was about it.

11 Q. The next phone call is after eleven o'clock. What
12 time did you go to the police station?

13 A. About that time.

14 Q. Actually, you called the same number again which, as
15 you recall, it's your boyfriend's number; is that
16 correct?

17 A. I said that might be him because that's the only
18 person I actually called during these events. He was the
19 only person I called.

20 Q. That's Ed Brown?

21 A. Ed Brown.

22 Q. Correct?

23 A. Yes.

24 Q. Who was your ---

25 A. At that point, we were dating, yes.

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- 1 Q. More serious than dating?
- 2 A. We were dating. No more serious than dating.
- 3 Q. No more serious than dating?
- 4 A. No more serious than dating.
- 5 Q. Are you sure about that?
- 6 A. I'm sure about that.
- 7 Q. And this fellow you were dating and you weren't very
8 serious with, you had a phone call with at ten sixteen,
9 and whatever it is for ten minutes. And at eleven
10 o'clock you had another phone call with him?
- 11 A. Uh-huh (affirmative).
- 12 Q. And a few minutes later you had another twenty-
13 minute phone call with him?
- 14 A. Uh-huh (affirmative).
- 15 Q. And a little bit later on, you had another phone
16 call?
- 17 A. Yes.
- 18 Q. The guy you were dating?
- 19 A. Yes.
- 20 Q. This was at the time you were at the police station?
- 21 A. This is at the time that the cops told me that I
22 could not go home because if I go home, I will go to his
23 house and kill him. So they decided to send me to Ed's
24 house, which obviously is farther away from Mr. Arroyo's
25 house.

1 Q. So the police sent you to Summerville?

2 A. Yes.

3 Q. You didn't want to go there, but they told you to go
4 there?

5 A. They said to move away so I would be safe, to go to
6 a safe place. And I took my kids, and that's where I
7 did. I went to Ed's house.

8 Q. This is the fellow who you were dating?

9 A. Yes, sir. Yes, exactly.

10 Q. When you got to Ed's house, what did you do that
11 night?

12 A. I cried. I just panicked. He was there for me. He
13 was there for my daughter. You know, he offered us to
14 stay there until we could calm down, yes.

15 Q. Who put your daughter in bed that night?

16 A. I put my daughter in bed that time.

17 Q. Really?

18 A. Yeah, really.

19 Q. And you tucked her in?

20 A. I put my daughter to bed that time. I told her
21 everything was going to be all right.

22 Q. And Ed Brown didn't take her and tuck her into the
23 bed that night?

24 A. I didn't want nobody to touch my daughter.

25 Q. You said, Ed, you stay downstairs. I'm going to

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- 1 take her upstairs and tuck her in bed?
- 2 A. No, actually, Ed walked us upstairs because it is
- 3 his house. So I didn't know how was his house.
- 4 Q. The police saw you the next day?
- 5 A. Uh-huh (affirmative).
- 6 Q. Not at 9:00 o'clock in the morning. They saw you
- 7 sometime later that afternoon?
- 8 A. Uh-huh (affirmative).
- 9 Q. Correct?
- 10 A. Yes.
- 11 Q. Now, the police that saw you that day was a female
- 12 officer?
- 13 A. Uh-huh (affirmative).
- 14 Q. And her name, I recall, was Detective Bacon?
- 15 A. Detective Bacon, yes.
- 16 Q. And you know her from the Mount Pleasant Police
- 17 Department, not just on this situation, but you had been
- 18 involved with her earlier?
- 19 A. I cannot ---
- 20 MS. GORDON: Objection, Your Honor.
- 21 THE COURT: What's your legal objection?
- 22 MS. GORDON: Relevance, Your Honor.
- 23 THE COURT: Overruled.
- 24 Q. You knew this officer from the police department?
- 25 A. Okay. I don't recall her, but ---

- 1 Q. I'm going to help you with that.
- 2 A. Okay.
- 3 Q. This is Detective Bacon, a female, a very pleasant
- 4 officer.
- 5 A. Uh-huh (affirmative).
- 6 Q. Do you recall whether you had known her previously?
- 7 A. I don't recall.
- 8 Q. Do you recall whether she in any way indicated that
- 9 she had known you previously?
- 10 A. I don't recall.
- 11 Q. And this is the law enforcement officer who was the
- 12 detective that investigated this case?
- 13 A. Bacon, yes.
- 14 Q. Now, do you remember having previously called
- 15 Detective Bacon to complain about one of your boyfriends?
- 16 A. I don't remember previously calling Detective Bacon.
- 17 I remember calling Mount Pleasant Police Department.
- 18 Q. Okay.
- 19 MR. SAVAGE: I beg the Court's indulgence.
- 20 THE COURT: Yes, sir.
- 21 Q. Do you remember on April 1st of that year, of '09,
- 22 May, June, July, August, September, some four or five
- 23 months before this, meeting Detective Bacon?
- 24 A. I don't really remember.
- 25 Q. Do you remember having or causing to be arrested

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1 Ruben Luiz Trinivegas (phonic).

2 A. Okay. I remember somebody helping me, but I didn't
3 know -- I don't remember her.

4 Q. He was the same gentleman who was in the car when
5 you were arrested on the Isle of Palms?

6 A. Yes.

7 Q. And this is a fellow who you had been staying with
8 since your 2008 arrest?

9 MS. GORDON: Objection, Your Honor. 608, 404.

10 MR. SAVAGE: I pass on it.

11 THE COURT: Okay.

12 Q. But this gentleman, you knew this gentleman, and you
13 had known him for some time?

14 A. I knew this gentleman, yes.

15 Q. And you had known him for over a year? You had
16 lived with him? And you had him arrested?

17 A. I wasn't living with him.

18 Q. You were closely related to him -- different mailing
19 ---

20 A. Yes.

21 Q. Different mailing addresses. And you -- Detective
22 Bacon is the one that investigated the case in which you
23 had him arrested.

24 A. Okay.

25 Q. Is that correct?

1 A. Well, if she was the one mentioned, yes, she was.

2 Q. You had claimed this gentleman had tried to run you
3 over?

4 A. Yes.

5 Q. And you claimed that about ten days after the
6 incident allegedly happened?

7 A. I did it. Everybody, especially Erick, asked me to
8 do it because Erick seems to be a little bit racist about
9 Mexican people, everybody that's Mexican. So ---

10 Q. So your brother Erick ---

11 THE COURT: Let her finish answering.

12 A. So I was not going to report him because I had
13 already broken up with him and I didn't want to deal with
14 him. So they told me I have to report it. And that's
15 when I reported it, that he hit me. Yes, I reported it.

16 Q. So the reason you reported it sometime after it
17 happened is because Erick doesn't like Mexicans. And
18 this fellow must be a Mexican?

19 A. Erick was very upset that I had moved out of the
20 house. And I thank Ruben for allowing me to move out of
21 the house. I moved out of the house to my own apartment,
22 and Ruben helped me. And it was -- Erick was very upset
23 that I had somebody support me to move out of my
24 brother's house.

25 Q. So all of this upsetting though was five months

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- 1 before this September 20th incident?
- 2 A. Well, he can be very ---
- 3 Q. Just answer.
- 4 A. --- Erick.
- 5 Q. I'm just asking. Is that ---
- 6 A. Well, yeah.
- 7 Q. So as a result of his arrest, Detective Bacon
- 8 investigated the case?
- 9 A. Okay.
- 10 Q. Which was thrown out, dismissed?
- 11 A. He was ---
- 12 MS. GORDON: Objection, Your Honor.
- 13 THE COURT: I'll sustain the objection.
- 14 Q. The fellow who you reported this incident to, did
- 15 you ever testify against him in court?
- 16 MS. GORDON: Objection, Your Honor.
- 17 MR. SAVAGE: What basis?
- 18 THE COURT: I think it's -- I'll sustain the
- 19 objection. I mean, we've covered it. You can cover it
- 20 with Detective Bacon.
- 21 MR. SAVAGE: Your Honor, may I ask if there was
- 22 a conviction?
- 23 THE COURT: I'm sorry?
- 24 MR. SAVAGE: Was the case dismissed?
- 25 THE COURT: Yes, sir, you can ask that.

1 Q. Was the case dismissed?

2 A. I don't know. He got deported. He was an illegal
3 immigrant deported. So I don't know.

4 Q. And the fellow whose house you went to that night,
5 on September 20th, his name is Ed Brown?

6 A. Uh-huh (affirmative).

7 Q. That's the house that you stayed in?

8 A. Uh-huh (affirmative).

9 Q. That's the gentleman you called some twelve,
10 fifteen, twenty times on September 20th?

11 A. Yes.

12 Q. You had him arrested?

13 A. Do what? I'm sorry?

14 Q. You had him arrested?

15 MS. GORDON: Objection, Your Honor.

16 A. Yes. Sorry.

17 Q. All this was before or was it after you went to the
18 Medical University to help your daughter with her
19 emotional difficulties following the September 20th
20 incident?

21 A. It was before.

22 Q. Now, when you went to the Medical University, was
23 that the first time that you and your daughter had gone
24 there?

25 A. The Medical University, what part of the Medical

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- 1 University?
- 2 Q. The Institute of Psychiatry of the crime victims'
- 3 area of the ---
- 4 A. That was the first time I took my daughter to crime
- 5 victims' area.
- 6 Q. Had you ever been into the Institute of Psychiatry
- 7 or Psychology to help deal with psychological problems
- 8 before this September 20th incident?
- 9 A. Not the crime victims' unit.
- 10 Q. The question was, did you deal with the psychiatric
- 11 people of which the crime victims' unit was a part of,
- 12 have you dealt with the psychiatric people at the Medical
- 13 University prior to September 20th, 2009?
- 14 A. Yes.
- 15 Q. And was that with Minor 1 ?
- 16 A. I don't remember.
- 17 Q. Well, how many children do you have?
- 18 A. I have three.
- 19 Q. And which child of the three do you think now you
- 20 probably would have been to the psychiatrist for?
- 21 A. I have a son. He's A.D.H.D. He also goes to the
- 22 psychiatry center.
- 23 Q. So your son and your daughter Minor 1 were both going
- 24 to the psychiatric ---
- 25 A. And myself.

1 Q. Now, when you go to the psychiatrist office down
2 there, do they ask you questions about your social
3 history, your background?

4 A. They asked me questions about all my life.

5 Q. And did you answer those questions honestly?

6 A. Yes, sir.

7 Q. Did you tell them -- first of all, who is Minor1's
8 father? His name once again?

9 A. Carlos Figueroa.

10 Q. Did you tell them that Minor1's father was
11 emotionally abusive?

12 MS. GORDON: Objection, Your Honor. Relevance.

13 THE COURT: I'll sustain the objection.

14 MR. SAVAGE: Your Honor, I won't argue now, but
15 may I be heard ---

16 THE COURT: I'm sorry, what?

17 MR. SAVAGE: May I be heard at the break?

18 THE COURT: Yes, sir.

19 Q. Did you report a history of the relationship between
20 Minor1 and her father?

21 A. I don't understand your question.

22 Q. Did you report a history when you were interviewed
23 by the psychologist and psychiatrist about the
24 relationships, the interpersonal relationships, of family
25 members?

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1 A. Yes.

2 MS. GORDON: Objection, Your Honor. Relevance.

3 THE COURT: Overruled.

4 Q. Did you take a psychological test when you were
5 there?

6 A. Yes.

7 Q. And this is at the time that you visited for Minor1 's
8 help after the September 20th incident?

9 A. I don't remember if the testing was after. I mean,
10 I've gone through so many testings.

11 Q. Do you recall though taking tests about you at the
12 Medical University while you were there with your
13 daughter?

14 A. Not really, no.

15 Q. Do you recall the psychiatrist ever counseling you
16 or providing medications for you?

17 A. Yes.

18 Q. And do you recall that the medications were provided
19 because they said you were paranoid?

20 A. I'm not paranoid.

21 Q. I didn't ask you if you were. I asked you if they
22 provided medications for you because of your paranoia?

23 A. No.

24 Q. Do you remember telling the psychiatrist down there
25 that you had observed Minor1, years before moving into

1 your brother's house, observing pornography on the
2 Internet?

3 A. Not years before I move into my brother's house.

4 Q. Well, let me ask you specifically. Did you advise
5 them that you caught Minor1 observing pornography on the
6 Internet about two years before?

7 A. I did not caught Minor1 watching pornography.

8 Q. All right.

9 MR. SAVAGE: May I, Your Honor.

10 Q. Could I ask the question, and then you can answer it
11 and then explain to your hearts content? Do you recall
12 telling the psychiatrists that were treating your child
13 that you caught her watching pornography on the Internet
14 in 2007?

15 A. I did not recall saying that I caught my daughter
16 watching pornography.

17 MR. SAVAGE: May I approach, Your Honor.

18 THE COURT: Yes, sir.

19 MR. SAVAGE: Your Honor, I'm referring to page
20 forty-four of the documents that the Solicitor provided.
21 May I approach?

22 THE COURT: Yes, sir.

23 Q. Do you recall ever seeing that document, or have you
24 ever counseled with the Solicitor or anybody about that?

25 A. (Reviewed document)

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1 Q. Have you ever counseled with the Solicitor or the
2 investigator ---

3 A. She asked me about this?

4 Q. So -- may I have it? So you're familiar with this
5 document?

6 A. I'm not familiar with the document. I've never seen
7 it before. This is the first time.

8 Q. But you're familiar with what the psychiatrist
9 before said?

10 A. No, I've never seen it.

11 Q. Do you deny that your child Minor1 was exposed
12 repeatedly to pornography on the Internet two years
13 before September 20th, 2009?

14 MS. GORDON: Objection, Your Honor. Misstating
15 evidence.

16 THE COURT: Overruled.

17 A. I did not deny it. I said I did not caught her.

18 Q. But that's the words that the medical experts ---

19 A. That's what he wrote, but that's not what I said.

20 Q. Do you recall telling the same interviewing
21 psychiatrist that shortly after the event that transpired
22 that you testified today, that you went with Minor1 to
23 your family doctor?

24 A. I take Minor1 to the family doctor to get her
25 annuals.

1 Q. Do you recall who your family doctor was?

2 A. I have taken her to Doctor's Care most of the time.

3 Q. And would that be Doctor's Care in Mount Pleasant,
4 South Carolina?

5 A. Dr. Who?

6 Q. Look right behind you.

7 MS. GORDON: Objection, Your Honor, if he's
8 going to publish -- before he publishes to the jury.

9 Q. I'm not showing any records. I'm asking you ---

10 THE COURT: Just don't show any records yet,
11 okay?

12 Q. --- is this ---

13 A. It's just Doctor's Care.

14 Q. --- Doctor's Care?

15 A. In Mount Pleasant, yeah.

16 Q. Now, is that -- is it like a regular medical office
17 or emergency care or whatever?

18 A. They have a doctor there if you want a regular
19 doctor, yes.

20 Q. And was there a particular doctor that you would see
21 there?

22 A. Dr. Shelido (phonic), I think.

23 Q. Dr. Shelido?

24 A. Yeah.

25 Q. And when you went to the Medical University, you

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1 reported to the psychiatrist that even before you went to
2 the Medical University you went to see Dr. Shelido?

3 A. Uh-huh (affirmative).

4 Q. Do you remember the reason why you went to see Dr.
5 Shelido with Minor1 on October 23rd of 2009?

6 A. I don't remember, no. But she was going to turn
7 age, so she might have needed like an annual or seeing --
8 I don't know.

9 Q. Would it help refresh your memory if the records
10 indicated that she was seen for four reasons on that
11 date?

12 A. Okay.

13 Q. Four different reasons?

14 A. Okay.

15 Q. This was in October of 2009.

16 A. Okay.

17 Q. And the reason ---

18 MS. GORDON: Your Honor, objection. If he's
19 going to refresh her recollection, I'd ask that he show
20 her the document that he's trying to refresh her
21 recollection with.

22 THE COURT: All right. Let me see the
23 document. If you're going ---

24 MR. SAVAGE: Her movement. I mean, she hasn't
25 said she doesn't recall. I don't need to refresh her

1 memory until she says she needs to see it.

2 THE COURT: Okay. Let me see the notes.

3 That's what I want to look at.

4 (WHEREUPON, the Court reviewed document.)

5 THE COURT: Okay.

6 Q. Do you remember going to the doctor at or about that
7 time?

8 A. Yes.

9 Q. And would it help refresh your memory about that
10 visit that she was seen for four different diagnoses?

11 A. (No verbal response)

12 Q. One would have been acne.

13 MS. GORDON: Objection, Your Honor.

14 THE COURT: What's your legal objection?

15 MS. GORDON: He's showing -- refreshing her
16 recollection without the document.

17 THE COURT: Let her look -- she's already said
18 she doesn't necessarily remember, so show her the
19 document. Let her look at it, and you can ask her some
20 questions about it.

21 Q. Let me just show you part of it so that we can
22 identify it.

23 THE COURT: You're not going to put it on the
24 screen.

25 A. Don't put it on the screen. I don't want them to

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1 see my daughter's -- my ---

2 THE COURT: We're not going to put it on the
3 screen at this time.

4 Q. Is this the document -- are you familiar with the
5 documents from the Doctor's Care?

6 A. This is a doctor's supplement. How can I be
7 familiar with a doctor's supplement?

8 Q. That's why I was asking you if you ...

9 THE COURT: Solicitor, do you have a copy of
10 it?

11 MS. GORDON: I do not, Your Honor. I've not
12 been provided a copy.

13 THE COURT: Would y'all provide the Solicitor a
14 copy of it, please?

15 A. Okay.

16 Q. Now, the Solicitor says she doesn't have a copy of
17 this. But the Solicitor has all your medical records
18 from the Medical University, including those that
19 reference this document; isn't that correct?

20 A. I don't know.

21 MS. GORDON: Your Honor, may we approach?

22 THE COURT: Yes, ma'am.

23 (WHEREUPON, a bench conference was held off the
24 record.)

25 THE COURT: Mr. Savage, if you'll give it to

1 the Clerk, I'll get a copy made of the exactly the ones
2 you need Doctor's Care.

3 MR. SAVAGE: I can go with it.

4 THE COURT: Okay. Well, give it to him, and
5 we'll get copies made for the Solicitor if you don't have
6 an extra copy.

7 Q. The document that I just showed you -- excuse me.
8 The document I just showed you, you may not be familiar
9 with that document, but that references your daughter's
10 care by a particular physician at Doctor's Care.

11 A. Okay.

12 Q. Okay. Did you have a chance to look at it?

13 A. I browsed through it, yes.

14 Q. Could you read the doctor's handwriting?

15 A. I can.

16 Q. And did the doctor's handwriting give four separate
17 diagnostic matters that were looked at?

18 A. Uh-huh (affirmative).

19 Q. And was one of them for acne?

20 A. Uh-huh (affirmative).

21 Q. And was another one for a soccer injury?

22 A. Yes.

23 Q. Was one of them for menstrual infrequency?

24 A. Yes.

25 Q. There was a fourth which was not sexual abuse,

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- 1 correct?
- 2 A. Not sexual abuse?
- 3 Q. Correct.
- 4 A. What did he say there?
- 5 Q. Well, I'm asking you what -- you took ---
- 6 A. He said, victim was a patient was raped by uncle.
- 7 Q. When you talked to -- when you took your daughter to
- 8 the doctor, it was not for the purposes of a sexual
- 9 assault?
- 10 A. No. I took her for her pain. Obviously, for the
- 11 pain for the ankle injury, and then maybe she took care
- 12 of everything else.
- 13 Q. But in the history that you provided to the doctor
- 14 at that time, you talked about a sexual assault some time
- 15 ago.
- 16 A. Not some time ago. I told her, like I told every
- 17 doctor, my daughter has been a victim of sexual abuse.
- 18 Q. But that's not the purpose that she went to the
- 19 doctor?
- 20 A. No. But it's the primary doctor, and you have to
- 21 tell her everything about your child.
- 22 Q. And that was three weeks before you took your child
- 23 to the Crime Victims' Center at the Medical University?
- 24 A. And those dark matters is the primary doctor.
- 25 Q. The question I'm asking you is, that was before you

1 took your child to the Medical University?

2 A. To the Crime Victims' Unit?

3 Q. To the psychologist and the medical physician at the
4 Medical University.

5 A. I have no idea when exactly the time frame, but
6 Minor 1 was seen by the Lowcountry Children's doctor way
7 before I took her to Doctor's Care.

8 Q. Now, before you went to the Lowcountry Children's
9 Center, she had told you, disclosed to you in your
10 questioning, that she had been vaginally penetrated?

11 A. No, sir.

12 Q. She didn't? Are you sure about that?

13 A. Sir?

14 Q. Are you sure about that?

15 A. I am absolutely sure.

16 Q. And you say she didn't report prior to going to the
17 Lowcountry Children's Center being vaginally penetrated?

18 A. Yes. She never told anybody.

19 Q. Yet, a medical doctor examined Minor 1, including a
20 gynecological examination?

21 A. Yes.

22 Q. And they also tested her for disease?

23 A. I asked them to do everything. She has just been
24 sexually molested. At that point, to me, that's the only
25 thing I knew.

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1 Q. Now, Ms. Arroyo, before we get into the specifics,
2 you have told this jury that when you took her to the
3 Lowcountry Children's Center she had not reported any
4 vaginal penetration?

5 A. Yes.

6 Q. Yet you asked for communicable disease for
7 gonorrhea, for syphilis, for chlamydia. You asked the
8 child be checked for that?

9 A. Yes.

10 Q. And at that time, you had no knowledge that your
11 brother had abused your child in such a way as to
12 transmit those diseases?

13 A. You're absolutely right.

14 Q. In fact, you even asked them to do a pregnancy test?

15 A. Everything.

16 Q. And they did all of this?

17 A. Everything.

18 Q. You were there?

19 A. Yes.

20 Q. Including the gynecological examination?

21 A. I don't think I was there for the gynecological
22 examination. They tested her.

23 MR. SAVAGE: I beg the Court's indulgence.

24 Q. Present at the gynecological examination, according
25 to the records -- maybe you disagree -- was Janetta King.

1 Do you know who that is?

2 A. Who?

3 Q. Janetta King, K-I-N-G?

4 A. No.

5 Q. Dr. Mia Amaya.

6 A. Is that one for the Lowcountry?

7 Q. I'm asking you. Do you ---

8 A. I don't know.

9 Q. And how about this name, Melina Arroyo?

10 A. Well, that's me.

11 Q. And you weren't there?

12 A. But where?

13 Q. For the gynecological examination?

14 A. For the Lowcountry or Doctor's Care?

15 Q. Oh, were there two?

16 A. I don't know. You have to tell me. Doctor's Care
17 or Lowcountry because I remember being in Lowcountry. I
18 don't remember being there for Doctor's Care. But if I
19 was there and the document said I was there, then I was
20 there.

21 Q. Here's the problem. I wasn't there. The jurors
22 weren't there. The Judge wasn't there.

23 A. And that was 2009.

24 Q. But certainly if there was a rape examination
25 protocol for your daughter ---

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- 1 A. It was done when Dr. [sic] Bacon took us, which is
2 the first week when he got arrested. Everything was done
3 during that week.
- 4 Q. So I'm asking, were you present?
- 5 A. At the Lowcountry Children's, yes.
- 6 Q. And do you remember Dr. Amaya?
- 7 A. I don't remember the names.
- 8 Q. Do you remember whether or not there was any finding
9 of pregnancy?
- 10 A. I don't know. They didn't discuss the results with
11 me.
- 12 Q. So you don't know whether your daughter was pregnant
13 or not at that time?
- 14 A. I don't know nothing. They didn't discuss anything
15 with me. They forwarded everything to the Solicitor's
16 office.
- 17 Q. They didn't talk to you about the social diseases,
18 the gonorrhea test, the chlamydia test, the syphilis
19 test. They didn't discuss that with you?
- 20 A. If it was at Doctor's Care, I'm sure they did. And
21 maybe I was super happy that this man didn't get her with
22 those.
- 23 Q. But did they tell you that there wasn't any
24 evidence, any evidence ---
- 25 MS. GORDON: Objection, Your Honor. Hearsay.

1 THE COURT: I'll sustain the objection.

2 Q. Did anybody ever indicate to you or did you receive
3 any report that confirmed that the child had been
4 physically or sexually abused, that she'd had had a
5 pregnancy?

6 MS. GORDON: Objection, Your Honor. Hearsay.

7 THE COURT: What's your legal objection?

8 MS. GORDON: Hearsay, Your Honor. I'd like to
9 be heard.

10 THE COURT: Do you want to be heard on that,
11 Mr. Savage? I'll be glad to let you come up here to the
12 bench.

13 MR. SAVAGE: I don't think -- I think we've got
14 this.

15 THE COURT: Pardon?

16 MR. SAVAGE: I think that we understood what
17 happened here.

18 THE COURT: Okay.

19 Q. I'm not asking you what was said. I'm asking you
20 whether you entered into a discussion with medical
21 professionals about the status of your daughter's
22 S.T.D.s, her pregnancy or any physical findings of abuse.
23 Did you enter into that discussion? And if you did ---

24 A. The medical professionals only told me she's right,
25 she's okay.

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1 Q. Now, during your self-report to the healthcare
2 professionals at the Medical University, did you discuss
3 with them the intervention of the Department of Social
4 Services when you lived in Florida?

5 A. I don't recall anybody in Florida messing with my
6 kids.

7 Q. Was there anybody else who made a social history
8 report about your children at the Medical University
9 other than you?

10 MS. GORDON: Objection, Your Honor. Hearsay.

11 MR. SAVAGE: Rephrase.

12 Q. Do you know if anyone other than you gave a social
13 history to the healthcare professionals that were looking
14 out for your daughter at the Medical University?

15 A. What is a social history?

16 Q. The age that she learned to crawl, age that she
17 learned to walk, age that she started to talk, where she
18 was in school, any intervention by any outside social
19 agencies. Was any of that information provided to them
20 other than by you?

21 A. I don't remember. But whatever they asked me, I
22 would have given them any information.

23 Q. Did you tell them that the Department of Social
24 Services had been involved in her life years before these
25 allegations arose?

- 1 A. When Minor 1 was a year and a half.
- 2 Q. Did you give them a specific date?
- 3 A. If I had papers in my hands, yes. But I don't
- 4 remember. Minor 1 was a year and a half.
- 5 Q. But whatever you told them would have been honest?
- 6 A. Yeah, sure.
- 7 Q. If you told them 2005, 2006, would that have been
- 8 truthful?
- 9 A. It wouldn't [sic] be truthful.
- 10 Q. Now, we had talked about years before this report of
- 11 September 20th that you and Minor 1 both engaged in
- 12 healthcare intervention with a psychologist and
- 13 psychiatrist at the Medical University?
- 14 A. Yes.
- 15 Q. Were you very concerned about your daughter at that
- 16 time?
- 17 A. Yes. Her father had just died, sir.
- 18 Q. What year was that that he died?
- 19 A. He died in 2006, I believe.
- 20 Q. And so this was shortly thereafter.
- 21 A. Yes.
- 22 Q. And the purpose of that was for grief counseling?
- 23 A. Yes, sir.
- 24 Q. Did you attend those meetings with her?
- 25 A. No. She'll go on her own for the grief counseling,

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1 and I will go on my own for my own counseling.

2 Q. And did you do the same thing following this event
3 in 2009?

4 A. Yeah, uh-huh (affirmative).

5 Q. Now, I believe in the earlier counseling, was she
6 provided medication?

7 A. I think like once, and then they said it doesn't
8 really -- she doesn't really need it. She just needs to
9 talk to somebody, and that's it. I don't think she ever
10 took medication.

11 Q. She didn't take medication?

12 A. I don't think so.

13 Q. Do you recall that her medication was actually
14 increased?

15 A. No, uh-uh (negative).

16 Q. Went from twenty-five milligrams to fifty milligrams
17 of the medication she was taking?

18 A. And if it was increased, she never took it. I don't
19 really remember ever giving her medication.

20 Q. So if the medication was prescribed and, in fact, it
21 was doubled, you don't have any recollection of that?

22 A. No.

23 Q. In fact, you didn't even take her. You stopped
24 going. You were discharged involuntarily because you
25 wouldn't take her to the sessions at the Medical

1 University?

2 A. No, that's not true.

3 Q. And if the medical records said that is true, why
4 would they be wrong?

5 A. My daughter went through all her therapies. And the
6 time went -- run out. The government just pay for
7 certain therapy, and then I'm on my own with her.

8 Q. So the medication that you don't recall, does the
9 name Zoloft mean anything?

10 A. Zoloft means a lot of things to me. It has been
11 prescribed to me. I never took it.

12 Q. Do you know whether it was prescribed for your
13 daughter?

14 A. Might.

15 Q. Do you know whether the recommended therapy for your
16 daughter would have lasted a year?

17 A. Well, the State didn't pay for only ten or twelve
18 visits. I don't know how many visits the State paid for.
19 And they told me that they could not help us anymore over
20 there.

21 Q. Do you recall that you were a frequent absentee on
22 scheduled visits in November, December, February and
23 April?

24 A. I don't remember.

25 Q. Do you recall them having to call you repeatedly at

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- 1 home to ask you where you were and where your daughter
2 was and why she wasn't attending therapy as instructed?
- 3 A. I don't remember, but I might have been working
4 because I support my kids. So I must be decided to go to
5 work instead of skip work.
- 6 Q. Now, working wasn't a problem following this event
7 because you were an assistant manager of Wal-Mart at that
8 time, correct?
- 9 A. What do you refer it wasn't a problem?
- 10 Q. Well, I know you couldn't make the appointments,
11 based on what you're telling me, for the initial
12 psychiatric intervention at the Medical University. I've
13 suggested that you missed a number of sessions. They
14 called you, and you said the reason you missed those
15 sessions was because you were working for your family.
- 16 A. Sir, and then I have to ask for a three-month leave
17 to take care of my daughter and take her to every single
18 one of her appointments. Three months leave because I
19 support three children. So I did take my leave to take
20 care of my children and bring her to her therapy.
- 21 Q. And the therapy you're referring to now, Ms. Arroyo,
22 would be after September 20th of 2009?
- 23 A. Yes.
- 24 Q. Now, the truth is -- let's stick with that -- that
25 Ed Brown, your boyfriend, is the one who would transport

1 Minor1 to her therapy sessions?

2 A. When I have to work, yes.

3 Q. And in fact, you weren't working because you took
4 the Family Medical Leave Act from Wal-Mart?

5 A. Well, depends on the timing. I mean, I don't have
6 the papers here. But it depends on the timing.

7 Q. That's why all these issues are so important. You
8 were working at Wal-Mart. You took a leave, not once,
9 but twice.

10 A. I took once a leave.

11 Q. But you did that for the purpose of this event, I
12 guess, right? Was there anything else that you took ---

13 A. Well, if this event hasn't occurred, you don't need
14 to take a leave.

15 Q. Yet, even though you didn't work, you still didn't
16 take your child to the therapist?

17 A. Sir, I'm bipolar. I suffer from depression. If I
18 cannot get off from my bed, I count -- I counted on my
19 boyfriend to do it for me. And he was there for me.

20 Q. Was the Family Medical Leave Act in full for your
21 health or your daughter's health?

22 A. My daughter's health.

23 Q. And while you were on that leave, did you just let
24 Ed Brown, the same fellow you had arrested, the same
25 fellow whose house you stayed in the night of September

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- 1 20th, was taking your daughter down to the Medical
2 University?
- 3 A. Sir?
- 4 Q. The answer to that is what?
- 5 A. No, that's incorrect.
- 6 Q. It's incorrect?
- 7 A. It's inaccurate.
- 8 Q. Tell me -- did Ed Brown take your daughter to the
9 Medical University?
- 10 A. Sometimes.
- 11 Q. Once, twice?
- 12 A. Maybe like five times.
- 13 Q. And how many times did you go?
- 14 A. All the other times, which was more than ten, more
15 than fifteen.
- 16 Q. And did you realize how important it was for you to
17 be there?
- 18 A. Very important.
- 19 Q. And you were on leave from work during these
20 occasions?
- 21 A. Uh-huh (affirmative).
- 22 Q. And you just had Ed take her?
- 23 A. Uh-huh (affirmative).
- 24 Q. In your report on those occasions you went down
25 there, you said that in your home there were some issues

1 of mental health. Were you referring to yourself?

2 A. If you consider bipolar disorder serious, then have
3 a blast.

4 Q. I'm asking you about your report, that you indicated
5 that there was serious issues of mental health with
6 Minor a's caretaker. Who were you referring to?

7 A. My son is A.D.H.D., I'm bi-polar and my daughter is
8 grieving her father's death, plus she's being abused.
9 Yeah, that's serious.

10 Q. Who is the caretaker?

11 A. Who is the what?

12 Q. Caretaker?

13 A. I'm the caretaker.

14 Q. Did you report that the caretaker was suffering
15 mental illness before these events transpired?

16 A. I've been bipolar since 1997.

17 Q. The question though is, Ms. Arroyo, did you report
18 to the healthcare professionals at the Medical University
19 before any of this happened that there were serious
20 mental health issues with the caretaker?

21 A. I reported to any doctor that's seen me for my
22 bipolar disorder that I'm the caretaker of three kids
23 since 1997.

24 Q. Alcoholism. Who would have been the caretaker or in
25 the home with alcoholism?

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- 1 A. The father of my kids.
- 2 Q. Which father of which children?
- 3 A. Angel Alvarez.
- 4 Q. And that would have been not Minor1's father, but
- 5 that would have been the father of the others?
- 6 A. Yes.
- 7 Q. And you reported that as being a very significant
- 8 event?
- 9 A. That's why I divorced him.
- 10 Q. Was there any report of you or Minor1 having
- 11 hallucinations, psychotic episodes or anything of that
- 12 nature?
- 13 A. No, sir.
- 14 Q. Are you sure of that?
- 15 A. I'm sure of that.
- 16 Q. And if that had been reported in the medical
- 17 records, that wouldn't have been your doing, it would
- 18 have been somebody else?
- 19 A. I would never say that I have hallucinations. I
- 20 would be lying. I don't know what a doctor writes
- 21 because that's the doctor's writing.
- 22 Q. But nobody would have ever discussed that with you?
- 23 A. If they ask me and they say, have you have
- 24 hallucinations, I'll be like, no, because it's not true.
- 25 But how does all this have to deal with the fact that I'm

1 here because my daughter has been raped? Because if this
2 is my child, I can go ahead. But this is about my
3 daughter.

4 MR. SAVAGE: I beg the Court's indulgence for a
5 moment.

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen, we've been going for about an hour and a half,
8 and I try to take a break every hour and a half. So
9 leave your notepads on the chairs. Please don't discuss
10 the case amongst yourselves. And I'll get you back in
11 fifteen or twenty minutes.

12 (WHEREUPON, the jury exited the open court at
13 approximately 4:34 p.m.)

14 THE COURT: All right. We'll take about a
15 fifteen- or twenty-minute break.

16 MS. GORDON: Thank you, Your Honor. Your
17 Honor, I would ask that I be getting a copy of any other
18 documents Mr. Savage is referencing.

19 THE COURT: Well, I ran one copy. Is that the
20 one you wanted?

21 MS. GORDON: I did receive that, but he's now
22 referring to another record, I guess, regarding
23 hallucinations.

24 THE COURT: Did you get the Doctor's Care
25 notes?

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1 MS. GORDON: I did get the Doctor's Care notes.

2 THE COURT: Okay. What do you want?

3 MS. GORDON: Whatever document he's referring
4 to regarding hallucinations.

5 MR. SAVAGE: They have Solicitor office Bates
6 stamp numbers on them.

7 MS. GORDON: Well, if you can just tell me what
8 number you're referring to.

9 MR. SAVAGE: I can't try your case. I'm trying
10 my own.

11 THE COURT: Well, just show her which one it is
12 and help find it or ---

13 MS. GORDON: If he can just tell me where he's
14 looking.

15 THE COURT: --- give her a copy or I'll get the
16 clerk to run a copy, okay?

17 MR. SAVAGE: Yes, sir.

18 THE COURT: All right. Thank you very much.

19 MR. SAVAGE: I obligated myself. I will not
20 mislead the witness.

21 THE COURT: I'm sorry. What?

22 MR. SAVAGE: I told this Court, and I repeat,
23 that I will not interview or cross-examine a witness
24 unless I can support the allegation that I have.

25 THE COURT: Okay. Fine. Thank you, sir.

1 You may step down. Please don't discuss the case
2 during the break, okay?

3 Let me see the two of you up here just a second,
4 please.

5 (WHEREUPON, a bench conference was held off the
6 record after which court stood at recess for a short
7 break.)

8 THE COURT: Bring us the jury, please.

9 (WHEREUPON, the jury entered the open court at
10 approximately 4:53 p.m.)

11 THE BAILIFF: The jury's present, Your Honor.

12 THE COURT: Thank you very much.

13 Mr. Savage, you may continue cross-examination,
14 please, sir.

15 MR. SAVAGE: No further questions.

16 THE COURT: Pardon?

17 MR. SAVAGE: No further questions.

18 THE COURT: No further questions. All right.
19 Any redirect?

20 MS. GORDON: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. GORDON:

23 Q. Okay. Melina, it's been a long afternoon. I want
24 to clear up a few things. You stated on cross-
25 examination you have a psychological diagnosis. What is

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- 1 that?
- 2 A. I'm bipolar, yes, ma'am.
- 3 Q. And how long have you had that diagnosis?
- 4 A. Since I was in college.
- 5 Q. And you take medication for that?
- 6 A. Yes.
- 7 Q. Have you taken medication for that since you were in
- 8 college?
- 9 A. Yes.
- 10 Q. Now, I want to clear up a little bit of the time
- 11 line here. The date that you saw your brother on top of
- 12 your daughter in his living room, that was September 20th
- 13 of '09?
- 14 A. Yes, ma'am.
- 15 Q. Now, do you recall the date that you first went to
- 16 Lowcountry Children's Center?
- 17 A. I don't recall the first day, but it has to be
- 18 within that week when everything was going in process
- 19 because everything happened really fast. Maybe one week,
- 20 two weeks.
- 21 Q. If you saw the date that your child was interviewed
- 22 by John Elsey -- and that was September 22nd of 2009 --
- 23 does that sound about right?
- 24 A. Yeah. It was fairly quick, yes.
- 25 Q. So that's September 22nd of 2009. And then the date

1 that you went to Doctor's Care, that was approximately a
2 month later; is that correct?

3 A. Let me see. Oh, yes.

4 Q. Okay. So by the time you got to Doctor's Care, had
5 Minor 1 at that point disclosed the sexual assault?

6 A. No.

7 Q. Not to you. But do you know if she had told the --
8 and I don't know. There's a little distinction here
9 between -- because she's disclosed digital penetration
10 and then a -- what you might refer to as rape, but a
11 penile penetration, we'll refer to.

12 A. I didn't know nothing about her being raped until
13 she started going to therapy, by almost the end of her
14 therapy.

15 Q. But prior to that, you knew that she had been
16 touched?

17 A. Yes.

18 Q. And you had reported this sexual assault to police
19 ---

20 A. Yes.

21 Q. --- prior to you showing up at Doctor's Care?

22 A. Oh, yes.

23 Q. Now, you don't know what additional information
24 Minor 1 may have given the doctor at Doctor's Care. You
25 only know what you told him?

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1 A. Uh-huh (affirmative).

2 Q. There was a lot of discussion about did you catch
3 Minor 1 watching pornography. What did you tell the
4 therapist about pornography and what you had -- what you
5 knew?

6 A. I didn't see my daughter watching pornography. One
7 day when I was living in my condo before I move in with
8 this thing, Minor 2 stayed at my house for a few days
9 watching ---

10 Q. Who's Minor 2 ?

11 A. It's this things step-daughter. She stay there
12 watching my kids so I could go to work. And then my
13 computer was always up or whatever. And one day I went
14 to my computer and through the history I saw some like,
15 you know, porn sights or whatever. I thought it was just
16 pop-ups or something like that. And I got mad. I said,
17 Minor 1, have you been watching that or whatever. And
18 she's like, mom, no, whatever. But, I mean, who else
19 because it was Minor 1 And I actually discussed this with
20 the thing. And he said ---

21 Q. When you refer to the thing, are you talking about
22 Erick Arroyo?

23 A. Yes.

24 Q. So you discussed, thinking you might have saved a
25 history of like a pornographic ---

1 A. Yeah. Exactly. And he said, oh, she might be just
2 curious. You know, she's just a teenager. And I said,
3 I'll be darn. I don't want her to be looking at that and
4 learning about sex the wrong way. So she was prohibited
5 of touching the computer or -- then I learn about, you
6 know, parental controls and all this stuff, and it never
7 happen again.

8 Q. Now, do you recall the day that Minor1 started
9 therapy with Maria Steenkamp?

10 A. I don't recall the day, but it was actually after
11 the Lowcountry stuff.

12 Q. So when did you take the F.M.L.A. leave? Was that
13 immediately after, or do you recall?

14 A. I don't recall. I have the papers in my hotel room.

15 Q. But at some point -- was it pretty soon after you
16 reported the incident?

17 A. I took the week of -- right when this thing
18 happened, they give me a week off from work. And then I
19 took three months when we have to start going to therapy
20 because my job -- my boss said, Melina, you really,
21 really need to go there. You need to be there with your
22 child. And it's affecting you at work. And I have
23 already been written up for losing at work and not
24 concentrating. So they gave me -- they approved me a
25 three-month so I could go to therapy with my daughter for

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1 three months.

2 Q. Now, I want to go back. I forgot to ask you. This
3 record at Doctor's Care, were you asked this morning to
4 authorize the release of this record?

5 A. Nobody ever ask me.

6 Q. Not that you saw it. Were you asked this morning if
7 you cared if the defense attorney was able to get the
8 records for Minor1 ?

9 A. Oh, I said, get whatever records you need.

10 Q. Do you have any question about what you saw the
11 night in your brother's living room?

12 A. I have no questions.

13 Q. Were you hallucinating?

14 A. I was not hallucinating.

15 Q. Were you drunk?

16 A. No.

17 Q. Were you dreaming?

18 A. No.

19 MS. GORDON: Court's indulgence. I don't know
20 if I can blow this up or not. Let's just try it. I
21 don't think they entered that.

22 Q. Melina, I'm referring to -- in fact, we'll just mark
23 it.

24 MS. GORDON: Andy, do you have any objection to
25 the ...

1 May I approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 (WHEREUPON, State's Exhibit Number 7 was marked for
4 identification only.)

5 MS. GORDON: The State moves State's Exhibit
6 Number 7 into evidence.

7 THE COURT: Any objection?

8 Q. Melina, 9/20 is the date that ---

9 THE COURT: Any objection?

10 MR. SAVAGE: No, sir. That's actually ---

11 THE COURT: State's Number 7 is admitted
12 without objection. Thank you very much.

13 (WHEREUPON, State's Exhibit Number 7 was admitted
14 into evidence.)

15 Q. 9/20 is the date that you're over at your brother's
16 house, and you said ten fifty-two is when you think you
17 woke up?

18 A. Uh-huh (affirmative).

19 Q. That's what you saw on the clock?

20 A. Yeah.

21 Q. Now, you don't know if his clock was set to the
22 atomic national time or anything like that?

23 A. (Shook head side to side in the negative.)

24 Q. Say yes or no.

25 A. No.

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1 Q. But that's the number you saw on the clock?

2 A. Yes.

3 Q. Okay. On 9/20 there is a call to this number 843-

4 - ; is that right? That's an incoming call. Can

5 you see that?

6 A. Yeah.

7 Q. Okay. And that's for ten minutes?

8 A. Okay.

9 Q. Does that accurately reflect what you're seeing?

10 A. Again, I cannot see the numbers but I see ---

11 Q. I'm sorry. I'm sorry. Let me back move it back

12 over. So ten sixteen, an incoming call for ten minutes?

13 A. Okay. Yeah.

14 Q. And then the next call was at what time? Can you

15 read that?

16 A. Eleven thirteen.

17 Q. And was that an incoming or outgoing call? Can you

18 see?

19 A. Incoming.

20 Q. And how long was that?

21 A. Two minutes.

22 Q. Do you recall getting a phone call on your way to

23 the Mount Pleasant Police or while you were there?

24 A. I really don't recall it. But if it was, I'm

25 telling you it was my exboyfriend.

1 Q. Okay.

2 A. That's the only person I actually talked to the
3 whole night.

4 Q. And then did you call him at some point after you
5 talked to the police about coming to stay with him and
6 ---

7 A. Yes. On the way there, yeah.

8 MS. GORDON: Nothing further, Your Honor.

9 THE COURT: Any recross?

10 MR. SAVAGE: Just one moment, please.

11 RECROSS-EXAMINATION

12 BY MR. SAVAGE:

13 Q. Ms. Arroyo, in being prepared for your testimony
14 today, I know that you've gone over it to the best of
15 your recollection of different events. But one of the
16 things I'd asked you about earlier that has been
17 mentioned again was your family medical leave. Have you
18 looked at your records from Wal-Mart? You said you have
19 them in your hotel room.

20 A. I might have them.

21 Q. Well, you had testified earlier that you had them
22 back in your hotel room?

23 A. I might have them.

24 Q. Do you know whether you have them or not?

25 A. I'm not sure. I brought some papers. I'm not sure

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- 1 if that's one of the one.
- 2 Q. Did you review those with anyone?
- 3 A. No.
- 4 Q. Would you be surprised if your Family Medical Leave
- 5 Act didn't start until March 19th of 2010?
- 6 A. Okay. I would be surprised.
- 7 Q. All right. So September 20th, October, November,
- 8 December, January, February, March, six months later?
- 9 A. Okay.
- 10 Q. And that you stayed on that Family Medical Leave Act
- 11 until May 3rd, 2010?
- 12 A. It was about three months, yeah. Uh-huh
- 13 (affirmative).
- 14 Q. And then the next week you went back on Family
- 15 Medical Leave Act?
- 16 A. After that?
- 17 Q. Yes, until June 14th of 2010. From May 10th to June
- 18 14th.
- 19 A. I had -- they gave me certain numbers and I still
- 20 have some more days to take. And my psychiatrist say go
- 21 ahead take all them, all your family leave. So that's
- 22 what they did. They just renew it for more time.
- 23 Q. And the reason you gave them was because there was
- 24 this serious health condition, correct?
- 25 A. Yeah.

1 Q. That's why you're entitled to it?

2 A. Okay.

3 Q. Actually, all the dates you missed at the Medical
4 University ---

5 A. Uh-huh (affirmative).

6 Q. --- to be there with your daughter ---

7 A. Uh-huh (affirmative).

8 Q. --- were while you were on leave and not while you
9 were working.

10 A. Okay.

11 Q. Would you agree with that?

12 A. I don't know. Maybe.

13 Q. Maybe?

14 A. Maybe. I don't know if I missed it when I was on
15 medical leave. I don't know if I miss any while I was on
16 medical leave.

17 Q. But the reason maybe doesn't work is because when I
18 asked you earlier why you missed those days, you said you
19 were working.

20 A. Okay. You're asking me a very specific question,
21 and I don't have a diary, a daily diary, of what I do
22 with my life and my days. But I do remember extending my
23 leave of absence. And I might miss -- I might have --
24 you're right -- missed some medical appointments, but
25 I've always took my daughter to her medical appointments.

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1 Q. Your testimony is that you always took your
2 daughter, always, to the medical appointments for her
3 therapy resulting from the incident which occurred on
4 September 20th, 2009.

5 A. And if I wasn't able, somebody was able to take her.

6 Q. Ed Brown, the gentleman you had arrested?

7 A. Ed Brown. It could have been Mother Teresa if she
8 was there.

9 Q. What date was Mother Teresa there?

10 A. Well, if Mother Teresa was available to help me, I
11 would have asked Mother Teresa.

12 Q. But the point is you didn't go?

13 A. Maybe I did. Maybe I didn't. You're right.

14 Q. And you also would agree that the psychological
15 intervention by the Medical University for your daughter
16 in 2008 was terminated because of your failure to deliver
17 her to her appointments?

18 A. In 2008?

19 Q. Yes. Before this incident that happened.

20 A. Okay. My daughter did not want to go to therapy in
21 2008. She said she didn't need it. And Erick Arroyo --
22 Erick Arroyo said, she doesn't need it. She's a
23 teenager. She can get over it. But obviously he was
24 already taking care of her therapy sessions.

25 Q. And I assume that Mr. Arroyo then would have gone to

1 the therapy sessions to meet with the healthcare
2 providers?

3 A. Mr. Arroyo -- listen, I don't want to answer that.

4 Q. And if the medical records said that there was a
5 failure to comply within the records of the therapeutic
6 healthcare professionals in terms of medication and
7 attendance at the health care interventions ---

8 MS. GORDON: Objection, Your Honor. This is
9 beyond the scope. This is regarding 2008.

10 THE COURT: Let me see the attorneys up here
11 just a second, please. Would you turn off the
12 microphone?

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

15 THE COURT: All right. The objection's
16 sustained. Recross is limited to what was brought out on
17 redirect, and we're getting far afield from that.

18 MR. SAVAGE: Judge, we don't have any further
19 questions at this time.

20 THE COURT: Okay. You may step down. Thank
21 you so very much.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Mr. Foreman, ladies and
24 gentlemen of the jury, as I instructed you yesterday,
25 please don't read anything, don't watch anything about

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1 it, don't talk to anybody about it. In this case, I want
2 you to make a decision on what you hear from the sworn
3 testimony in the courtroom. Don't get on any electronic
4 devices and do any research. I'll see you in the morning
5 at nine thirty. Have a good evening. Leave your
6 notepads in your chair.

7 (WHEREUPON, the jury exited the open court at
8 approximately 5:10 p.m.)

9 THE COURT: May I see the attorneys up here
10 just a second, please? Well, longer than a second.
11 Could I see you up here?

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

14 THE COURT: All right. We're adjourned until
15 9:30 in the morning.

16 (WHEREUPON, court stood at recess in this case.)

17 *** END OF VOLUME I ***

1 July 11, 2012

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 9:36 a.m.)

5 THE COURT: We're still waiting on one juror.
6 Can I see the attorneys up here just a second?

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 THE BAILIFF: Your Honor, the jury's present.

10 THE COURT: Do we have all the jurors? Okay.
11 I understand we do have the last juror who is now
12 present.

13 Mr. Savage, I understand you would like to put
14 something on the record; is that correct?

15 MR. SAVAGE: Just so the Court is clear, I have
16 spoken to my client, Mr. Arroyo. I have spoken to all
17 the members of his family. I have indicated to him what
18 the potential would be if the jury comes back and finds
19 him guilty.

20 Is that correct?

21 MR. ARROYO: That is correct.

22 MR. SAVAGE: And I have also indicated to him,
23 without giving a definite number, the range that I would
24 project that this Court, based on the testimony the Court
25 has heard, based on the background of my client, sort of

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1 a range, based on my experience. I'm certainly not
2 committing the Court to any particular number. I have
3 provided that to Mr. Arroyo as well. He has expressed to
4 me that the collateral consequences of a sexual
5 conviction is tantamount to life imprisonment is what
6 he's told me. I have given him my advice on that.

7 I have also told him that it's his decision whether
8 or not to proceed or to request that I engage in further
9 contact with the Solicitor. He has not authorized me to
10 engage in further discussions with the Solicitor in an
11 attempt to mitigate the sentence that she is currently
12 recommending. I have told him that I thought I could be
13 successful in mitigating the current plea offer to a
14 limited sentence, but I have not been authorized to do
15 that.

16 THE COURT: Okay. Anything else?

17 MR. SAVAGE: Is that correct?

18 MR. ARROYO: Yes, sir, that's correct.

19 THE COURT: All right. Let me see the
20 attorneys up here just a second.

21 (WHEREUPON, a bench conference was held off the
22 record.)

23 THE COURT: All right. Bring in the jury,
24 please.

25 (WHEREUPON, the jury entered the open court at

1 approximately 9:45 a.m.)

2 THE BAILIFF: The jury's present, Your Honor.

3 THE COURT: Thank you very much. Does
4 everybody have their notepads and something to write
5 with? Thank you.

6 Solicitor, if you'll call your next witness, please.

7 MS. GORDON: Thank you, Your Honor. The State
8 calls Christopher Hochreiter.

9 **CHRISTOPHER HOCHREITER,**

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MS. GORDON:

13 Q. Good morning, Officer Hochreiter. How are you?

14 A. All right.

15 Q. Good. Did you work last night?

16 A. Yes, ma'am, I did.

17 Q. Have you been home to go to bed yet?

18 A. No, ma'am.

19 Q. We'll try to get you in and out as soon as we can.

20 I promise.

21 A. I appreciate that.

22 Q. Tell us -- tell the jury where you're employed now?

23 A. With the Charleston County Sheriff's Office.

24 Q. And back in 2009, were you employed with the Mount

25 Pleasant Police Department?

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Christopher Hochreiter - Direct Examination by Ms. Gordon

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1 A. Yes, ma'am, I was.

2 Q. What were your duties in September 2009 with the
3 Mount Pleasant Police Department?

4 A. I was a patrol officer. I answered calls for
5 service in the town of Mount Pleasant.

6 Q. On September 20th of 2009, did you have occasion to
7 come into contact with Melina Arroyo?

8 A. Yes, I did.

9 Q. Okay. Can you tell the jury about that?

10 A. While I was at our headquarters -- which is off of
11 Houston Norcutt in Mount Pleasant. And I was walking
12 back to my patrol vehicle which was parked in the front
13 parking lot. And I heard what sounded like a car
14 accelerating into our parking lot. I saw the headlights,
15 and I saw a sedan enter the parking lot. It started
16 driving towards me at an abnormally high rate of speed
17 for a car in a parking lot. And given that the vehicle
18 was driving towards me, I was mildly uncomfortable with
19 the fact that it was driving at the speed it was. So I
20 began to walk back towards the entrance of the police
21 department. However, the vehicle stopped a few feet away
22 from me, and a Hispanic came out, exited the driver's
23 seat, and walked towards me very quickly. She was very
24 upset. She was crying. She was screaming. She was
25 talking very quickly. She was pacing. And for the first

1 few minutes I couldn't understand most of what she was
2 saying because ---

3 Q. Did you understand any of the words coming out of
4 her mouth?

5 A. There was one particular phrase I heard her ---

6 MR. SAVAGE: Objection to hearsay, Your Honor.

7 MS. GORDON: Your Honor, excited utterance.

8 THE COURT: I'll overrule on one of the
9 exceptions. Go ahead.

10 Q. Go ahead.

11 A. There was one phrase that she did repeat several
12 times which was, I'm going to kill him, I'm going to kill
13 him, several times.

14 Q. Were there other people in the car with her?

15 A. Uh-huh (affirmative). There were -- I assumed they
16 were her children, and she confirmed later on that they
17 were.

18 Q. Were you able to get any other information from her?

19 A. She had said they came from her brother Erick's
20 house where she and her children were.

21 Q. And were you able to get enough information to
22 determine what she -- what had happened?

23 A. After we calmed her down, yes, ma'am, we did.

24 Q. And what was it that -- was the report of?

25 A. It was a criminal sexual conduct.

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1 Q. What did you do upon receiving that information?

2 A. I notified my direct supervisor at the time, which
3 was Corporal Driggers. And he happened to be at the
4 headquarters, so he stepped out in the parking lot. And
5 I advised him of the situation, and he contacted the on-
6 duty investigator which would have been Detective Bacon.

7 Q. Did you speak to the minor victim that night?

8 A. No, ma'am, I did not.

9 Q. Did you see her?

10 A. I did.

11 Q. What was she like?

12 A. Very disconnected.

13 Q. What do you mean by that?

14 A. She didn't seem like she was in tune with her
15 surroundings, so to speak.

16 Q. Can you describe how she looked or what it was about
17 her?

18 A. She was just looking straight forward in the car.

19 Q. Like kind of in shock?

20 A. Yeah. As if she had not even heard her mom yelling
21 as loudly as she was. And we were only ten or fifteen
22 feet away from her.

23 Q. Did you give Ms. Arroyo any instructions for that
24 night?

25 A. Well, after we talked to Detective Bacon, I advised

1 her to go somewhere safe for the night and not to contact
2 her brother and that Detective Bacon would contact her in
3 the morning.

4 Q. Were you afraid that she might actually kill her
5 brother that night?

6 A. Possibly.

7 Q. Was she -- is that the level of upset that she was?

8 A. To this day, I have never seen a woman as upset as
9 she was that night.

10 Q. Thank you.

11 MS. GORDON: I have nothing further.

12 THE COURT: Cross-examination?

13 MR. GIBBES: Thank you.

14 MS. GORDON: Your Honor, may I -- I'm sorry.

15 May I ask one other before we get started?

16 THE COURT: Yes, ma'am.

17 Q. Do you recall what time it was that she arrived at
18 the Mount Pleasant Police Department?

19 A. If I may reference my ---

20 Q. Would it refresh your recollection if you referred
21 to your police report?

22 A. Yes, ma'am, it would. I know it was late, but I
23 don't know the exact time.

24 MS. GORDON: May I approach?

25 THE COURT: Yes, ma'am.

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1 A. It was approximately eleven sixteen.

2 Q. Eleven sixteen?

3 A. Yes, ma'am.

4 Q. Thank you.

5 CROSS-EXAMINATION

6 BY MR. SAVAGE:

7 Q. Good morning.

8 A. Good morning.

9 Q. You're with the Charleston County Sheriff's
10 Department at this time?

11 A. Yes, sir.

12 Q. And the difference between the Sheriff's Department
13 and Mount Pleasant, Mount Pleasant has a more limited
14 jurisdiction. But your duties today are the same as
15 basically they were ---

16 A. Similar, yes, sir.

17 Q. --- just a different ---

18 A. On a larger scale, you might say.

19 Q. So in terms of your primary duty as a law
20 enforcement officer, it is to keep peace in the
21 community?

22 A. I would say that was a large part.

23 Q. Well, tell us -- instead of me telling you what it
24 is, what are your duties in terms of being in law
25 enforcement in the Charleston community?

1 A. Well, it's not so much to keep peace, but to protect
2 people would be our primary goal. Obviously, we protect
3 people.

4 Q. Well, is that limited to any category of person or
5 all people created equally?

6 A. As equal as we can.

7 Q. And what other things would you be obligated to do?

8 A. I'm not sure what ...

9 Q. Well, I guess the question is if you are to be fair
10 and impartial in enforcing the law, and you've seen
11 somebody who tells you they want to kill somebody, and
12 you believe they're going to kill somebody, as you've
13 testified to, what did you do to protect Erick Arroyo?

14 A. I ...

15 Q. Nothing?

16 A. No. That's right. I didn't.

17 Q. You didn't go by his home. Were you coming on shift
18 or were you going off shift?

19 A. We were -- I was in the middle.

20 Q. Didn't drive two or three minutes to his home, knock
21 on the door, ask him what was up, what were you doing?
22 This hysterical woman I met in the parking lot, I've
23 never seen anybody in my career in all these years that
24 was inflamed and as upset as she was. And she said she
25 was going to kill you. And in the records of the Mount

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1 Pleasant Police Department that night, there was evidence
2 that she had a gun. Are you familiar with that?

3 A. Well, I wasn't aware that there was a gun.

4 Q. You're not familiar with her ---

5 A. I wasn't aware if she had a gun at all.

6 Q. Did your supervisor, Corporal Driggers ---

7 A. Uh-huh (affirmative). Yes, sir.

8 Q. --- or Detective Bacon look into their records to
9 see what type of personality this person had that was
10 outraged in your parking lot who you thought was going to
11 run you over and then who was hysterical and told you she
12 was going to kill somebody that night?

13 MS. GORDON: Object, Your Honor. Personal
14 knowledge.

15 THE COURT: Overruled. Go ahead.

16 Q. Were any of the business records his personal
17 knowledge?

18 A. Business records were not my responsibility that
19 night.

20 Q. And nobody took the time to see the character of the
21 person you were dealing with?

22 A. Well, unfortunately, I can't testify to the things
23 that Detective Bacon would have done.

24 Q. Well, Corporal, in terms of what you observed that
25 night, you were alarmed?

1 A. Mildly.

2 Q. Mildly or not, you said that this was the most
3 distressed person you had ever seen in your career.

4 A. Up to that point, sure.

5 Q. And since then is what your testimony is. And she
6 threatened to kill somebody immediately.

7 A. She did.

8 Q. And in the records at the Mount Pleasant Police
9 Department at that time, you knew she was armed?

10 A. No, I didn't. I'm sorry. I did not know she was
11 armed.

12 Q. Because nobody looked?

13 A. I did not personally look, but I had no reason to
14 see if she was armed. It's not illegal to own a gun.

15 Q. You have indicted, Deputy, that this was a report of
16 criminal sexual conduct.

17 A. Uh-huh (affirmative).

18 Q. Is that correct?

19 A. Yes, sir.

20 Q. Tell us what was reported. Was there any sexual
21 battery reported that night?

22 A. I'm not sure I'm allowed to say that.

23 Q. Well, I'm asking you the question. Until somebody
24 tells me ---

25 A. Well, there was. There was.

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1 Q. All right. What specifically of a sexual battery
2 was reported to you that night? You can refer to your
3 notes.

4 A. The information that I was given was from Ms.
5 Arroyo. And it was from her daughter that her brother
6 had touched her breast area, had had her [sic] hands up
7 her shirt and was touching her breast area.

8 Q. All this experience you've had in law enforcement,
9 you do know what sexual battery is?

10 A. I know what sexual battery is now.

11 Q. Was a sexual battery reported that night?

12 A. Not per the law.

13 Q. You're not trying to mislead the jury are you?

14 A. No, not at all.

15 Q. You just assumed that it was a criminal sexual
16 battery, and that's how you handled it. Now, criminal
17 sexual battery is one of the most serious offenses of the
18 laws that you're required to enforce?

19 A. That's right. It is.

20 Q. Right up there with murder, armed robbery,
21 kidnaping?

22 MS. GORDON: Objection, Your Honor. Misstating
23 evidence.

24 THE COURT: I'll sustain the objection.

25 Q. You're aware of the felony laws in the State of

1 South Carolina?

2 A. Yes, sir.

3 Q. Are you aware that criminal sexual conduct is in the
4 same category as kidnaping and armed robbery?

5 MS. GORDON: Objection, Your Honor. May we
6 approach?

7 THE COURT: I'll sustain the objection.
8 There's not any relevancy to the question.

9 Q. At the police department do you have people who
10 focus on serious felonies?

11 A. We do.

12 Q. Would this be one of them?

13 A. Absolutely.

14 MS. GORDON: Objection, Your Honor.

15 MR. SAVAGE: On what grounds?

16 THE COURT: Overruled. Go ahead.

17 Q. In terms of the police department and their focus on
18 serious crime, would this be the focus of serious crime
19 in the Mount Pleasant Police Department?

20 A. Absolutely, yes, sir.

21 Q. And when there's serious crime, are you obligated or
22 do you have a choice in terms of verifying through police
23 investigation the credibility of witnesses, and do you
24 have an obligation to go to the crime scene to interview
25 potential witnesses or look for forensic evidence?

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1 A. Our procedures at the time at the Mount Pleasant
2 Police Department and my responsibilities as a patrol
3 officer were to make an initial contact report and then
4 notify the on-duty detective. After that, it is in their
5 hands.

6 Q. And would you be responsible for accompanying the
7 detective in uniform to the crime scene location to
8 ensure peace and good order?

9 A. If requested, yes.

10 Q. And cooperation?

11 A. Uh-huh (affirmative). If requested, we'll go.

12 Q. Was that requested that night?

13 A. No, sir.

14 Q. Was anything done by the Mount Pleasant Police
15 Department to investigate the reported criminal activity?

16 A. That night?

17 Q. Yes, sir.

18 A. No, sir.

19 Q. Nothing?

20 A. No, sir.

21 Q. Do you know whether the person you saw that night
22 when you confronted her in the parking lot was on the
23 telephone?

24 A. I was not made aware if she was on the telephone or
25 not.

1 Q. Did you observe her on the telephone?

2 A. I don't recall seeing her on the telephone.

3 Q. Does that mean you don't recall now or that it
4 wasn't important at the time to indicate whether she was
5 on the phone with someone?

6 A. I didn't -- I don't recall her being on a cell phone
7 at the time.

8 Q. Of course, she was not asked about who she was
9 talking to or anything at that point?

10 A. I don't recall her being on the cell phone, so I had
11 no reason to ask her.

12 Q. Was she asked by you or anyone else that night if
13 there were witnesses that would be important to
14 corroborate the information that was provided?

15 A. I didn't personally ask her that. But again, I
16 can't testify to what everybody else asked.

17 Q. Was there any questioning her of where the reported
18 misconduct took place?

19 A. She was pretty certain about the address and
20 location.

21 Q. And was there any conversation about where it took
22 place, the location where it took place? Not the address
23 but the location.

24 A. She mentioned a couch. She fell asleep on a couch,
25 and then there was another couch.

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1 Q. And there was no effort on law enforcement to go
2 back and look at the couch or obtain the clothing of the
3 person that they were wearing that night?

4 A. Not at that time.

5 Q. Was there ever any effort to go to the home, examine
6 the home, diagram the home, see the location and
7 proximity between the couch where the witnesses may have
8 been sitting? Was there any attempt to remove the
9 clothing as is typically done in a criminal sexual
10 conduct case? Is that not right?

11 A. Yeah.

12 Q. The clothing is usually taken into custody?

13 A. If available.

14 Q. And then scientifically tested to see whether there
15 is any evidence, forensic evidence, of the misconduct?

16 A. That's correct.

17 Q. What was the alleged victim wearing?

18 A. I don't recall.

19 Q. Wouldn't that have been important in testing
20 believability and credibility about taking clothes off
21 and the manner in which they were taken off?

22 A. Not in the initial contact, that wouldn't have been
23 done.

24 Q. But you know in the protocol that both the Sheriff's
25 Department has and Mount Pleasant had on September 20th,

1 2009, it instructs the investigating officer to take
2 control of the crime scene. It instructs the
3 investigating officer to, quote, obtain the clothing so
4 that it can be examined forensically, so it can be looked
5 for tears.

6 THE COURT: Mr. Savage, I hate to interrupt,
7 but he's not the investigating officer.

8 MR. SAVAGE: I understand that. But he's
9 knowledgeable about the protocol.

10 THE COURT: I understand that. Let's use --
11 he's the patrol officer. Let's use the right
12 terminology. He's not the investigating officer.

13 Q. In the protocol when you attended the criminal
14 justice academy, as all patrol officers and detectives
15 did, do you receive instructions of preserving evidence
16 of a crime scene?

17 A. To a certain extent, yes.

18 Q. And those policies that are taught to all police
19 officers include preservation of evidence?

20 A. That's correct.

21 Q. And evidence can be derived both from an alleged
22 victim and an alleged perpetrator?

23 A. Absolutely.

24 Q. And in sex crimes, evidence would include clothing

25 ---

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1 A. Uh-huh (affirmative).

2 Q. --- and forensic analysis of the location of both
3 parties?

4 A. That night sex was not alleged.

5 Q. Well, you said a sexual battery. You thought that a
6 sexual battery had occurred?

7 A. Well ...

8 Q. The question is, why wasn't anything done that
9 night?

10 A. Our procedure at the police department was to notify
11 our immediate supervisor. I, as a patrol officer, once I
12 notify my supervisor, my responsibility is gone. It is
13 in the hands of the supervisor.

14 Q. And so Detective Bacon would be the one responsible?

15 A. Detective Bacon was not my supervisor at the time.

16 Q. Corporal Driggers was?

17 A. Yes, sir.

18 Q. Is Corporal Driggers still with the Mount Pleasant
19 Police Department?

20 A. As far as I know, he is.

21 Q. Is Detective Bacon still with the Mount Pleasant
22 Police Department?

23 A. As far as I know, she is.

24 Q. And as far as you're concerned, that information was
25 passed up channel, and they'd be the responsible parties

1 to respond to these questions?

2 A. Yes, sir.

3 Q. Thank you, sir.

4 THE COURT: Any redirect?

5 MS. GORDON: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. GORDON:

8 Q. Based on your observations of Melina Arroyo and your
9 interactions with her that night, did you find what she
10 was saying to be credible?

11 A. Absolutely.

12 MR. SAVAGE: Objection, Your Honor. That's an
13 opinion that's improper.

14 MS. GORDON: Your Honor, he opened the door by
15 asking it on cross-examination.

16 THE COURT: Overruled. Go ahead.

17 Q. Based on your observations and your interactions
18 with Melina Arroyo that night, did you find her
19 allegations to be credible?

20 A. Yes, ma'am, I did.

21 THE COURT: Recross?

22 MR. SAVAGE: No, sir.

23 THE COURT: Okay. You may step down. Thank
24 you very much.

25 Call your next witness.

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1 Is there any objection to the officer being excused?

2 Mr. Savage, do you have any objection?

3 MR. SAVAGE: No, sir.

4 THE COURT: Okay. You may be excused. Thank
5 you very much.

6 MS. GORDON: The State calls Maria Steenkamp.

7 (WHEREUPON, the witness was duly sworn.)

8 MS. GORDON: Your Honor, may we approach
9 briefly?

10 THE COURT: Yes, ma'am. You want to approach
11 the bench?

12 MS. GORDON: Yes, Your Honor.

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

15 THE COURT: Ms. Foreman, ladies and gentlemen
16 of the jury, there's a matter I'm going to have to take
17 up out of your presence. Please leave your notepads in
18 the chairs. Please don't discuss the case. I'm going to
19 get you back just as soon as I can.

20 (WHEREUPON, the jury exited the open court at
21 approximately 10:07 a.m.)

22 THE COURT: Mr. Savage, if I may summarize the
23 bench conference. Mr. Savage, I understand that you
24 question the qualifications of Dr. Maria Steenkamp. And
25 I stated that you were entitled to cross-examine her in

1 front of the jury concerning her qualifications, but you
2 wanted the Court to make a determination in-camera prior
3 to any testimony being heard by the jury. Is that
4 correct, Mr. Savage?

5 MR. SAVAGE: That is correct.

6 THE COURT: Okay. All right. Do you have her
7 vitae ---

8 MS. GORDON: Would you like to see her C.V.?

9 THE COURT: --- I can sort of look at?

10 MS. GORDON: Are you looking for her C.V.?

11 THE COURT: Right. Solicitor, for what purpose
12 are you offering this witness, I guess I should ask, so
13 I'll know if I can look at it in a minute and tell.

14 MS. GORDON: Your Honor, she would be an expert
15 in -- she's a licensed clinical psychologist. She is an
16 expert in trauma related to psychologicals or trauma --
17 the effects of trauma. The effects of trauma.

18 THE COURT: All right. So she's a clinical --
19 she's a psychologist. And you're going to offer her to
20 be an expert as to how trauma affects individuals; is
21 that correct?

22 MS. GORDON: Yes, Your Honor. She would be
23 admitted as an expert in trauma-related psychology is the
24 terminology.

25 THE COURT: Okay.

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1 All right. What's your objection? And then we'll
2 take some testimony and let you cross or however you want
3 to proceed.

4 MR. SAVAGE: I'm not sure I have an objection
5 because I haven't had an opportunity to test her
6 qualifications to see if she can testify in this case?

7 THE COURT: Have you seen her C.V.?

8 MR. SAVAGE: Yes, I have.

9 THE COURT: Before today?

10 MR. SAVAGE: Yes.

11 THE COURT: Okay. All right.

12 MR. SAVAGE: Actually, I've seen her ---

13 MS. GORDON: Personnel file?

14 MR. SAVAGE: Yeah. I've seen pretty much
15 everything about her from the Medical University.

16 THE COURT: Well, let me ask you this. It's
17 your motion. How do you want the Court to proceed? Do
18 you want to take testimony?

19 MR. SAVAGE: I would like the opportunity to
20 question her under oath regarding her academic training,
21 her experience and qualifications to testify.

22 THE COURT: Okay. All right.

23 MR. SAVAGE: That would be part one. Part two,
24 depending on what area she's qualified in, then we would
25 have a legal argument regarding the parameters of that

1 testimony.

2 THE COURT: Okay. All right.

3 Solicitor, do you want to go forward or do you want
4 to go straight in to cross?

5 MS. GORDON: I can go forward, Your Honor. I
6 gave you my last copy of her C.V. If I could ask to
7 someone to make you an additional copy so that you can
8 ---

9 MR. SAVAGE: I have her old one and her new
10 one, so ...

11 THE COURT: Why don't you just mark the new one
12 as a Court exhibit, if you would, and y'all both can use
13 it.

14 MS. GORDON: I'm happy to. I'm not sure which
15 is ---

16 THE COURT: Which is the new one?

17 MS. GORDON: You've got the new one.

18 THE COURT: All right. Then mark it as the
19 Court's exhibit, and we can -- y'all can both use -- will
20 both be able to use it.

21 (WHEREUPON, Court's Exhibit Number 7 was marked for
22 identification only.)

23 THE COURT: Does anybody have a copy of the old
24 one I could look at?

25 MR. SAVAGE: I do, Your Honor.

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1 THE COURT: Thank you, sir.

2 MR. SAVAGE: Which is much thicker.

3 THE COURT: Much thicker? Oh, okay.

4 Thank you, sir.

5 **MARIA STEENKAMP,**

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 IN-CAMERA EXAMINATION

8 BY MS. GORDON:

9 Q. It's Dr. Steenkamp; is that correct?

10 A. That's correct.

11 Q. Dr. Steenkamp, can you tell us where you're
12 currently employed?

13 A. I'm currently a post-doctoral fellow at the Boston
14 V.A.

15 Q. And where did you receive your B.A.?

16 A. In South Africa at the University of Stellenbosch.

17 Q. And what was your Bachelor's Degree in?

18 A. Psychology and sociology.

19 Q. And then did you also receive a second bachelor's
20 degree in psychology?

21 A. Yes. I received an honors here in psychology.

22 Q. And then after that, what is your next degree?

23 A. I have a master's degree in psychology.

24 Q. And where was that from?

25 A. Also the University of Stellenbosch in South Africa.

- 1 Q. And that was in 2004?
- 2 A. I believe so, yes.
- 3 Q. And then what was your next degree after that?
- 4 A. I completed my Ph.D. in clinical psychology at
- 5 Boston University.
- 6 Q. In addition to your academic training, have you had
- 7 post-doctoral training?
- 8 A. Yes. I'm currently in post-doctoral training.
- 9 Q. And that's at the V.A. in ---
- 10 A. In Boston.
- 11 Q. --- Boston. What has been your experience and
- 12 training in the area of trauma?
- 13 A. My ---
- 14 Q. And let me make sure I'm using the correct word.
- 15 Trauma-related psychology.
- 16 A. Sure. My training throughout grad school was at the
- 17 National Center for P.T.S.D., so all my graduate training
- 18 was focused on post-traumatic stress disorder and other
- 19 disorders related to psychological trauma. My post-
- 20 doctoral fellowship right now is also a fellowship in
- 21 P.T.S.D.
- 22 Q. Do you hold any -- receive any honors as part of
- 23 your training, in academic training?
- 24 A. Do you mean in terms of awards and so forth?
- 25 Q. Yes.

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1 A. Yes, I received some honors and merits and so forth
2 while at Stellenbosh. And then I received a dissertation
3 award through Boston University.

4 Q. Do you currently hold any licenses?

5 A. I do. I'm a licensed clinical psychologist in the
6 State of New York.

7 Q. And have you held any teaching positions?

8 A. I was a teaching fellow at Boston University, and I
9 was also a lecturer at the University of Stellenbosh.

10 Q. What has been your clinical experience related to
11 trauma-related psychology?

12 A. As part of clinical psychology Ph.D., we're required
13 to complete several years of clinical work. That means
14 seeing patients and being supervised closely. So I
15 completed three years in Boston. One of those was at the
16 National Center for P.T.S.D., again at the Boston V.A.
17 And then I came down here for my clinical internship,
18 which is the final year of our Ph.D. in which we're
19 required to see patients full-time for a whole year. So
20 I did that here at M.U.S.C., and I did the trauma track.
21 In other words, the rotations of that internship that
22 emphasized psychological trauma.

23 Q. Have you ever testified as an expert before?

24 A. I have testified, but not as an expert. I'm not
25 sure if I was an expert actually. It was during an

1 internship. It was a custody hearing. And I was
2 treating the child, and they wanted my opinion about
3 placement.

4 Q. So you were asked to give an opinion related to
5 psychology in a court?

6 A. Yes.

7 Q. And have you published anything related to trauma-
8 related psychology?

9 A. I have.

10 Q. And you've given us a list here. Are there eight
11 publications in which you have participated? Does that
12 sound accurate?

13 A. That sounds about right, yes.

14 Q. Is it fair to say that the vast majority, if not
15 all, of your training and experience through undergrad,
16 graduate school, doctoral degree, post-doctoral
17 fellowship and clinical experience has all been related
18 to trauma-related psychology?

19 A. The majority of it, yes. Not all of it, but the
20 majority. That's what I consider my specialty.

21 Q. How many patients could you estimate that you've
22 seen related to trauma -- in regards to trauma-related
23 psychology?

24 A. Oh, boy. I guess between fifty and seventy. It's
25 just a guess off the top of my head. I haven't counted.

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1 MS. GORDON: Thank you, Your Honor.

2 THE COURT: Okay.

3 MS. GORDON: We would offer Dr. Steenkamp as an
4 expert in the field of trauma related psychology.

5 THE COURT: Mr. Savage?

6 MR. SAVAGE: Thank you, Your Honor.

7 IN-CAMERA EXAMINATION

8 BY MR. SAVAGE:

9 Q. Good morning, Doctor. I'm Andy Savage and I
10 represent the accused in this case.

11 A. Good morning.

12 Q. And I have, so that you know, received your quite
13 impressive resume as well as your information and the
14 application for the internship at the Medical University.
15 And part of the background information -- whatever H.R.
16 had in their notes ---

17 A. Sure.

18 Q. --- is what I have.

19 A. Okay.

20 Q. And I don't want you to think and I don't want this
21 Court to think in any way that I don't accept your
22 supreme academic credentials as well as the work
23 experience that you have had to date in the field of
24 trauma and how to react and how to counsel people who are
25 involved in trauma.

1 A. Uh-huh (affirmative).

2 Q. What I am going to focus on is the experience you
3 have had with children. And in reviewing your academic
4 record and your clinical experience at the Medical
5 University and your subsequent experience, that's the
6 area that I would like to question. Your excellent
7 resume ---

8 THE COURT: Can I interrupt just a second so
9 I'll -- for my edification. Did this doctor actually
10 examine the victim? Is she a hands-on examiner or is she
11 going to give an opinion based on records or both?

12 MR. SAVAGE: I don't know what they're going to
13 do.

14 THE COURT: I'm just asking the question. Has
15 she actually treated the victim?

16 MS. GORDON: Yes. Yes, Your Honor. She
17 treated this patient.

18 THE COURT: All right. Okay. Go ahead. I
19 just sort of wanted to know what ---

20 MR. SAVAGE: And that's another legal argument.
21 That's why I said ---

22 THE COURT: I understand. I just sort of
23 wanted to know what her role was. Go ahead. That
24 doesn't have anything to do with the qualifications right
25 now.

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1 Q. So Doctor, so you know where I'm going so there's no
2 surprise here is your experience with folks both
3 academically and in your private practice. And as I
4 understand it now, you are in Boston?

5 A. Correct.

6 Q. Associated with the university there?

7 A. Boston University.

8 Q. But employed with the V.A. program?

9 A. Technically I'm employed through the Boston V.A.
10 Research Institute, so I'm not a V.A. employee because of
11 my citizenship. I'm not a U.S. citizen. But, yes, for
12 all intents and purposes I work at the Boston ---

13 Q. But for the citizenship issue, you would be a V.A.
14 employee?

15 A. Exactly, yes.

16 Q. And in that employment, you have excelled in caring
17 for our veterans?

18 A. I work with veterans, yes.

19 Q. And particularly those veterans who have been
20 exposed to combat and who have psychological deficits
21 resulting from that experience?

22 A. I see a variety of different types of trauma within
23 the veterans. So whereas traditionally you think of the
24 V.A., you think of combat -- and that's, of course,
25 certainly the case. I do have a lot of patients who I

1 see primarily for having experienced child sexual abuse
2 or child physical abuse when they were younger. So I do
3 have a lot of patients in that regard. I also see
4 patients who were assaulted sexually while in the
5 military. And then I also see patients who have
6 experienced any other kind of trauma, just for example, a
7 mugging or bad car accident in a civilian life after, for
8 example, they left the military.

9 Q. Do you counsel with or do you treat families?

10 A. The V.A. does not typically offer family services.

11 Q. So your experience then would not be with anyone who
12 hasn't been discharged honorably from the service?

13 A. In my current position, that is correct.

14 Q. And I would assume then that they were all twenty
15 years or above?

16 A. Yes. Most of them, yeah.

17 Q. So your experience in terms of treatment
18 observations have been exclusively with adults?

19 A. In my current position?

20 Q. Yes.

21 A. That's correct.

22 Q. And prior to coming to the Medical University of
23 South Carolina for your internship, tell us what your
24 experience was at that time.

25 A. My clinical experience?

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1 Q. Yes.

2 A. I did one rotation at Boston University Center for
3 anxiety and related disorders. That is a clinic within
4 the university that specializes in anxiety. There I saw
5 many adults and some college-aged students, early teens.

6 Q. Did you ever treat, prior to coming to South
7 Carolina in your internship, children?

8 A. No, I did not.

9 Q. And so before South Carolina, after South Carolina,
10 you've had no experience with children victims of trauma?

11 A. That's correct.

12 Q. Now, while you were in South Carolina is the time
13 that you had experience then with children. And we know
14 that one of those children was the child who is the
15 accuser in this matter, Minor 1 ?

16 A. That's correct.

17 Q. In addition to her, did you have other children who
18 were victims of child abuse?

19 A. I did on that rotation.

20 Q. And how many total victims of alleged child abuse
21 have you treated?

22 A. Off the top of my head, including doing intake
23 assessments, psychological evaluations and so forth,
24 probably about ten, maybe fifteen.

25 Q. And out of those ten, how many did you find were

1 malingering?

2 A. There was one patient who I had a question about,
3 but it was very unclear. And I wouldn't go as far as to
4 call it malingering. It was not the patient in question
5 here.

6 Q. Was there any patient that you thought that you were
7 seeing that was not a victim of child abuse?

8 A. No, unless, of course, I was seeing them for reasons
9 not related to child abuse.

10 Q. Was there any child that you reported to your
11 supervisor or to others that you were concerned because
12 you felt they weren't appropriately being treated for
13 something under your care?

14 A. I'm not sure if I understand the question.

15 Q. In other words, of the children that you have seen
16 in your whole career ---

17 A. Uh-huh (affirmative).

18 Q. --- say ten ---

19 A. Uh-huh (affirmative).

20 Q. --- were there any that you differentiated the
21 diagnosis from those who had presented as a possible
22 victim of child abuse?

23 A. So you're asking were there any children that I saw
24 in my clinical work who told me they had been abused but
25 I did not believe them. Is that correct?

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- 1 Q. Correct.
- 2 A. No, none that come to mind.
- 3 Q. Now, with respect to your position, you were working
- 4 under the leadership or the direction of -- what do you
- 5 call it? Not professors but ---
- 6 A. Supervisors?
- 7 Q. --- supervisors and that sort of thing?
- 8 A. Yes.
- 9 Q. Is that correct?
- 10 A. That's correct.
- 11 Q. And your primary supervisor was Dr. A-C-I-E-R-N-O?
- 12 A. He was one of my supervisors on internship. He was
- 13 not the supervisor in this case. In fact, he worked at
- 14 the V.A., so he was in a completely different rotation.
- 15 My supervisor for this case in this rotation was Dr. Ken
- 16 Ruggiero at M.U.S.C.
- 17 Q. The question I asked was, was Dr. A-C-I-E-R-N-O your
- 18 supervisor?
- 19 A. Again, he was but not for this rotation. He did not
- 20 have any interaction with this patient and knew nothing
- 21 of this patient, and I never spoke to him about this
- 22 patient.
- 23 MR. SAVAGE: May I approach, Your Honor?
- 24 THE COURT: Yes, sir.
- 25 Q. Do you recognize that document?

1 A. Yes.

2 Q. Does that document accurately reflect your
3 evaluation of Dr. Acierno?

4 A. It does.

5 Q. Did you make more than one evaluation of Dr.
6 Acierno?

7 A. As part of our training, they ask all interns to
8 assess the supervisors, and likewise the supervisors
9 assess us, of course. And so halfway through the
10 rotation and towards the end of the rotation, we're asked
11 to evaluate them in a standard way. What I'm looking at
12 here is asking, you know, whether they're outstanding,
13 what are their expectations and so forth, and then to
14 write comments about our experience with that supervisor
15 in terms of whether we found them helpful and so forth.

16 Q. Would you mind reading the full paragraph at the
17 bottom of that evaluation?

18 A. Sure. I would like to emphasize though first that,
19 again, the evaluation that I'm reading is for a
20 supervisor who had absolutely nothing to do with this
21 case. In fact, it was a supervisor at the V.A., not at
22 this clinic.

23 Q. All right. Would you mind reading what it says
24 that's documented by date and in your handwriting? Not
25 today but what you wrote at the time during your

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1 internship.

2 MS. GORDON: Your Honor, I'm going to object to
3 relevance since this witness has stated this is a review
4 of a supervisor on a different rotation. I don't know
5 what it has to do with her qualifications.

6 MR. SAVAGE: Well, he hasn't heard what it
7 says.

8 THE COURT: Well, the way I understand it, if
9 she was doing her fellowship at M.U.S.C. But when they
10 do that at M.U.S.C., they also do clinical work at the
11 V.A. back and forth, is what I understand.

12 Is that correct?

13 THE WITNESS: It's a ---

14 THE COURT: I'm not sure what it has to do with
15 her qualifications. Now, it may have something to do
16 with whether she can give her opinion or not. But go
17 ahead. Let's get it out first, okay? Your objection's
18 overruled.

19 Q. Will you read, please, and then we can explain if
20 there's a need to explain later on ---

21 A. Sure.

22 Q. --- what you wrote.

23 A. Okay.

24 Q. And tell us the date on which you wrote it and what
25 it says.

1 A. So you'd like me to read from the top or just the
2 comments portion?

3 Q. I'd like you to read the date.

4 A. The date is November 5th, 2009.

5 THE COURT: Can you do me a favor? Give it to
6 me. I can read it. She doesn't need to read it. Let me
7 read it. I'm having difficulty understanding her and
8 hearing her, so give me something to read and let me look
9 at it. I don't need her reading to me. I can read.

10 MR. SAVAGE: Well, it needs to get in the
11 record.

12 THE COURT: I understand. But you can make it
13 part of the record. You can mark it a Court's exhibit,
14 whatever you want to mark. Just let me read it, okay,
15 please? I don't need her reading it to me.

16 Q. Well, Doctor, what so far we've had a difficult time
17 getting you to do is to say what that reports says. Does
18 it not say that he was your supervisor?

19 A. It does.

20 Q. And in your words it says he is your primary
21 supervisor?

22 A. It also says ---

23 Q. Is that correct?

24 A. It also says at the top ---

25 Q. Is that correct?

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- 1 A. It is correct, yes.
- 2 Q. And in your handwriting on that date you listed him
- 3 as your primary supervisor?
- 4 A. Yes.
- 5 Q. And in that report you give him terrible remarks?
- 6 A. I did.
- 7 Q. For the supervision he employed over you?
- 8 A. I did.
- 9 Q. Now, you further say you evaluated other
- 10 supervisors.
- 11 A. Uh-huh (affirmative). Some of them, not all of
- 12 them.
- 13 Q. And who is the supervisor that you consulted with
- 14 regarding your treatment of the ten children that you
- 15 have stated you treated in your internship?
- 16 A. That supervisor was Dr. Ken Ruggiero at M.U.S.C.
- 17 Q. And did you make any notes or did you prepare any
- 18 summaries of his supervision in terms of how often you
- 19 met, what you discussed with him, what he encouraged you
- 20 to change, what he encouraged you to do?
- 21 A. Are you asking whether I did a similar evaluation of
- 22 him?
- 23 Q. Yes.
- 24 A. I don't believe I did one formally on the computer.
- 25 I think the evaluation he and I did was informal and

1 verbal.

2 Q. So as I understand your testimony, today, you say
3 that this supervisor who you wrote was your supervisor
4 was not really your supervisor, but the supervisor who
5 was really your supervisor, Dr. Ruggiero, you never were
6 asked to evaluate him as you would the non-supervisor; is
7 that correct?

8 A. Can I clarify how the rotations work because I think
9 it would shed light.

10 THE COURT: Hold on a second. Mr. Savage, I
11 have read it, and you can mark it as a Court's exhibit if
12 you so desire so it will be a part of the record. Hold
13 on just a second.

14 (WHEREUPON, Court's Exhibit Number 8 was marked for
15 identification only.)

16 MR. SAVAGE: Your Honor, Court's Exhibit Number
17 8 are the two ---

18 THE COURT: Okay. Thank you very much.

19 I'm sorry. You were going to say something ---

20 THE WITNESS: I just wanted ---

21 THE COURT: --- and I interrupted you. I
22 apologize.

23 A. I was just going to clarify. I did four rotations
24 over the course of my internship here. Each of those
25 rotations was at a very different site. Two of them were

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1 at the V.A. but within different clinics at the V.A. One
2 was at the Crime Victims' Center at M.U.S.C., which is
3 where I saw this patient. And another one was in a
4 clinic in North Charleston. Each of those are very
5 separate entities, although they fall under the umbrella
6 of the M.U.S.C. slash V.A. internship. We are supervised
7 by different supervisors within each of those rotations.
8 Those supervisors are completely independent and have no
9 knowledge of any other patients that we see in other
10 rotations. So for example, my supervisor at the V.A.
11 rotation would have known absolutely nothing about the
12 patients I was seeing at the M.U.S.C. rotation and vice
13 versa. That specific evaluation is for my V.A.
14 supervisor. He was my primary supervisor at the V.A.
15 That's correct, Mr. Savage. However, he was not -- had
16 nothing to do with the patient in this case. So I just
17 want to clarify that just so everyone's clear that he was
18 not the primary supervisor in this case.

19 Q. So the report that's now Court's Exhibit 8 has to do
20 with the bureaucratic supervision of you as a person; it
21 has nothing to do with your treatment of the child who is
22 the accuser in this case. Is that fair?

23 A. This report that I wrote, you mean?

24 Q. Court's Exhibit Number 8, the two evaluations, one
25 in November and one in -- November of '09 and one in

1 February of '10, you're saying that those evaluations
2 have to do with somebody other than the supervisor of
3 your treatment of children?

4 A. That is correct. They reflect my evaluation of the
5 V.A. supervisor.

6 Q. And the subsequent question then was did you do an
7 evaluation of Dr. Ruggiero or anyone else in writing as
8 you did to Dr. Acierno?

9 A. There are typically two ways in which they are done.
10 In practice, it's a lot more informal. You can either
11 log into the computer and do a formal evaluation, or if
12 you want you can actually sit down during a meeting and
13 actually discuss your experiences with that supervisor.
14 And I did that latter option with Dr. Ruggiero, the
15 supervisor in this case.

16 Q. And the evaluation that you do of your supervisors
17 is really for the administrative process in evaluating
18 the professorial abilities of your supervisor?

19 A. It's a quality control type thing.

20 Q. And with respect to Dr. Ruggiero and his supervision
21 of you in the child clinic, there is no such evaluation
22 tool that Dr. Ruggiero's supervisors could use in rating
23 him?

24 A. That tool, that exact same tool, is available to
25 grade him and evaluate him. However, I did not use it

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1 because I had done so verbally with him already, and it
2 would have been redundant.

3 Q. And did you have that same conference with his
4 supervisors?

5 A. Whose supervisors?

6 Q. Dr. Ruggiero's, so that his supervisors could tell
7 whether he was doing a good job.

8 A. No. I don't believe he -- you know he has a boss in
9 the clinic, but he himself is a licensed clinical
10 psychologist. So it sort of ends with him.

11 Q. Now, while you were here, you were here for
12 approximately one calendar year?

13 A. That's correct.

14 Q. And in that calendar year, you had four separate
15 rotations?

16 A. That's correct.

17 Q. Did this child who's the accuser in this case
18 overlap those rotations?

19 A. No. I believe I saw her as just part of the one
20 six-month rotation at the Crime Victims' Center.

21 Q. So four rotations ---

22 A. Uh-huh (affirmative). So every six months we have
23 two, so each rotation was six months.

24 Q. And the rotation was completed with this child?

25 A. That's correct. So we get assigned new patients at

- 1 the start, we see them through, and then we leave.
- 2 Q. And the rotation in which you saw the child would
- 3 have been one of the two rotations ---
- 4 A. Uh-huh (affirmative).
- 5 Q. --- the other one being under the supervision of Dr.
- 6 Acierno?
- 7 A. I saw this patient in the second half of the year.
- 8 I was supervised by Dr. Acierno the first half of the
- 9 year.
- 10 Q. I'm sorry?
- 11 A. I saw this patient in the second half of the year,
- 12 so the second-batch of rotations. Dr. Acierno supervised
- 13 me in the first batch of rotations at the V.A.
- 14 Q. All right. Well, these evaluations, particularly
- 15 the one in February of 2010, did you see the child during
- 16 that time period?
- 17 A. I think I first did my intake evaluation of her in
- 18 February, I believe. I'll double check.
- 19 Q. In intake?
- 20 A. Yeah. We always first start seeing patients with an
- 21 intake assessment.
- 22 Q. Did anyone else see this child at the Medical
- 23 University besides you?
- 24 A. Yes.
- 25 Q. And who would that be?

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- 1 A. That was the psychiatrist on staff at the Crime
2 Victims' Center, Dr. Kruse (phonic).
- 3 Q. And did you interchange notes to form the opinion
4 that you are going to give the Court today?
- 5 A. We might have informally collaborated. I forget.
6 Nothing major that comes to mind, no. It wasn't typical
7 practice unless there was something really out of the
8 ordinary.
- 9 Q. And is that doctor a child psychiatrist?
- 10 A. I believe so, yes.
- 11 Q. Do you promote yourself -- and I don't mean that in
12 a disrespectful way. But do you inform the public that
13 you -- do you represent yourself as a child psychologist?
- 14 A. No, I do not.
- 15 Q. Is there a difference between child psychology and
16 adult psychology?
- 17 A. That's a complicated question, but yes. Typically,
18 a child psychologist would call themselves child
19 psychologist and specialize in that and have that be
20 their primary thing.
- 21 Q. And within psychology there are very definitive
22 areas prescribed by the national boards, the American
23 Psychological Association?
- 24 A. Uh-huh (affirmative).
- 25 Q. And within those ranges of expertise, there is a

- 1 speciality of child psychology, correct?
- 2 A. I believe so, yes.
- 3 Q. There's a specialty for psychology for treatment of
- 4 sexual assault victims?
- 5 A. That's not a formally designated specialty though.
- 6 Informally, yes.
- 7 Q. Like Dr. Kilpatrick, for example?
- 8 A. Uh-huh (affirmative).
- 9 Q. Whom you're familiar with?
- 10 A. Sure.
- 11 Q. He is nationally known as a expert in sexual assault
- 12 treatment of victims?
- 13 A. Sure.
- 14 Q. Dr. Ben Saunders at the Medical University likewise?
- 15 A. Uh-huh (affirmative).
- 16 Q. Dr. Connie Best at the Medical University likewise?
- 17 A. That's correct.
- 18 Q. You don't have their expertise in that area; isn't
- 19 that correct?
- 20 A. They're much more advanced in their careers, for
- 21 sure.
- 22 Q. But they promote themselves as child psychologists
- 23 or sexual assault treatment psychologists as defined by
- 24 the A.P.A.?
- 25 A. That I don't know. I don't know how they define

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1 themselves. In terms of sexual assault, I think they
2 would probably -- and again, I can't speak for them. But
3 I'm guessing they would probably classify themselves
4 rather as trauma experts or P.T.S.D. experts. There's
5 not a specific designated official category of being a
6 sexual assault specialist. For example, I did my
7 dissertation on sexual trauma. Whether I would call
8 myself a sexual trauma expert, I mean, I could.

9 Q. But the A.P.A., that professional governing body
10 does define child psychologist as a specialized field?

11 A. Sure, they do.

12 Q. The A.P.A. defines sexual trauma treatment as a
13 specialized field?

14 A. I'm not a hundred percent sure on that, on the
15 latter one. I know, for example, major branches like
16 forensic psychology and so forth are considered sub-
17 specialties. Clinical psychology is a sub-specialty.
18 Whether there's, you know, an actual specialty of sexual
19 trauma, I personally have never heard of formally
20 recognized as such.

21 Q. How about child psychology?

22 A. Child psychology, yes.

23 Q. How about forensic psychology?

24 A. Yes, forensic psychology.

25 Q. And do you promote yourself as having any of that

1 expertise?

2 A. As a forensic or child psychologist?

3 Q. Yes.

4 A. No, I do not.

5 Q. Have you ever testified before as an expert with
6 respect to interpretations of treatment for victims of
7 child sexual abuse?

8 A. I am not sure. Again, I did, during internships,
9 testify during a custody hearing for a child who had been
10 removed from a home because of abuse. I am not sure if
11 that qualifies as being an expert.

12 Q. Do you remember what your particular qualifications
13 were that the court approved for your testimony?

14 A. I was his therapist at the time, and they wanted my
15 recommendation. Whether or not it was seen as an expert
16 witness, I am not sure. I'm sorry.

17 Q. Would you agree, based on your training in the
18 medical field, that medical doctors have different
19 specialties?

20 A. Definitely, yes.

21 Q. And perhaps you know that lawyers engage in
22 different specialties as well?

23 A. Of course.

24 Q. And psychologists, I'd assume?

25 A. That's true.

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- 1 Q. And you would concede -- you do agree with that?
- 2 A. I would what?
- 3 Q. You would agree with that, right?
- 4 A. Of course, yes.
- 5 Q. Not all psychologists are the same?
- 6 A. Not all psychologists are the same. No, I agree.
- 7 Q. Now, of the ten children that you treated at the
- 8 Crime Victims' Center, how many of them were victims of
- 9 emotional or physical abuse?
- 10 A. Those were typically the patients that we saw. I'm
- 11 trying to think of exceptions right now. None come to
- 12 mind. I can't say -- again, this was two and a half
- 13 years ago. I can't say definitely that there wasn't one.
- 14 But most children that we see at the Crime Victims'
- 15 Center have been abused in some way. There are, of
- 16 course, exceptions. Other kinds of traumas happen to
- 17 children.
- 18 Q. All right. So in narrowing what we're talking
- 19 about, and that is your experience.
- 20 A. Uh-huh (affirmative).
- 21 Q. Of the ten children in your career that you've seen,
- 22 how many of them were victims of child sexual abuse?
- 23 A. Again, this will have to be a guess. I'm assuming
- 24 at least eighty percent of them.
- 25 Q. So eight?

1 A. Yes.

2 Q. Have you testified before as to any of those eight
3 children?

4 A. No, I have not.

5 Q. Have you been asked your opinion by any attorneys,
6 D.S.S. workers?

7 A. Not attorneys. I'm not sure if there were trials or
8 not. I did routinely, as part of my job at the Crime
9 Victims' Center, interact with D.S.S.

10 Q. As the result of your experience at the Medical
11 University with these eight children, have you written
12 any treaties or publication for any periodicals in the
13 field of psychology? Have you taught any classes or
14 given instruction at an American Psychological
15 Association or any similar type of organization to
16 express to your colleagues your expertise in the field of
17 child psychology and trauma and victims of sexual abuse?

18 A. No, I have not.

19 Q. Thank you, Doctor.

20 THE COURT: Jo, let me see the C.V. that's
21 marked.

22 MS. GORDON: I've got it.

23 THE COURT: Oh, you walked off with it?

24 MS. GORDON: I walked off with it. It's my
25 fault.

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1 THE COURT: Okay.

2 All right. Is there any redirect?

3 MS. GORDON: No, Your Honor.

4 THE COURT: This is number 7; is that correct?

5 MADAM COURT REPORTER: Yes, sir.

6 THE COURT: What number would this be?

7 MADAM COURT REPORTER: 9

8 THE COURT: Mark that as 9.

9 (WHEREUPON, Court's Exhibit Number 9 was marked for
10 identification only.)

11 THE COURT: Thank you, ma'am.

12 Dr. Steenkamp, referring to your C.V., I see where
13 from September '04 to January 2011 you received a
14 doctorate in physiology [sic]. And your dissertation was
15 Early Trajectories of Adjustment Due to Sexual Assault.

16 DR. STEENKAMP: That's correct. Psychology,
17 yes.

18 THE COURT: Then -- let me see -- August '08 to
19 May of '09, your dissertation study on Early Trajectories
20 Adjustment to Sexual Assault. Is that correct?

21 DR. STEENKAMP: That's correct.

22 THE COURT: You have a conference presentation
23 on, it looks like, Exploration of Effects of Sample
24 Sexual Assault Survivors. Is that correct?

25 DR. STEENKAMP: I believe so, yes. It was a

1 conference presentation, yeah.

2 THE COURT: And you also did a Predicators of
3 Adjustment to Sexual Assault on November 2008. Is that
4 correct?

5 DR. STEENKAMP: I believe so, yes.

6 THE COURT: All right. Were all those
7 dissertations or studies involving adults, or were some
8 children involved in those?

9 DR. STEENKAMP: Adults.

10 THE COURT: Adults only? Have you ever done
11 any of those type of studies on children?

12 DR. STEENKAMP: No, I have not.

13 THE COURT: Is there a difference between a
14 trauma-related treatment of a child versus trauma-related
15 treatment of an adult?

16 DR. STEENKAMP: They follow the same
17 principles, and they use the same strategies. But of
18 course, they are tailored towards children. For example,
19 you might color pictures and things like that which, of
20 course, you wouldn't really do with adults. But they
21 follow the same strategies and approaches and rationales.

22 THE COURT: And so the philosophy behind the
23 treatment is the same?

24 DR. STEENKAMP: Exactly.

25 THE COURT: It's just how it's handled and how

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1 ---

2 DR. STEENKAMP: How it's presented.

3 THE COURT: --- how it's presented to the
4 patient?

5 DR. STEENKAMP: Exactly, yes.

6 THE COURT: Okay.

7 All right. Does anybody have any questions in light
8 of what the Court has asked? I'll give you an
9 opportunity to ask that. I wasn't trying to usurp
10 y'all's authority. I just had some questions since I've
11 got to rule on whether she's qualified and what she's
12 qualified to do.

13 MR. SAVAGE: No, Judge. I think that's very
14 helpful because obviously Dr. Steenkamp's academic
15 training and practical experience ---

16 THE COURT: Well, for right now, do you have
17 any questions. I'll listen to your argument later. Do
18 you have any questions based upon what I asked her? I'll
19 give you the opportunity to ask whatever you want to ask.

20 MR. SAVAGE: Yes.

21 IN-CAMERA EXAMINATION

22 CONTINUED BY MR. SAVAGE:

23 Q. Dr. Steenkamp, not from your position, but the Court
24 addressed you in terms of the variance between children
25 and adults.

1 A. Uh-huh (affirmative).

2 Q. And you responded to the Judge that you did not have
3 any experience in these practicums and treaties that
4 would go with children.

5 A. Correct.

6 Q. And the American Psychological Association, not you,
7 but the overreaching authority for a licensed
8 psychologist does distinguish by expertise between
9 children and adult treatment?

10 A. Correct.

11 Q. And that's what, in terms of the evaluation of
12 experts under the American Psychological Association, is
13 based. They distinguish between treatment of children
14 and treatment of adults?

15 A. Correct.

16 Q. And your experience, as you told the Court, has been
17 with adults only?

18 A. Correct.

19 MS. GORDON: Your Honor, I have just a couple.

20 THE COURT: Pardon me?

21 MS. GORDON: I have just a couple.

22 THE COURT: Okay.

23 IN-CAMERA EXAMINATION

24 BY MS. GORDON:

25 Q. Dr. Steenkamp, do you have experience treating

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1 children in a clinical setting as a psychologist?

2 A. Yes, as part of this rotation.

3 Q. And I think you said you had treated ten to fifteen
4 children?

5 A. Approximately, yes.

6 Q. And is the diagnosis of post-traumatic stress
7 disorder -- is it a different criteria for diagnosing an
8 adolescent, particular a thirteen-year-old, versus an
9 adult?

10 A. No.

11 Q. Was your ...

12 MS. GORDON: Nothing further, Your Honor.

13 THE COURT: All right. Do y'all want to make
14 any arguments, or do y'all just want me to rule?

15 MR. SAVAGE: Well, I'm worried about the people
16 ---

17 THE COURT: I'm sorry, what?

18 MR. SAVAGE: I'm worried about the people a
19 hundred miles from here. I'm satisfied, but I think that
20 I'd better argue that she's not qualified under 702. Not
21 on her personal opinion and not on her ability as an
22 expert. It's just that she doesn't have the experience
23 in this field. You might have heard what the Solicitor
24 said taking the eight children that she saw at most in
25 this internship was the only children she's ever had any

1 affiliation with as a professional. The Solicitor makes
2 that ten to fifteen. Well ---

3 THE COURT: I think she testified ten to
4 fifteen.

5 MR. SAVAGE: I don't believe so.

6 THE COURT: She had testified ten to fifteen.
7 You said ten but she did expand it to fifteen.

8 MR. SAVAGE: I believe her testimony ---

9 THE COURT: The witness expanded it to fifteen.

10 MR. SAVAGE: I believe that the witness, no
11 question in my mind, testified that there were eight ---

12 THE COURT: That were children, I believe.

13 MR. SAVAGE: Eight at the most children who
14 suffered proposed sexual abuse. Is that not correct?

15 THE COURT: That's correct. She said eight
16 children exposed to sexual abuse, ten to fifteen
17 treatment of children during her fellowship, is what she
18 said.

19 MR. SAVAGE: With a fifty percent deference.

20 THE COURT: I mean, you're correct about the
21 eight. I'm just saying that ---

22 MR. SAVAGE: And the A.P.A. -- the witness has
23 testified that the overreaching authority in this area,
24 not the legal authority but the psychologist professional
25 organization, that delineates expertise says there's a

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1 difference between children and adults. It's clear from
2 the records that the Court reviewed that her supervision
3 of the professors at the Medical University was
4 insufficient. If there was another supervisor ---

5 THE COURT: I don't think the supervision issue
6 has anything to do with it. That's something local that
7 she was supervised. She was writing a resume or a report
8 on her supervisor. That doesn't have anything to do with
9 her qualifications. It's absolutely immaterial. Whether
10 she liked the guy, didn't like him or hated him, it's
11 immaterial.

12 MR. SAVAGE: I agree with that part doesn't
13 count. But whether or not he supervised her, she's a
14 student.

15 THE COURT: Well, he supervised her at the V.A.
16 All the children treated were at M.U.S.C. There was a
17 different supervisor there. So what happened at the V.A.
18 is totally immaterial from this Court's perspective.
19 Okay? Right or wrong. Okay?

20 MR. SAVAGE: The Court, if you would -- there
21 was a supervisor at the children's hospital or at the
22 Crime Victims', but we don't have that report. That's --
23 the State has the obligation, Judge, under the rules
24 governing experts to show that they have expertise.
25 That's what the rule of evidence says, that the burden is

1 on the State to qualify an expert witness under South
2 Carolina Rule of Evidence 702. So what we have done is
3 questioned the supervision. The State has the obligation
4 under 702, not the defense, to qualify. She has no
5 experience with children, very limited experience with
6 children during this internship at the Medical
7 University. So as a student there, not as a professor
8 there. She's a student. And the student then would be
9 under somebody else's supervision. They say Dr.
10 Ruggiero. Dr. Ruggiero's available. Then they have an
11 obligation to bring Dr. Ruggiero in. The law is very
12 clear on that. Your Honor, we have provided you with
13 three different cases in the medical field that the
14 Supreme Court has ruled that a podiatrist is not the same
15 as an orthopaedic. That in the car mechanics field, the
16 Court has ruled that a mechanic is not the same as an
17 expert on cruise control. So while the overreaching
18 expertise is accepted, we agree with her. But she
19 doesn't have the specialized knowledge that would allow
20 her to be an expert in the field of child psychology.
21 This is a child's case. You will note, Your Honor, that
22 the alleged offense is criminal sexual conduct with a
23 minor. It doesn't say criminal sexual conduct. It
24 delineates a minor. So the expertise that we need at
25 this trial on these charges is a psychologist that is

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1 specially trained or who has employment history, has
2 expertise with minors. That's what the State has chosen
3 to charge, a minor. And she has no experience with
4 minors.

5 THE COURT: Thank you very much.

6 Solicitor?

7 MS. GORDON: Thank you, Your Honor.

8 THE COURT: I didn't mean to cut you off. Were
9 you through, Mr. Savage?

10 MR. SAVAGE: Yes, sir.

11 THE COURT: Thank you very much.

12 Solicitor?

13 MS. GORDON: Under the Rule, Dr. Steenkamp has
14 the requisite knowledge and experience to be considered
15 an expert in the field of trauma-related psychology.
16 She, in addition, has expertise related to the treatment
17 of children because she has treated, in her words, ten to
18 fifteen. Mr. Savage tried to pin her down to eight.
19 What she said was eighty percent of the ten to fifteen.
20 She couldn't give an exact number. But Mr. Savage chose
21 ten and then eighty percent, and he chose eight. That's
22 not unusual for a doctor of any sort to say they couldn't
23 state how many people they've treated.

24 There is nothing in the rules or the case law that
25 requires her to be the preeminent expert in the field or

1 the person with the most experience in the field or there
2 would only be one expert in every field. She has the
3 requisite knowledge. She has certainly more knowledge in
4 an area that may be difficult for a jury to understand.
5 She has the requisite knowledge, experience and education
6 to testify as an expert in the field of trauma-related
7 psychology.

8 THE COURT: Well, let me ask you a question.
9 I've got to assume that she made a diagnosis of post-
10 traumatic stress syndrome?

11 MS. GORDON: That's correct, Your Honor. I
12 have one more statement, if that's all right.

13 THE COURT: Okay.

14 MS. GORDON: There is nothing that requires --
15 just like a general practitioner can treat a child, you
16 don't have to be a pediatrician for a G.P. to see a
17 child. You do not have to be a child psychologist to
18 treat a child. They are authorized to treat children.

19 THE COURT: I understand.

20 MS. GORDON: Thank you, Your Honor.

21 THE COURT: All right. We're going to take a
22 -- let me see. We've been here for about an hour and a
23 half. We're going to take about a ten- or fifteen-minute
24 break, okay?

25 You may step down. Just don't discuss the case

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1 during the break, okay?

2 DR. STEENKAMP: Okay. Thank you.

3 (WHEREUPON, court stood at recess for a short
4 break.)

5 THE COURT: All right. The Court is going to
6 find Maria M. Steenkamp, Ph.D., who is a psychologist, is
7 qualified as an expert in trauma-related injuries. The
8 Court finds that the clinical procedures and treatment
9 are the same for adults and children; however,
10 presentation is different. The diagnosis of post-
11 traumatic stress -- the diagnosis is the same for adults
12 and children. The presentation is different, according
13 to *Watson versus Ford Motor Company*. And the Court finds
14 that the expert has the required requisite knowledge and
15 skill to qualify as an expert in a particular subject
16 matter of trauma-related. And in the case of *State*
17 *versus Henry*, two D.S.S. workers were qualified as
18 testifying about sexual abuse in children. And I feel
19 certain that this psychologist has much better
20 qualifications than two D.S.S. workers.

21 Now, as far as what that means and what she's going
22 to offer, I have no earthly idea what type of testimony
23 she's going to offer. Now, I'm not -- it's hard for me
24 to judge.

25 What are you going to offer her to do, Solicitor?

1 MS. GORDON: Your Honor, she is here ---

2 THE COURT: Is she going to be a treating
3 physician and talk about what her diagnosis was and her
4 prognosis?

5 MS. GORDON: That is correct, Your Honor. She
6 will talk about her diagnosis, her treatment and just the
7 type of symptoms that presented or the common symptoms
8 and how she diagnosed her and how she treated her. And
9 was the treatment helpful.

10 THE COURT: And factually justify what she's
11 found as far as her ---

12 MS. GORDON: Yes, sir.

13 THE COURT: But she's not going to go into any
14 grooming effects or anything like this?

15 MS. GORDON: She will not be testifying about
16 grooming. That is not her area.

17 THE COURT: Because I've got some real problems
18 on how far I'm going to let you go into the sexual --
19 child sexual syndrome, for lack of a better word. Do you
20 understand what I'm saying?

21 MS. GORDON: That is not her area of expertise.

22 THE COURT: Because I'm not going to let you go
23 there. I'm going to treat her as a treating physician.
24 Her diagnosis, how she arrived at the diagnosis, her
25 prognosis.

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1 MS. GORDON: Yes, Your Honor.

2 THE COURT: Understand?

3 MS. GORDON: Yes, Your Honor.

4 THE COURT: That's what I'm limiting it to.

5 MS. GORDON: That's correct. That's what we
6 are offering her for, Your Honor.

7 THE COURT: Okay. All right. Now, how do
8 y'all want to proceed? Do y'all -- Mr. Savage, do you
9 want to go through the cross in front of the jury or what
10 is your pleasure?

11 MR. SAVAGE: Judge, as you know, this is an
12 evolving area of the law.

13 THE COURT: I understand. And I've ruled and I
14 don't need any more arguments. Okay?

15 MR. SAVAGE: No, I'm not going to argue.

16 THE COURT: Okay.

17 MR. SAVAGE: I just want to say it's an
18 evolving area of the law.

19 THE COURT: I understand.

20 MR. SAVAGE: Last week the State, in a case
21 that they appealed from the Court of Appeals, the Tapp
22 case out of Charleston that was handed down by the
23 Supreme Court a month ago.

24 THE COURT: And the Supreme Court reversed the
25 Court of Appeals and said the Court is still the

1 gatekeeper and you've got to make a determination of the
2 qualifications.

3 MR. SAVAGE: Exactly.

4 THE COURT: And on science. The big thing's
5 the science. Is it proper basis for the sciences
6 involved?

7 MR. SAVAGE: And that case also said that the
8 circuit judge should have then evaluated the substance of
9 prodance (phonic) testimony to determine if it was
10 reliable. So reliability is -- now -- it wasn't two
11 months ago, but now it is a separate issue.

12 THE COURT: Well, I understand that. That's
13 why I said I don't know where she's going at this point
14 in time. We've still got that hurdle to go across.

15 MR. SAVAGE: Yeah. And I think then that
16 they're required to proffer that. We can cross-examine.
17 But then the Court makes another determination whether
18 the testimony would be reliable.

19 THE COURT: Well, that's why I asked you, do
20 you want to do it now or do you want to do it as we go
21 through the testimony in front of the jury?

22 MR. SAVAGE: Oh, I think that it has to be done
23 before the ---

24 THE COURT: Well, I'll be happy to do it either
25 way.

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1 MR. SAVAGE: Before the jury hears it. I think
2 we're required to do it that way.

3 THE COURT: I don't think we're required to. I
4 mean, I can deal with it with objections, but I'll do it
5 however you want to do it. I'm not trying to -- the case
6 doesn't say how we're supposed to do it. And I'm at your
7 pleasure on that, Mr. Savage. You want to do it here?

8 MR. SAVAGE: Yes.

9 THE COURT: Okay. That's fine.

10 Let's go, Solicitor.

11 IN-CAMERA EXAMINATION

12 BY MS. GORDON:

13 Q. Dr. Steenkamp, did you, in your term or your
14 rotation at the Crime Victims' Center at the Medical
15 University of South Carolina, did you have an opportunity
16 to meet and treat a patient by the name of Minor1 ?

17 A. Yes, I did.

18 Q. When did you first see her?

19 THE COURT: Let me correct one thing. Two
20 social workers *Honea versus Prior*, 369 S.E.2d 846. I
21 just want to put that on the record. Go ahead.

22 Q. Dr. Steenkamp, when did you first see Minor1 ?

23 A. I believe it was February 2010 when I first did the
24 intake.

25 Q. Why was she referred to you?

1 A. She was referred to our clinic because of alleged
2 child sexual abuse, and she was having some symptoms,
3 psychological symptoms, that might benefit from
4 treatment.

5 Q. What was the result of your assessment?

6 A. We made a diagnosis of post-traumatic stress
7 disorder or P.T.S.D.

8 Q. What is P.T.S.D.?

9 A. P.T.S.D. is an anxiety disorder that sometimes
10 happens after an individual has experienced a trauma.
11 There are seventeen symptoms overall. We tend to divide
12 them into three clusters. The first is what we call the
13 re-experiencing symptoms. In other words, the trauma
14 keeps coming back to the person, for example, in the form
15 of nightmares, or it just pops into their mind when they
16 don't want them to.

17 The second cluster are what we call the avoidance
18 and numbing cluster. Numbing refers to emotional
19 numbing. Often the patient will report not really having
20 any feelings or they have a very constricted range of
21 feelings. The avoidance symptoms are really sort of at
22 the heart of P.T.S.D. in which the person does not want
23 to think about and does not want to talk about the
24 trauma. And the reason they don't want to is because it
25 brings up a lot of very difficult emotions.

1 The third cluster are what we call the hyper-arousal
2 symptoms. And those are things like irritability, having
3 difficulty sleeping, easy startle reflex and so forth.

4 Q. And to get a diagnosis of post-traumatic stress
5 disorder or P.T.S.D., do you have to have a symptom in
6 each of those categories, or how is that diagnosis made?

7 A. So to meet diagnostic criteria, you need to first of
8 all have a traumatic event. And then you need to have
9 met at least one re-experiencing symptom, three avoidance
10 or numbing symptoms and two hyper-arousal symptoms.

11 Q. And what symptoms did Minorl have?

12 A. She would have met for all of those clusters. I
13 believe she had the nightmares for sure and other re-
14 experiencing symptoms in terms of unwanted thoughts about
15 the abuse. Avoidance was very prominent, as it is with
16 most patients in the sense that she did not like to think
17 about it or talk about it. She tried to push it out of
18 her mind when the thoughts did come. And she definitely
19 reported difficulty sleeping -- that's one of the things
20 we focused on in treatment -- as well as anger and
21 irritability that, for example, we saw in conflicts with
22 her siblings.

23 Q. So she had symptoms in each category?

24 A. Yes. Each category. So the anger and irritability
25 and so forth is in the hyper-arousal category.

1 Q. Did you make a recommendation for treatment based on
2 her diagnosis?

3 A. I did. I recommended trauma focus therapy.

4 Q. Now, were you aware of other traumas that this child
5 had experienced in the past?

6 A. Yes.

7 Q. Okay. Were those traumas part of the -- the purpose
8 or part of the diagnosis of her current post-traumatic
9 stress disorder?

10 A. So when we do the initial intake assessment, we ask
11 the child for all traumatic and stressful experiences
12 that they've ever experienced. So she reported multiple
13 ones. But the way the P.T.S.D. diagnosis is made is that
14 you tie a specific diagnosis to a specific trauma. So
15 it's not a blanket category. It's P.T.S.D. related to
16 child sexual abuse. So this diagnosis was related to
17 child sexual abuse even though she had, also had, other
18 experiences of trauma.

19 Q. And how do you determine which trauma goes with this
20 P.T.S.D.?

21 A. Typically, the re-experiencing symptoms are what we
22 use the most. For example, are they having nightmares
23 about that specific trauma? Are there things that
24 they're trying to push out of their mind or not talk
25 about about that specific trauma.

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1 Q. How do you treat someone with P.T.S.D.?

2 A. There are different options for treatment. The gold
3 standard recognized by the American Psychological
4 Association and American Psychiatric Association tends to
5 be a family of treatments that we call trauma focus
6 therapy, which the crux of that is that you ask the
7 individual to really think about and talk about the
8 trauma. In other words, you're asking them to stop
9 avoiding thinking and talking about the trauma. This is
10 different from a lot of other therapies in which you
11 don't really ever talk about the trauma. You just focus
12 on day-to-day issues and stressors.

13 So we recommended trauma focus therapy for her, and
14 that was the treatment of choice within the clinic as
15 well.

16 Q. You stated in trauma focus therapy that you actually
17 force the -- or get the patient to deal with the trauma
18 and talk about the trauma?

19 A. Yes.

20 Q. How do you do that?

21 A. There are different options available to the
22 therapist. In this case, I did a technique which is
23 fairly popular in which you ask them to write about what
24 happened. In other words, to complete what we call a
25 trauma narrative in which they basically, you know, write

1 out in as much detail as they can remember what happened.

2 Q. And then do you go over that trauma narrative?

3 A. Yes. So typically we ask them to write it for
4 homework. So they go home and find kind of a time and a
5 place that's kind of, you know, comfortable and
6 confidential. And they then write out and then they
7 bring it in the next session. And typically they are
8 asked to then read it out loud, and the therapist helps
9 process with them what they wrote.

10 Q. How is that helpful? How does that work?

11 A. The idea behind P.T.S.D. -- and there's a lot of
12 research to support this -- is that people continue to
13 have the symptoms because they've never really fully
14 digested or processed the traumatic event. Because
15 they're so busy avoiding it and pushing it out of their
16 mind at all times and refusing to talk about it or think
17 about it, it's almost like the trauma just sits there
18 undigested. And it will continue to do that essentially,
19 you know, indefinitely, until the day that they do decide
20 to approach rather than avoid the trauma. And so again,
21 another term for the type of therapy that I did is called
22 exposure therapy because exposing yourself to something
23 is the opposite of avoiding it. And the rationale behind
24 it is that when you do expose yourself to it, you realize
25 that certain thinking patterns that you had about the

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1 event might not be entirely helpful or adaptive.

2 So you might, for example, have certain beliefs like
3 soft playing (phonic), which the therapist can address.
4 And you also learn something that we call habituation or
5 extension in which -- I guess the best example is if you
6 watch a very scary movie for the first time. So the
7 first time you watch it, you're all riled up and
8 emotional. But if I was to ask you to watch that same
9 movie over and over again, you know, by the fifteenth time
10 that you're watching that same movie, you're not going to
11 be as emotional. So that is an illustration of
12 habituation. And the idea is by asking the patient to
13 kind of go back there or relive it over and over, we have
14 the same effect so that one day they get to the point
15 where they can actually think about it, talk about it
16 without having that strong emotional reaction.

17 Q. Were you able to get to that point with Minor 1?

18 A. Yes.

19 Q. Describe how that happened. Was it the first time
20 she came in, the second time?

21 A. No. So the way this happens in trauma therapy is it
22 takes a while, and typically at least four months of
23 trauma processing. It's a -- she wrote multiple
24 narratives throughout the course of therapy. And as an
25 illustration of this habituation concept, I would ask her

1 when she brought in the narrative she had written for
2 homework to read it once through. And we use this little
3 pneumonic that we call a SUDS rating. It's basically
4 just a scale from zero to a hundred about how distressed
5 or anxious you are in the moment. And then we basically
6 track if -- you know, if she reads it once, it might be
7 very difficult, so she rates it like a ninety-eight. And
8 I ask her to read it again and again and again, and she
9 notices, oh, by the fourth time she's reading, it's
10 actually not too bad. And maybe her little scale is on a
11 twenty or something. And so we use that as an
12 illustration of this principle of non-avoidance to never
13 avoid the trauma.

14 Q. At some point in the therapy, did Minor1 disclose
15 additional details of abuse that had not been previously
16 reported?

17 A. She did.

18 Q. Is that unusual?

19 A. No.

20 Q. Explain why that would happen?

21 A. Patients typically report more details as the
22 therapy goes along because they establish a sense of
23 trust and safety with the therapist. And also, they come
24 in extremely avoidant, which is, again, why they have
25 P.T.S.D. And so once you teach them that, hey, you can

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1 actually think about it, talk about it, without being
2 overwhelmed and, you know, you can kind of survive that,
3 then they are in a place where they are more willing to
4 really take themselves back there and remember the full
5 details and share the full details of what happened.

6 Q. During the course of your treatment -- and you're
7 limited to time and place -- but did Minor1 disclose to
8 you that she was sexually assaulted?

9 A. She did.

10 Q. And did she tell you when it happened?

11 A. She did.

12 Q. When did she say that it had happened?

13 A. I remember she said that it had happened multiple\$
14 times. She disclosed full penetration. And it happened
15 during the course of the alleged abuse.

16 Q. And did she tell you where it had happened?

17 A. I believe it happened in his home. I'm a little bit
18 fuzzy on the detail exactly where it happened. But I'm
19 definitely certain that she reported it did happen. We
20 don't typically put those details in our notes, which is
21 why it's hard for me to remember them now.

22 Q. The second part of therapy you said was addressing
23 or examining the thoughts and beliefs that the patient
24 has surrounding the trauma. What are the common thoughts
25 and beliefs that someone who has suffered a child sexual

1 abuse? What are the thoughts and beliefs they would
2 have?

3 A. By far the most common thinking pattern is one of
4 self-blame in which the individual tends to blame
5 themselves for what happened. The common things that you
6 hear are, I should have stopped it. You know, it was my
7 fault somehow. Maybe I made it happen. Maybe there's
8 something about me that elicited this. And so those
9 thoughts are really problematic because they keep the
10 patient stuck. And then obviously thinking those kinds
11 of thoughts are accompanied by a lot of negative
12 emotions. And so one of the therapist's jobs is to
13 really look at those thoughts and talk with them and, you
14 know, think with the patient, is that a realistic
15 thought? Is that a rational thought? Are there other
16 ways of looking at it? And basically help those thoughts
17 shift in a more adaptive direction and helps the patient
18 get unstuck.

19 Q. And did you observe those symptoms in Minor 1?

20 A. Yes.

21 Q. Was the trauma-focused therapy -- and I think you
22 said exposure therapy ---

23 A. Uh-huh (affirmative).

24 Q. --- were those helpful to Minor 1?

25 A. I believe so. By the end of our treatment, she had

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1 lost her P.T.S.D. diagnosis.

2 Q. Was Minor 1 cooperative in her treatment?

3 A. Yes.

4 Q. At some point did you begin tapering down her
5 sessions?

6 A. Yes.

7 Q. After she finished treatment with you, do you have
8 information if she continued therapy on her own?

9 A. I believe during some of our last interactions, her
10 mother had mentioned something about another therapist
11 closer to their home, so outside of M.U.S.C. I am not
12 sure. I left South Carolina at that point. I'm not sure
13 if they ever followed up on that.

14 Q. But at the point that she completed therapy with
15 you, she no longer had a diagnosis of P.T.S.D.?

16 A. Yes, which is not to say that she was completely
17 symptom-free. She just didn't meet the fairly high
18 diagnostic threshold that we would need to actually
19 formally diagnose someone with P.T.S.D.

20 MS. GORDON: The Court's indulgence.

21 Q. Just a couple more, Dr. Steenkamp. As part of your
22 treatment, did Minor 1 have her treatment with you
23 individually or was her mother present?

24 A. The way that we do child therapy typically is that
25 most of the session involves one-on-one work with the

1 child. And then we typically have the parent come in for
2 the last ten minutes. There's also some flexibility
3 about this. Sometimes you can see them together if you
4 wanted to if you found that was therapeutic, but we do
5 try and keep the parents involved by having face-to-face
6 time, just me and the parent, at least once or twice in
7 second sessions.

8 Q. Did you base your diagnosis and treatment on simply
9 information you received from the mother or was it on
10 information you received from the child?

11 A. The diagnosis is based on the formal intake
12 procedure that we do at Crime Victims' Center. It
13 involves a one-hour psychological evaluation of the
14 patient, in other words, of the child, followed by a
15 separate one-hour evaluation of the parent. They then
16 also both do a series of structured psychometric tests.
17 So these are just questionnaires about common symptoms
18 and problems that people have following trauma. The
19 therapist then pulls all of that information to come up
20 with the diagnosis.

21 Q. Thank you, Doctor.

22 THE COURT: Cross-examination?

23 MR. SAVAGE: As a preliminary matter, Your
24 Honor, the testimony that was heard on direct could not
25 be construed any other way than to bolster ---

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1 THE COURT: Other than to what?

2 MR. SAVAGE: Other than to bolster the
3 testimony of Minor1. It's sort of a back door way of
4 doing it, not commenting directly on the verbal
5 statements, but commenting on the inference that the
6 treatment continued, that she found post-traumatic stress
7 syndrome and other areas that she testified consistent
8 with the truthful statement by the child. So we believe
9 Judge Few, earlier this year in the *McCurley* case
10 prohibits this type of testimony.

11 THE COURT: What's your motion. To strike it?
12 Mr. Savage, what's your motion?

13 MR. SAVAGE: It's not in front of the jury yet.
14 Not a move to strike but ---

15 THE COURT: I understand. What's your ---

16 MR. SAVAGE: I would move to disqualify this
17 witness as to what she proposes to testify is strictly
18 bolstering the testimony of the victim.

19 THE COURT: Okay. Anything else?

20 MR. SAVAGE: Well, not on that. And subject to
21 that if the Court rules against me, I'm ready to cross.

22 THE COURT: Anything else on that motion?

23 MR. SAVAGE: No, sir.

24 THE COURT: Thank you very much.

25 Solicitor?

1 MS. GORDON: May I respond, Your Honor? The
2 case to which Mr. Savage is referring, that case was
3 regarding specific testimony in which the forensic
4 interviewer stated that the reason they were doing the
5 forensic interview was to determine whether or not to
6 believe this child, whether or not the story was credible
7 and then testified that they found the history to be
8 compelling for substantive ---

9 THE COURT: I think they testified they thought
10 the child was telling the truth, correct?

11 MS. GORDON: Correct, Your Honor.

12 THE COURT: And that's what the Court said was
13 not proper.

14 MS. GORDON: That is what is not proper. That
15 is not at all what we are asking Dr. Steenkamp to testify
16 to. This is an area that, of course, is not common
17 knowledge for a lay jury. And her testimony would be
18 helpful for them in knowing why someone might testify in
19 a way that they did, what the avoidance symptoms are, why
20 they might be -- why they might not disclose all the
21 details on first approach. And that information is
22 helpful for this jury to know to evaluate all of the
23 testimony that's been heard today or heard in the last
24 few days.

25 THE COURT: Anything very briefly in rebuttal?

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1 MR. SAVAGE: Well, Judge, the clear reading of
2 *McCurley*, which was decided on March 28th of this year
3 and the rehearing denied, goes in specifically as to the
4 things that this witness has testified to that are
5 impermissible.

6 Those statements that have a level of detail that
7 they would have to have only if something was to happen.
8 She testified to that. She's also testified we are
9 looking at other possible reasons, other possible
10 explanations. She's testified to that. We're looking
11 that her story adds up. She's testified to that. We're
12 looking to see if they tell us throughout the interview
13 is the same from the beginning to the end consistent with
14 that.

15 We're looking at their behavior and the way they're
16 expressing themselves in the interview. Their behavior
17 is their language. We have the same testimony there. In
18 forming her opinion as to whether something happens she
19 considered the victim's statements were consistent with
20 the other information on the case.

21 The law has changed. This is an evolving area of
22 the law. The latest law in this area is this decision,
23 the *McCurley* decision. And what Judge Few was saying is
24 it's impermissible to do an end-run around the
25 bolstering.

1 If you look at the Supreme Court case that they're
2 relying on, you'll see that Court lambasted the appellate
3 defender for doing such a lousy job and not developing
4 the facts of the case. We don't have that here. We've
5 had a very clear, concise objection that this testimony
6 is bolstering. We also have an objection that this
7 testimony is not reliable at this point based on the lack
8 of experience of this witness. And what I'm referring to
9 in *McCurley*, Your Honor, is footnote number four in
10 *Westlaw*.

11 MS. GORDON: Your Honor, may I make one
12 additional point?

13 THE COURT: No. You've had your shot. He's on
14 reply, and I'm not going to have a re- re- re- re-reply.

15 Anything else?

16 MR. SAVAGE: That's all we have.

17 THE COURT: Pardon?

18 MR. SAVAGE: That's all we have at this point.

19 THE COURT: Thank you very much.

20 All right. The motion is denied based on *State*
21 *versus McCurley*, 397 -- let me find the Southeastern
22 site, 725 S.E.2d 139.

23 All right. There's no question that psychiatry and
24 psychology is accepted science. I'm not sure what you
25 want me to look at as far as the science is concerned.

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1 You quoted that recent case that just came down, I
2 believe, last month.

3 MR. SAVAGE: Tapp.

4 THE COURT: Is it Tapp? Is that the name of
5 it?

6 MR. SAVAGE: Yes, sir.

7 THE COURT: I'm not sure what you want me to --
8 we're not dealing with some pop-science here. I mean,
9 psychiatry and psychology have been around for ages and
10 ages, so it's not some newly developed science like the
11 footprints or the teeth marks or this sort of thing.

12 MR. SAVAGE: I agree.

13 THE COURT: So I mean, what are you asking the
14 Court to do because I'm ready to get the jury in and
15 let's move on.

16 MR. SAVAGE: With respect to this witness, this
17 proposed testimony, the Court still has to evaluate,
18 based on her training and experience -- she's been
19 qualified as an expert. But is it a reliable testimony
20 that she proposes to give based on her lack of experience
21 in this field?

22 THE COURT: I just denied your motion on that,
23 so the Court's found that. You just made a motion to
24 suppress her testimony and not allow her testimony. I
25 denied it. So my question, what else do you want me to

1 do?

2 MR. SAVAGE: There are two different grounds.

3 THE COURT: Okay.

4 MR. SAVAGE: One is that the testimony is not
5 reliable. That's an objection made after the Court has
6 qualified her as an expert based on her training and
7 experience. Even though she's been qualified, it still
8 has to be reliable. We've objected to her as an expert,
9 stage one; now we're objecting to her as not offering
10 reliable testimony. Number two, we're objecting to her
11 testimony based on the proffer provided by the State that
12 the only purpose of this testimony is to enhance or
13 bolster the testimony of the victim.

14 THE COURT: I thought that was the motion I
15 just denied.

16 MR. SAVAGE: It is.

17 THE COURT: Okay. Now, you want to do part
18 one?

19 MR. SAVAGE: I think you've ruled on that.

20 THE COURT: I think I've ruled on both of them.

21 MR. SAVAGE: I wanted to be for certain for the
22 record that it wasn't just on one basis.

23 THE COURT: I understand. I think I've ruled
24 on both of them.

25 MR. SAVAGE: We're fine.

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1 THE COURT: We're fine? Is there anything else
2 you want me to rule on?

3 MR. SAVAGE: I think the record's good. That's
4 all I'm trying to do, Judge. I'm not arguing with the
5 Court.

6 THE COURT: I understand. I'm not arguing with
7 -- I don't think you're arguing with me. I'm just trying
8 to make sure I've ruled on everything you want me to rule
9 on.

10 MR. SAVAGE: And if you haven't, that's my
11 fault.

12 THE COURT: As Judge Ness used to say, it may
13 be wrong, but never been doubted.

14 Anything else?

15 MR. SAVAGE: No, sir.

16 THE COURT: Okay. Are we ready to bring the
17 jury, or do y'all need a short break before we bring the
18 jury in?

19 Let me take up one thing, Mr. Savage. I don't know
20 what you're going to do on cross in front of the jury.
21 I'm not trying to impose upon that. But let me say this.
22 The evaluation that she did of her supervisor, I don't
23 think has any relevance. Okay? Now, the supervisor
24 evaluation on her, I think's very relevant. Okay?

25 MR. SAVAGE: I don't intend to address that.

1 That was for purposes of qualification.

2 THE COURT: I understand. But I just don't
3 think that has any relevance.

4 MR. SAVAGE: I'm past that.

5 THE COURT: Okay. I just want to make sure
6 we're on the same wave length.

7 MR. SAVAGE: Yes, sir, we are.

8 THE COURT: I think it was very relevant where
9 we were earlier, but not when this jury comes in.

10 MR. SAVAGE: The Court's ruled on her
11 expertise. I'll follow the Court's direction.

12 THE COURT: Okay. Thank you so very much.
13 Anything else before we bring the jury in?

14 MS. GORDON: Nothing from the State.

15 THE COURT: Bring us the jury, please.

16 Ma'am, pull up closer to the microphone ---

17 THE WITNESS: I'm sorry.

18 THE COURT: --- so everybody can hear you,
19 please, ma'am.

20 THE WITNESS: Is that better?

21 THE COURT: That's fine. Just lean forward and
22 talk into it. I'm probably the worst hearing in this
23 courtroom, so if I can't hear -- if I can hear you, I
24 know everybody else can. Okay?

25 THE WITNESS: Okay. Just let me know if it's

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1 too soft.

2 THE COURT: Hold the jury for just a second,
3 please.

4 Let me just clarify one thing before we bring the
5 jury, Mr. Savage, if I may. And I meant to do this
6 earlier. I apologize. Under the *Watson versus Ford*
7 *Motor Company* case, that case was about the reliability
8 of particular evidence about the speed control in the
9 Ford vehicle and the Panther.

10 MR. SAVAGE: My Cousin Vinnie had the same
11 issues.

12 THE COURT: Yeah, I tried one of those up in
13 Laurens County. Okay? So I'm sort of familiar with the
14 Panther foundation. They didn't call it a foundation.
15 Panther platform. But anyhow, in that case, they said
16 the scientific evidence the Court had to determine
17 reliability and laid out four specific things. Now, I
18 can do that with the psychiatry if you want to -- or
19 psychology -- but I think that's not necessary because
20 we're not dealing with some speculative type of science.
21 It's been around since Freudian times. Okay?

22 MR. SAVAGE: I understand.

23 THE COURT: But if you want me to do that, I
24 will.

25 MR. SAVAGE: The Court's ruled. I think the

1 record's complete.

2 THE COURT: Okay. I just wanted to make --
3 I'll be happy to go through the four -- what do they call
4 them -- the four elements that the Court would have to
5 find as the gatekeeper. I'll be happy to go through them
6 if you want me to. I just don't think it's necessary.

7 MR. SAVAGE: I think it's complete at this
8 point, Judge.

9 THE COURT: Okay. Thank you very much.
10 Bring us the jury.

11 (WHEREUPON, the jury entered the open court at
12 approximately 11:49 a.m.)

13 THE BAILIFF: The jury's present, Your Honor.

14 THE COURT: Thank you very much.

15 Solicitor, you may proceed.

16 MS. GORDON: Thank you, Your Honor.

17 **MARIA STEENKAMP,**

18 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MS. GORDON:

21 Q. Good morning, Dr. Steenkamp. How are you?

22 A. I'm well, thanks. How are you?

23 Q. Dr. Steenkamp, can you state -- I'm not sure if we
24 did this earlier. Can you state your full name for the
25 jury?

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1 A. Sure. My name is Dr. Maria Steenkamp.

2 Q. Dr. Steenkamp, where are you currently employed?

3 A. I'm employed at the Boston V.A. Hospital.

4 Q. And what is your position there?

5 A. I'm a clinical psychology postdoctoral fellow.

6 Q. And prior to your current position, what education
7 and training do you have? For example, what was your
8 undergraduate degree in?

9 A. I have a B.A. and a master's degree in psychology,
10 and I also hold a Ph.D. in clinical psychology from
11 Boston University.

12 Q. Did you -- as part of your education, did you also
13 have clinical experience?

14 A. I did.

15 Q. And what was that?

16 A. Part of our clinical training is to do several
17 practicum rotations, seeing patients for therapy. I did
18 three practicum rotations, each a year long, and then I
19 came down to South Carolina to do a one-year clinical
20 internship in which I see patients full-time for one
21 year.

22 Q. Do you currently hold any licenses?

23 A. I do. I'm a licensed clinical psychologist in New
24 York.

25 Q. Have you had any teaching experience?

1 A. I have.

2 Q. And what was that?

3 A. I was a lecturer at the University of Stellenbosch
4 in South Africa. And I also was a teaching fellow at
5 Boston University.

6 Q. Have you done research in the area of -- the area of
7 post-traumatic stress disorder and sexual assaults?

8 A. I have.

9 Q. Okay. And can you tell the jury what kind of
10 research you've done in that area?

11 A. My dissertation was on Adjustment to Sexual Assault.
12 And my job right now, in addition to seeing patients,
13 primarily involves doing research on combat traumas and
14 some at the V.A.

15 Q. And in your field of study, do you -- it looks like
16 that you have been published eight times. Does that
17 sound correct?

18 A. Yes. In peer review journals.

19 Q. And those are peer review journals?

20 A. Uh-huh (affirmative response).

21 Q. Dr. Steenkamp, what has been your primary focus?
22 What area of psychology has been your primary focus in
23 both your education, research, and clinical experience?

24 A. I specialize in trauma, specifically post-traumatic
25 stress disorder.

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1 MS. GORDON: Your Honor, the State moves Dr.

2 Maria Steenkamp as an expert in the area of trauma-
3 related therapy.

4 THE COURT: All right.

5 MR. SAVAGE: As previously stated.

6 THE COURT: As previously objected in the in-
7 camera hearings. Any other objections?

8 MR. SAVAGE: No, sir.

9 THE COURT: All right. That motion is denied.
10 And the Court -- offering in what capacity, now?

11 MS. GORDON: In trauma-related psychology.

12 THE COURT: All right. The Court finds that
13 she's qualified to testify about trauma-related
14 psychology.

15 Q. Dr. Steenkamp, you stated that you -- you're
16 currently in Boston, but at one point you did some
17 clinical work as part of a rotation in Charleston, South
18 Carolina; is that right?

19 A. That's correct.

20 Q. Was that at the Medical University?

21 A. Yes. The internship was jointly through M.U.S.C. as
22 well as the Charleston V.A.

23 Q. During your time in Charleston, did you have
24 occasion to treat a patient by the name of Minor 1

25 ?

1 A. I did.

2 Q. When did you first meet Minor1 ?

3 A. I believe it was in February 2010 when I first did
4 the intake.

5 Q. Do you remember her?

6 A. I do.

7 Q. What were your initial impressions?

8 A. I remember her being a very nice, kind and bright
9 girl who was going through a very difficult time.

10 Q. What was Minor1 referred to you for?

11 A. She was referred for us to do an assessment for
12 trauma related symptoms given alleged child sexual abuse
13 to see whether our clinic was the best place for her to
14 receive treatment.

15 Q. What was the result of that assessment?

16 A. The assessment revealed a diagnosis of post-
17 traumatic stress disorder, and we recommended that she
18 receive therapy in our clinic.

19 Q. Tell the jury, what is post-traumatic stress
20 disorder?

21 A. Sure. Post-traumatic stress disorder is an anxiety
22 disorder that sometimes develops after someone has
23 experienced a traumatic event. Examples could be being
24 in a bad car crash, being in combat, being raped, being
25 in a hurricane and so forth.

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1 There are seventeen symptoms overall. You don't
2 have to meet all of those symptoms, but you do have to
3 have symptoms in what we call three different clusters of
4 symptoms. The first cluster is the re-experiencing
5 cluster. And basically that just means that individuals
6 of P.T.S.D. will have, for example, nightmares or
7 flashbacks of the event. In other words, they re-
8 experience the bad that thing that happened. It keeps
9 coming back to them over and over.

10 The second cluster is what we call the numbing and
11 avoidance cluster. The numbing is emotional numbing, so
12 the individual will feel very flat. They won't really
13 have a lot of emotions. They're just pretty numbed out.

14 The avoidance symptoms are really what we consider
15 to be at the heart of P.T.S.D. And what the person is
16 avoiding is thinking about and talking about the trauma.
17 So they're constantly trying to push it out of their mind
18 and not think about it. In other words, have feelings
19 about it because when they think about it, all these bad
20 feelings come up.

21 The third and last cluster is the hyper-arousal
22 cluster. And this means that their general sort of
23 anxiety or arousal level is quite high, so they're very
24 irritable and angry. They have a quick startle reflex,
25 and they have difficulty falling asleep because they're

1 so wound up all of the time.

2 Q. And you said to meet the criteria for a diagnosis of
3 P.T.S.D., you have to have symptoms in each of those
4 categories?

5 A. That's correct.

6 Q. Did Minor1 have symptoms in each of those categories?

7 A. She did.

8 Q. Okay. What were those?

9 A. I remember she had nightmares about the alleged
10 abuse. She -- you know, they would come back to her
11 during the day. They would pop into her mind and be very
12 upsetting when she didn't want them to. She definitely
13 had a lot of avoidance symptoms in which she did not like
14 to think about it or talk about it, and she definitely
15 tried to push it out of her mind a lot. Again, that
16 doesn't really work because it keeps coming back anyway.

17 In terms of the hyper-arousal symptoms, I remember
18 she had problems at first with irritability, which was
19 clear with her interaction with her siblings, for
20 example. She had trouble sleeping, which was one of the
21 things that we spoke about, you know, being too keyed up
22 to fall asleep. So those are some examples of her
23 symptoms.

24 Q. You talked about -- there has to be first a trauma.

25 A. Uh-huh (affirmative).

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1 Q. And you learned of the trauma for the sexual abuse
2 from Minor1 ?

3 A. That's correct.

4 Q. Were you aware of other possible traumas that this
5 child had experienced in the past?

6 A. Yes. So as part of the intake procedures that we
7 do at Crime Victims' Center, we do a one-hour thorough
8 semi-structured interview with both the child and the
9 parent. And during the interview we take what we call a
10 trauma history in which we ask them for stress or
11 traumatic events that they've had in their entire
12 lifetime.

13 And so Minor1 did have some additional ones in
14 addition to the child abuse. But what we do with a
15 diagnosis of P.T.S.D. is that we tie each diagnosis to a
16 specific traumatic event. So it's not a blanket
17 diagnosis if you have P.T.S.D. related to abuse or a
18 mugging or so forth.

19 Q. And what was her diagnosis and her treatment with
20 you, related to her treatment with you?

21 A. Related to her treatment with me was P.T.S.D. due to
22 child sexual abuse.

23 Q. And how did you tie the sexual abuse to her current
24 P.T.S.D. diagnosis?

25 A. You typically look, for example, at the re-

1 experiencing symptoms. So what is it that they're having
2 nightmares about it? What is it? You know, what are the
3 bad memories that keep popping into their mind? And in
4 this case, it was the child sexual abuse.

5 Q. Based on her diagnosis what was your recommendation?

6 A. We recommended trauma-focused therapy.

7 Q. What is that?

8 A. Trauma focus therapy is the gold standard treatment
9 for P.T.S.D. It involves asking the individual to talk
10 about and think about the trauma. So it's different from
11 some other kinds of therapies in which they don't really
12 ever address the trauma. They just kind of speak about
13 what's going on in the person's everyday life. This
14 therapy specifically focuses on the trauma and asks the
15 person to kind of go back there in their mind and really
16 approach it rather than avoid it in as much detail as
17 possible.

18 Q. How is that helpful?

19 A. It's helpful on two levels. The first one is that
20 in allowing the person to really kind of go back for the
21 first time in their mind, it brings to light typically a
22 whole bunch of thoughts and beliefs that they have about
23 the trauma that are typically maladaptive and harmful.
24 So the most common example of this is beliefs about self-
25 blame. So you know, often people will say, oh, you know,

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1 I caused it. It was my fault. I should have seen it
2 coming. I should have stopped it. Those are the things
3 we hear most commonly.

4 Q. Did you hear that -- did you find that with Minor1?

5 A. Yes. So she -- you know, again, very common. She
6 had those beliefs. And they really are problematic
7 because they keep a patient stuck. It's very difficult
8 for them to move on when they have those kinds of
9 beliefs. And so your role as therapist is to help them
10 shift those beliefs.

11 So the second part which is helpful is teaching the
12 patient that you can go back and think about it and talk
13 about it. A process called habituation happens. And the
14 best example of that is watching a really scary movie.
15 So, for example, the first time you see that scary movie
16 you might be really riled up. But if I was to ask you to
17 just watch that same movie over and over and over again,
18 what's going to happen is that your anxiety is going to
19 come down. And so by the fifteenth time you're watching
20 that same movie, it's not going to be as upsetting. And
21 so what we ask the person to do is to repeatedly kind of
22 go back and process what happened until eventually they
23 don't have that strong emotion.

24 Q. And how did you do that with Minor1?

25 A. There are different options available. With Minor1,

1 I asked her to write out an account of some of the events
2 that happened. And so basically we ask them to do a
3 homework assignment in which they go home and they find a
4 private spot and time, and they write out as much detail
5 as possible what happened. And then they bring it in the
6 next session and read through it out loud with me and we
7 talk about it.

8 Q. And how did that go with Minor1? Did you do that the
9 very first time you met her or ...

10 A. No. So typically we don't ask people to do that the
11 first time simply because it's a very difficult task, as
12 you can imagine. It's typically quite the opposite of
13 what they've been doing. They have P.T.S.D. because they
14 have been so avoidant. And so it takes a while to
15 establish that relationship and trust and also to explain
16 the rationale for why I'm asking her to do this difficult
17 thing.

18 Q. And when Minor1 did that, was she able to get through
19 and talk about the sexual abuse?

20 A. She was.

21 Q. During that process, did she disclose additional
22 details of abuse that she had not previously shared?

23 A. She did.

24 Q. Is that unusual?

25 A. Not at all.

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1 Q. Why not?

2 A. Typically, it takes people, again, some time to get
3 comfortable with the person. In a lot of cases of
4 personal trauma, trust is violated. And so they don't
5 know whether they can trust this stranger sitting in
6 front of them with this information. They don't know
7 what to do with it. And so it takes a while for them to
8 really get to know me and establish some trust in the
9 relationship. And also as they understand the rationale
10 for why I'm asking them to do it, they start to be more
11 willing to go back and re-look at it instead of just
12 pushing it away all the time. And in doing so, more
13 details come back.

14 Q. Was the trauma focus therapy and the writing and the
15 going over it -- I think you called it habituation.

16 A. Uh-huh (affirmative).

17 Q. Was that helpful for Minor 1?

18 A. I believe so. By the end of therapy she reported
19 having far fewer nightmares. Her anger was way down.
20 She was having less trouble falling asleep at night, and
21 she also formally lost her diagnosis of P.T.S.D.

22 Q. I want to go back to something I saw. At some point
23 in your notes you talk about a human freezing response.
24 What is the human freezing response?

25 A. The human freezing response is an evolutionary

1 mechanism. It's similar to the fight or flight response
2 which people might have heard of in which when we're
3 confronted with an imminent danger, there are really
4 three options. One is, you know, you fight it. The
5 second one is you flee. And the third one is if you're
6 in a situation in which you are physically trapped that
7 you cannot get out of -- we often see this in sexual
8 assault, for example, with children that are female,
9 woman victims in which the male is stronger in which they
10 cannot physically resist. This mechanism kicks in in
11 which they basically just freeze and they kind of go
12 limp. We call that tonic immobility. And they can't
13 really respond, and often they go mute as well.

14 Q. Was Minor 1 cooperative in therapy?

15 A. Yes.

16 Q. Did you have therapy sessions -- were your therapy
17 sessions with her, or were they with her family? How did
18 you actually do the therapy?

19 A. So typically we see the patient one-on-one. They
20 can have different ways of doing it. The way that we did
21 it in this case was I saw Minor 1 for most of the session.
22 And then most sessions I ended by speaking to her mom for
23 about ten minutes, just to kind of keep her in the loop
24 and let her know how we're doing and see if she had any
25 concerns or questions that she had.

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1 Q. And at some point did you talk to Minor1 and her mom
2 about tapering off therapy or terminating therapy?

3 A. Yes.

4 Q. And why was that?

5 A. It was approaching the end of my rotation, so I was
6 going to leave South Carolina. And also, she was doing
7 better. So typically, we don't just stop cold turkey.
8 We, you know, see each other every second week, every
9 third week and we tend to taper it off.

10 MS. GORDON: The Court's indulgence.

11 Q. Thank you, Dr. Steenkamp. If you'll answer any
12 questions for the Defense.

13 THE COURT: Cross-examination?

14 MR. SAVAGE: May it please the Court.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. SAVAGE:

18 Q. Good afternoon. I know that you and I have spoken
19 today in the courtroom before, but the jury hasn't heard
20 it.

21 A. Sure.

22 Q. So I may be asking you some questions that I
23 previously ask you, and I don't mean to do that in any
24 way other than making sure I ...

25 A. Sure.

1 Q. Because I know you're not very familiar with the
2 courtroom. This is actually only the second time you've
3 been in the courtroom; is that correct?

4 A. That's correct.

5 Q. And let's talk a little bit about -- I think that
6 the State wanted you to be an expert. Clearly, you have
7 a lot of great educational background. But the State
8 asked about you being an expert to give an opinion to the
9 jury in the field of trauma; is that correct?

10 A. That's correct.

11 Q. And I suppose that your discussions with the
12 Solicitor prior to your testimony were about what you
13 observed in terms of trauma with the individual that made
14 the complaint in this case; is that correct?

15 A. I believe so, yes.

16 Q. Now, as a licensed psychologist, as a Ph.D. now
17 engaged in post-doctoral studies in Boston, you're
18 familiar with the overview of the field of psychiatry
19 [sic] by -- what's the organization? A.P.A., American
20 Psychological Association?

21 A. In the field of psychology?

22 Q. Yes.

23 A. The field of psychology is the American
24 Psychological Association.

25 Q. And we all agree that that's sort of -- they write

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- 1 the book on expertise and fields of expertise?
- 2 A. Sure.
- 3 Q. And would you agree that the fields of expertise in
- 4 psychology are clinical neuropsychology?
- 5 A. At least, yes.
- 6 Q. Okay. And you don't claim to be an expert in that?
- 7 A. In which one?
- 8 Q. Clinical neuropsychology?
- 9 A. No, I'm not a neuropsychologist.
- 10 Q. And clinical health psychology?
- 11 A. I'm not a health psychologist.
- 12 Q. And psycho analytic psychology?
- 13 A. I'm not a psychoanalyst.
- 14 Q. And school psychology?
- 15 A. I'm not a school psychologist.
- 16 Q. Counseling psychology?
- 17 A. I'm not a counseling psychologist.
- 18 Q. Industrial organization psychology?
- 19 A. I'm not an industrial organizational psychologist.
- 20 Q. Behavioral and cognitive psychology?
- 21 A. I would consider myself a behavioral and cognitive
- 22 psychologist.
- 23 Q. Okay. So the area in which you've been declared by
- 24 the State an expert, would that be actually behavioral
- 25 and cognitive psychology?

1 A. The states don't -- when they license you, I believe
2 it's just as psychologist.

3 Q. Bad terminology. My fault. When I refer to the
4 State, I'm really talking about the Prosecutor, the
5 entity of the government.

6 A. Oh, I'm sorry.

7 Q. So they're the ones that have suggested you're an
8 expert in trauma psychology. Are you saying that it
9 would be better suited to behavior and cognitive
10 psychology?

11 A. Behavioral and cognitive psychology is a type of
12 psychology that focuses on a way of doing treatment, and
13 that overlaps with the type of treatment I did in this
14 case.

15 Q. How about family psychology?

16 A. I'm not a family psychologist.

17 Q. And professional -- is it geropsychology, G-E-R-O
18 psychology?

19 A. G-E-R-O, geropsychology, yes. That's ---

20 Q. And what's that?

21 A. That's for elderly individuals.

22 Q. Now, there -- that's not a complete list; is that
23 correct?

24 A. I haven't seen a complete list, but I imagine there
25 are more specialties.

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1 Q. This case -- you know what the charges are in this
2 case, correct?

3 A. I believe so, yes.

4 Q. And the charges, the actual document that's been
5 given to the jury, is criminal sexual ---

6 A. Uh-huh (affirmative).

7 Q. So sexual is an important word. Criminal is the
8 reason we're here.

9 A. Uh-huh (affirmative).

10 Q. Conduct, means the actions of somebody.

11 A. Uh-huh (affirmative).

12 Q. ... with a minor.

13 A. Uh-huh (affirmative).

14 Q. Correct?

15 A. I believe so. I haven't seen the formal charge.

16 Q. But that's -- you understand that's why you're here?

17 A. Yes. Yeah.

18 Q. Sexual acts ---

19 A. Uh-huh (affirmative).

20 Q. --- involving a minor? Now, there's a field of
21 psychology called forensic psychology. Are you a
22 forensic psychologist?

23 A. No, I am not.

24 Q. What is a forensic psychologist?

25 A. Forensic psychologists specialize in sort of the

1 attraction between psychology and the legal system.

2 Q. And you don't profess to be in that field?

3 A. No.

4 Q. Here's another one. Clinical child psychology. Are
5 you a clinician in the field of minors, juveniles and
6 teenagers? Do you have any expertise in that field?

7 A. No.

8 Q. So the State has asked you to come in today without
9 any background with children. Prior to coming to the
10 Medical University of South Carolina, you filled out an
11 application that provided your credentials to that date.
12 And would it be fair to say that you had no, zero,
13 experience in any type of psychological capacity in any
14 of those fields with juveniles or children?

15 A. Yes, with the caveat that I did receive training in
16 child psychology, so I did courses in it. But if you're
17 asking specifically about clinical, doing therapy with
18 children, then no, I did not see child patients before
19 coming to this particular rotation.

20 Q. In fact, when you were asked about your assessment
21 experience, you were asked about older adults over sixty-
22 five. And you said that, I've had thirty hours of face-
23 to-face time with them.

24 A. Asked by whom? I'm sorry.

25 Q. When you were interviewed for your intervention and

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- 1 assessment experience ---
- 2 A. Uh-huh (affirmative).
- 3 Q. --- and they asked you specifically, how much
- 4 experience do you have with different types of
- 5 psychological intervention ---
- 6 A. Uh-huh (affirmative).
- 7 Q. --- and assessment ---
- 8 A. Uh-huh (affirmative).
- 9 Q. --- you indicated that you treated geriatrics on
- 10 thirty occasions.
- 11 A. I believe so. I'm guessing you're reading from my
- 12 formal internship application?
- 13 Q. I don't mean this to be specific, and I'm not trying
- 14 to trick you in any way. But when you presented your
- 15 credentials to the Medical University ---
- 16 A. Uh-huh (affirmative).
- 17 Q. --- you said that you had had experience ---
- 18 A. Uh-huh (affirmative).
- 19 Q. --- with geriatrics?
- 20 A. Yes.
- 21 Q. And that you had six hundred and thirty-nine hours
- 22 of experience with adults?
- 23 A. Yes.
- 24 Q. And that for adolescents age thirteen to seventeen,
- 25 you had zero?

1 A. That's correct.

2 Q. And for school-aged children from six to twelve, you
3 had zero?

4 A. That's correct.

5 Q. And in pre-school and toddlers, you've had zero?

6 A. Correct.

7 Q. And then when they asked you about group counseling,
8 your figures were similar, that you had experience with
9 adults but none with adolescents or children?

10 A. That's correct.

11 Q. And when you applied for the position, you wrote a
12 letter to Dr. Kilpatrick in which you said, my training
13 at Boston University ---

14 MS. GORDON: Objection, Your Honor.

15 THE COURT: I'll sustain the objection. If she
16 can identify it -- is it a letter from her to the doctor
17 -- I mean -- excuse me.

18 Q. Did you write a letter to Dr. Kilpatrick promoting
19 your reasons for coming to this internship?

20 A. Yes.

21 Q. And in that letter did you say that your history ---

22 MS. GORDON: Objection, Your Honor, hearsay.

23 MR. SAVAGE: It's the witness.

24 THE COURT: It's what she wrote. Give her the
25 letter and let her identify it, if you would, sir, Mr.

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- 1 Savage, and make sure -- give her a chance to look at it
2 and refresh her memory, and then you can ask her
3 questions about it. Thank you very much.
- 4 A. Yes. This was the cover letter to my application to
5 M.U.S.C.
- 6 Q. I'm not trying to trick you. If you'd like to hold
7 it. But ---
- 8 A. That's fine.
- 9 Q. --- you're familiar with it?
- 10 A. I'm familiar with it.
- 11 Q. And in that letter you indicated that your focus,
12 your primary interest, was in adult anxiety disorders?
- 13 A. At the time, correct, yes.
- 14 Q. Particularly post-traumatic stress disorders?
- 15 A. Uh-huh (affirmative).
- 16 Q. And that you were looking forward to match your
17 clinical and research interest with the civilian
18 population.
- 19 A. Uh-huh (affirmative).
- 20 Q. And that your strongest interest was in military
21 trauma and participating in post-traumatic stress
22 disorders, V.A.M.C. -- I'm not sure what that is. Is
23 that the V.A. Medical Center?
- 24 A. That's correct.
- 25 Q. ... rotation is an ideal match in that regard?

1 A. That's correct.

2 Q. So prior to getting here, your exclusive practice
3 was with adults?

4 A. Uh-huh (affirmative).

5 Q. Primarily in the military men and women?

6 A. Uh-huh (affirmative).

7 Q. And when you came to South Carolina, it was to
8 primarily engage in a similar rotation with the V.A.
9 hospital we have here in Charleston?

10 A. Yes.

11 Q. And that this rotation that you had involving where
12 you met young children ---

13 A. Uh-huh (affirmative).

14 Q. --- was sort of secondary and composed less than or
15 about twenty-five percent of your clinical time?

16 A. That's correct.

17 Q. Seventy-five percent was with adults?

18 A. Uh-huh (affirmative).

19 Q. Having other areas?

20 A. Uh-huh (affirmative).

21 Q. And you were very focused on doing research at that
22 time. In fact, you said that it would add to your
23 experience and be able to do research and write about
24 that research?

25 A. Internship is designed to be a clinical year. So

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1 the primary emphasis is really on doing therapy with
2 patients. But because we hold Ph.D.'s, research is
3 always considered a very important part of what we do.
4 And so we are considered to keep research going basically
5 from day one in our careers throughout. So, yes,
6 research was always an interest.

7 Q. Actually, your words, to become involved in clinical
8 research?

9 A. That's correct. Clinical research involves studying
10 therapy, so you do the therapy and then study it.

11 Q. Now, as a result of the year that you spent in South
12 Carolina, the six months that you had this internship at
13 the Medical University ---

14 A. Uh-huh (affirmative).

15 Q. --- did you do any research?

16 A. Yes.

17 Q. And did you write about it? Did you publish it?

18 A. I wrote it up. I don't believe I submitted it for
19 publication. It was on veterans.

20 Q. On veterans?

21 A. Yes.

22 Q. Now, I was asking about the portion of your
23 internship with the children.

24 A. Uh-huh (affirmative).

25 Q. Did you do research with the children?

1 A. No.

2 Q. Did you write any publications, or did you present
3 any papers to some local or national psychology
4 conventions?

5 A. No.

6 Q. This was just another, let's say, course, as many
7 courses you have taken to get your undergraduate degree
8 and your master's degree and your Ph.D.

9 A. Ph.D.

10 Q. And post-doctorate. And you're still studying,
11 right?

12 A. Well, actually, I'm licensed.

13 Q. And so this experience, this six-months rotation,
14 was the extent of your experience with children?

15 A. That's correct.

16 Q. In doing that, in doing what you have talked about
17 before this jury today, did you do a complete history on
18 children that you intervened with? In other words, if a
19 child presented or a family presented, would you take an
20 extensive background on the children?

21 A. Yes. That was a part of our standard clinic
22 procedure.

23 Q. And in fact, in your application to the internship,
24 you spoke how important it was to understand cultures,
25 correct?

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1 A. That's correct.

2 Q. And you said it was important for you to understand
3 different lifestyles, cultural experiences in which
4 people learn appropriate behavior and reaction to
5 behavior?

6 A. I don't recall exactly what -- we had to write
7 essays as part of our application for internship. And
8 one of the standard questions involves our beliefs about
9 how culture influences therapy. So I'm not sure if
10 you're referring to that, but that sounds about right.

11 Q. You put it much better than I did. Your interest in
12 the mind of a student -- and I don't mean that in a
13 disparaging way at all. We all continue to learn through
14 life. And one of your -- the important positions that
15 you have with respect to knowledge is understanding the
16 human psyche and how they interpret events based on their
17 experience?

18 A. I think that is a fair statement, yes.

19 Q. Culturally, nationally, politically, family
20 environment, all of those things really go into how we
21 interpret events?

22 A. True.

23 Q. And not everybody interprets an event in the same
24 way?

25 A. True.

1 Q. And that difference, the differentiation in
2 interpretation's based on who they are and what they are,
3 where they've been and their life's experience?

4 A. That's true.

5 Q. So when you would engage with children and families
6 ---

7 A. Uh-huh (affirmative).

8 Q. --- during your rotation at the Medical University,
9 would you agree that it was important for you to have
10 knowledge about the environment in which your patients
11 lived?

12 A. To a certain extent, yes, as long as it was
13 relevant.

14 Q. And that's what I'm asking. Is that relevant in
15 terms of what you do?

16 A. I think it varies from case to case. For example,
17 if a specific kind of religion is very prominent for an
18 individual and it's really, you know, extremely important
19 to them, then it is up to us to help them, you know, to
20 understand that and to work within their beliefs.

21 Likewise, you know, if they're very embedded in a
22 specific cultural system, to also understand that and
23 respect that and work within that.

24 Q. Supposing beyond religion, life's experience,
25 observations, you had mentioned -- I think you mentioned

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1 -- correct me if I'm wrong -- a hurricane would change a
2 person's world view, life's experience?

3 A. Again, depending on how severely they were impacted
4 by it, sure.

5 Q. But that's one of the references that you gave.
6 Now, when the child who is the subject of this litigation
7 came to see you, did you do or did somebody on your
8 behalf do a life's history regarding any unusual aspects
9 of their life that may impact your ability to properly
10 assess and treat them properly?

11 A. As part of the standard intake procedures we used in
12 the clinic -- again, we used a semi-structured interview,
13 which means that the questions were already there
14 beforehand and you follow it and make adjustments as you
15 go along. We Did a trauma history, which is, again,
16 asking them about lifetime traumas. And then we also, I
17 think, you know, did basic information about where they
18 grew up, you know, developmental delays in the case of
19 kids, what their family structure is like, any problems
20 at school. It's a general kind of, just trying to get a
21 snapshot of their life and whether there's anything that
22 stands out that I should be aware of as a treating
23 clinician.

24 Q. When you deal with adults or more specifically with
25 children, you like to get third-party verification of the

1 information provided?

2 A. Typically, it's not that I don't like it. It just
3 typically doesn't happen.

4 Q. Pardon me?

5 A. It's not that I don't like to get third-party
6 information. It just typically doesn't work that way in
7 standard practice.

8 Q. Okay. And with children -- so whatever children
9 come in and say -- and I don't meant his disrespectfully.
10 But when a child presents itself, you just take them at
11 their word?

12 A. So again, the intake procedures we do it with the
13 child as well as one parent. So we have two -- we
14 interview them separately, so we have two perspectives on
15 what's going on. They also complete the questionnaire
16 separately, and then we pull it together. I also had a
17 report, I believe, from the Lowcountry Children's Center
18 and detailing the extent of their forensic evaluation and
19 physical exam. That was during the referral. So that
20 was information I had to go on.

21 Q. Well, actually, the field of questions that I'm
22 probably not specific enough is that when you do an
23 assessment ---

24 A. Uh-huh (affirmative).

25 Q. --- that leads to a diagnosis and a prognosis ---

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1 A. Uh-huh (affirmative).

2 Q. --- do you do a history of that presenting party?

3 A. Yes.

4 Q. So how far back does that history go?

5 A. Again, it depends, you know, sort of on exactly
6 where you are, what clinic and what population. But
7 typically in this clinic, because they're kids, we go
8 back in time.

9 Q. Were you aware when this family presented that the
10 child who presented with the mother had had a previous
11 history of psychological intervention going back to the
12 state of Florida?

13 A. I don't recall.

14 Q. In preparation for today's testimony, did you review
15 your notes?

16 A. I did. I have them here.

17 Q. And do you recall that you were advised that the
18 child had had psychological intervention by a healthcare
19 professional in the state of Florida?

20 A. I'm sorry. This was two and a half years ago. Was
21 this with regard to the death of her father from cancer?
22 I believe she might have seen someone after that.

23 Q. The way this works in the legal field -- I know it's
24 different in your field. But I can't answer questions.
25 I can only ask them.

1 A. Okay. So ---

2 Q. So the question to you was, were you aware -- and
3 you can answer yes or no, but give us an explanation.

4 THE COURT: Let me intercede for a second. You
5 can answer yes or no, I don't know, I don't understand,
6 and you can give an explanation. Okay?

7 THE WITNESS: Okay.

8 THE COURT: All right. But answer the question
9 yes or no and then you can give an explanation. Okay?

10 THE WITNESS: Okay.

11 THE COURT: And he won't have to keep asking
12 the same question again. Okay?

13 THE WITNESS: Okay.

14 Q. Were you aware when this family presented the
15 history of the family?

16 A. Yes.

17 Q. Did that include a presentation of prior
18 psychological intervention which included intervention in
19 the state of Florida?

20 A. I don't recall right now. But if it's in my notes,
21 yes.

22 Q. Do you recall whether or not you obtained the
23 records from the previous psychological intervention in
24 the state of Florida if, in fact, there was psychological
25 intervention in the state of Florida?

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1 A. I did not obtain them.

2 Q. Were you aware that the child had prior
3 psychological intervention at the Medical University of
4 South Carolina before you met the child?

5 A. It would have been in the notes, so I'm going to say
6 yes.

7 Q. Was that a guess or do you know?

8 A. I believe I actually saw it and, yes, I would have
9 all of her treatment notes in front of me again.

10 Q. What do you specifically recall in the context of
11 the diagnosis that you provided to this jury of this
12 same, same -- not similar -- same psychological
13 presentations that were made to you when you saw her?

14 A. I'm sorry. Could you repeat that?

15 Q. You had listed in response to Ms. Gordon's question
16 -- you call them clusters, and you called them some other
17 technical term I don't recall. But you listed specific
18 things.

19 A. Uh-huh (affirmative).

20 Q. One I recall was sleep disturbance ---

21 A. Uh-huh (affirmative).

22 Q. --- irritability. But whatever you call those
23 things, you listed them quite specifically.

24 A. Uh-huh (affirmative).

25 Q. And the question that I'm asking you is -- and you

1 talked about, you know, projecting this diagnosis to a
2 specific act, correct?

3 A. Yes.

4 Q. And the specific act you projected to was sexual
5 abuse?

6 A. In my evaluation, yes.

7 Q. And so informing the jury of the completeness of the
8 psychological investigation of this child ---

9 A. Uh-huh (affirmative).

10 Q. --- did you obtain the records of previous
11 psychological intervention and the signs that the child
12 was presenting on examination?

13 A. I did not get records from Florida. I would have
14 had the M.U.S.C. records at my disposal. I don't recall
15 exactly what they say.

16 Q. Do you recall referencing those?

17 A. If they were in M.U.S.C. records, I would have
18 looked through them and seen whether I thought they were
19 pertinent to my diagnosis.

20 Q. And if the records said that in 2000 ---

21 THE COURT: Let me interrupt you and see the
22 attorneys up here just a second.

23 (WHEREUPON, a bench conference was held off the
24 record.)

25 Q. Dr. Steenkamp, do you have your records, your file

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1 with you?

2 A. I have some portion of it.

3 Q. Do you know if you have the file that includes the
4 psychological intervention from the Medical University in
5 2008?

6 A. I believe I only have the notes that, you know, sort
7 of I wrote and anything that was occurring during the
8 time I was writing them as well as the initial referral.
9 So I don't believe I have anything that goes that far
10 back.

11 MR. SAVAGE: Your Honor, may I present ---

12 THE COURT: Yes, sir. Yes, sir.

13 (WHEREUPON, Mr. Savage handed document to the
14 witness.)

15 THE COURT: How many pages are in the records,
16 Mr. Savage?

17 MR. SAVAGE: I believe there are just two pages
18 in those records.

19 THE COURT: Two pages? Okay.

20 MS. GORDON: Your Honor, the State would ask
21 that he provide us with a copy of what he is referencing
22 or if it's something we've provided him, that he can at
23 least reference a Bates stamp number.

24 THE COURT: I don't know if he has a copy. You
25 could -- it's hard for three people to share one copy.

1 Do y'all have any more copies?

2 THE WITNESS: Oh, I'm sorry. Do you need these
3 back?

4 MR. SAVAGE: Judge, no. These are the records
5 we got from the Medical University. It's not our work
6 product.

7 THE COURT: I understand. I understand. Do
8 you want a copy of them?

9 MS. GORDON: I'd like to be able to see what
10 we're referencing.

11 THE COURT: All right. Mr. Savage, just give
12 them to the clerk. He'll go run everybody copies, and
13 maybe we can come back to this, if you don't mind, once
14 we get the copies. Is that going to mess up your
15 sequence?

16 MR. SAVAGE: No, I really want to move on if we
17 can.

18 THE COURT: Pardon?

19 MR. SAVAGE: I'm sure the doctor would like to
20 get back to Boston.

21 Q. Are we okay moving forward?

22 A. Sure.

23 Q. In that history from 2008 -- it seems obvious, but I
24 still have to ask the question. It would be important to
25 know, I guess, of what the child presented with, what

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1 symptoms she presented with at that time?

2 A. Yes.

3 Q. So that the jury would know that perhaps these
4 symptoms that you observed a year later were one in the
5 same?

6 A. Sure.

7 Q. And after reviewing those records, we now know and
8 are in a position to tell the jury that the assessment
9 made in 2008, those red flags so to speak, those
10 psychological red flags, were one in the same as they
11 were when you saw her?

12 A. I do believe that's correct.

13 Q. And why is that, doctor?

14 A. Well, based on just reading through that quickly, it
15 seemed to me that the symptoms that they were describing
16 on that piece of paper were more consistent with
17 depression or grief. Now, the tricky part comes in in
18 which there's a lot of overlap in the symptoms of
19 P.T.S.D. and depression. In fact, they often highly
20 comorbid which means that people with P.T.S.D. tend to
21 have depression as well. So the overlapping symptoms
22 which I think you're referring to, which I think are
23 difficulty sleeping, irritability and so forth, often in
24 children, depression manifests itself more as
25 irritability as well. And so the overlapping symptoms,

1 my initial take would be that those stem from the death
2 of her father from cancer. I don't see re-experiencing
3 symptoms in there. Again, I looked through it more
4 closely. But the re-experiencing symptoms, there again,
5 those flashbacks and so forth, those are really the
6 hallmarks of P.T.S.D. The other things tend to overlap
7 with depression as well.

8 Q. What about violence? Would that evoke the P.T.S.D.?

9 A. Sure, if it's ---

10 Q. And did you review the records in detail to see
11 whether the presentation of the child was there because
12 of her observations of violence in the home, or are you
13 just selectively taking what you would like to plug in as
14 the reason for her being there? Are you aware that the
15 2008 presentation ---

16 MS. GORDON: Your Honor, I object. This is a
17 compound -- he needs to let her answer the first
18 question.

19 THE COURT: Let her answer one question at a
20 time.

21 Q. Are you aware that the presentation of this child at
22 the Medical University was because of violence that the
23 child had observed in the home, mental health illness of
24 the mother, and alcoholism?

25 THE WITNESS: Do I have to answer yes or no?

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1 THE COURT: Pardon?

2 THE WITNESS: I'm sorry. Do I have to answer
3 yes or no, or can I elaborate?

4 THE COURT: You need to answer yes or no, I
5 don't know, I don't understand. You can give any
6 explanation you want to give.

7 THE WITNESS: Okay.

8 A. During the assessment ---

9 Q. The answer is yes or no?

10 THE COURT: Yes or no?

11 THE WITNESS: Oh, do I have to give -- I'm
12 sorry. I misunderstood you. I thought I could
13 elaborate.

14 THE COURT: Or you can give that ...

15 Did she say yes or no?

16 Do you remember the question?

17 A. I can't remember the question. I'm sorry.

18 Q. The question was ---

19 THE COURT: Listen to the question. Answer it
20 yes or no, I don't know, I don't understand, and you can
21 give an explanation.

22 THE WITNESS: Okay.

23 THE COURT: I won't let him interrupt you.

24 Okay?

25 THE WITNESS: Okay.

1 Q. And if I do, I apologize.

2 Dr. Steenkamp, not today, but when you interviewed
3 this child in February of 2009, were you aware that her
4 prior presentation for psychological intervention at the
5 Medical University of South Carolina was for her viewing
6 of violence in the home, mental health of her mother, and
7 alcoholism?

8 A. Yes.

9 THE COURT: Now you can give whatever
10 explanation you'd like.

11 THE WITNESS: Okay.

12 A. I was aware that Minor¹ had witnessed domestic
13 violence. That came up during our interview. I believe
14 both her and her mother disclosed that. I was also aware
15 that her father had died when she was younger and that
16 she had had a difficult adjustment period to that.

17 So, yes, I knew that she had had some psychological
18 symptoms regarding that when I did my assessment, and
19 that did not change my diagnosis.

20 Q. Then or now?

21 A. Then and now.

22 Q. Well, tell us who you conferred with who had prior
23 treatment of this child?

24 A. I did not confer with anyone in Florida. But again,
25 the M.U.S.C. records would have been on my computer in

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1 front of me.

2 Q. With whom did you discuss -- I'm asking specifically
3 names of treating psychologists or psychiatrists
4 regarding the treatment she received at the Medical
5 University where you were employed in 2008?

6 A. I did not talk to anyone.

7 Q. So the impression that you have testified to without
8 any prior child experience, you did not consult with the
9 professionals at the Medical University on staff ---

10 A. Uh-huh (affirmative).

11 Q. --- who had years and years of experience in
12 psychiatry of children, psychological with children?

13 A. I didn't know if they did have that experience.

14 Q. Because you didn't call, you didn't ask. You didn't
15 try.

16 A. I did not deem it necessary at the time, but, yes,
17 granted I did not speak to them to hear about the
18 treatment she had years previously.

19 Q. So when you say that the presentation that was in
20 2008 was different than the one you saw in 2009, although
21 you've testified today that the 2009 was withdrawn
22 behavior, disturbance in sleep, difficulty with
23 relationships and coping with family ---

24 A. Uh-huh (affirmative).

25 Q. --- anti-authoritarian behavior, among other things

1 which included defiant behavior, unexplained
2 irritability, crying often, loss of interest in
3 activities once enjoyed, appears bored, often lacks
4 interest in playing with friends or communicating with
5 anyone, social isolation, difficulty initiating sleep,
6 difficulty maintaining sleep, early morning waking cycle,
7 motor retardation, loss of energy, fatigue, exhaustion,
8 low self-esteem, lack of self-confidence, feelings of
9 worthlessness or inappropriate guilt, extreme sensitivity
10 to rejection or failure, difficulty concentrating and
11 decline in academic performance, difficulty with
12 relationships or coping with family, conflicts and peer
13 conflicts, frequent vague, non-specific physical
14 complaints such as physical manifestations. That's a
15 long laundry list.

16 A. All consistent with depression, absolutely.

17 Q. Let me ask you again, did you talk to anyone about
18 the basis for the treatment?

19 A. No.

20 Q. Do you know that treatment was sought because there
21 were observations of physical violence in the home, the
22 mother's mental health issues and alcohol?

23 MS. GORDON: Objection, asked and answered.

24 A. I don't know whether that's accurate.

25 Q. Now, in terms of the prior treatment, were you aware

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1 that this child was provided medication?

2 A. I don't recall. I know she was -- she didn't with
3 me, but I don't recall if she had before.

4 Q. Were you aware in taking this social history, and
5 would it have been important to you, that she was taking
6 psychotropic medication, or does that not matter?

7 A. It does matter. Because we had a psychiatrist on
8 staff who was seeing the patients, we tend to leave the
9 medical assessments, the medical histories, primarily to
10 them. I would note perhaps if they were taking
11 medications, but it would not impact the treatment that I
12 was doing. And as a psychologist, I cannot talk about
13 meds with them.

14 Q. Now, the medication is in your records?

15 A. I would note in the record that someone is on a
16 medication, that they're taking it. But I wouldn't, for
17 example, be able to change the dosage or even recommend
18 that they change the dosage. It's not within my area of
19 expertise.

20 Q. Why was the medication doubled in 2008?

21 A. I have no idea. Again, it's not my area.

22 Q. And when you asked the psychiatrist that was
23 involved, why was this medication prescribed, why was it
24 doubled in dosage, what response did you get?

25 MS. GORDON: Objection, Your Honor. He's

1 asking about 2008. This witness has testified she didn't
2 treat the patient until 2010.

3 THE COURT: Overruled. If she knows, she
4 knows; if she doesn't, she doesn't.

5 Do you remember the question?

6 THE WITNESS: I think so.

7 A. The question was, whether I had knowledge ---

8 Q. You had, as I understand it, a computer and maybe
9 hard copies of the 2008, one year before you saw her,
10 less than a year before you saw her -- about a year
11 before you saw her -- the records of her psychological
12 intervention, psychiatric intervention.

13 A. Uh-huh (affirmative).

14 Q. You were aware that she was taking medication?

15 A. To be honest, I have no memory of that simply
16 because it would not have been important for my
17 treatment.

18 Q. Even if she was taking psychotropic medication, even
19 if it doubled?

20 A. Ninety-five percent of my patients take psychotropic
21 medication. It doesn't even register with me.

22 Q. Children?

23 A. Children are often on psychotropic medications.
24 Again, this is not my area. I can't speak to it.

25 Q. Have there been any clinical trials with children

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1 for S.S.R.I.'s, psychotropic ---

2 MS. GORDON: Objection, Your Honor. Beyond the
3 scope of her expertise.

4 THE COURT: I'll sustain that objection.

5 MR. SAVAGE: Your Honor, I'd ask her to be
6 allowed ---

7 THE COURT: I'll sustain that objection. It's
8 beyond the scope of her expertise and what she's ---

9 Q. You're in the field of psychology?

10 A. Uh-huh (affirmative).

11 Q. Is that correct?

12 A. That's correct.

13 Q. And you work closely with psychiatrists?

14 A. Somewhat, yes.

15 Q. Both fields are directed towards mental health?

16 A. Correct.

17 Q. They call psychology the soft science. Is that
18 true?

19 A. True.

20 Q. And they call medicine the hard science when it
21 comes to treating of psychiatrically ill people?

22 A. True.

23 Q. Are you not taught or have you not received
24 knowledge through experience or training the impact of
25 psychotropic medication on children?

1 A. We receive some basic training.. Obviously, if
2 you're a child psychologist, more so. Again, it is
3 outside the -- we specialize in talk therapy.

4 Q. Generically, you are aware of the overall concern
5 about psychotropic medication on children?

6 A. I am aware there is some concern. I don't know
7 about the scientific validity of that concern or the
8 field's response to that concern.

9 Q. But you know that that's a red flag?

10 A. I know that some people believe it to be a red flag,
11 but I don't know if it's a fact that it's a red flag.
12 It's not my area.

13 Q. When you were treating the child under your
14 auspices, was the child at the same time you were caring
15 for her, under the care of a psychiatrist?

16 A. Yes.

17 Q. Who is that psychiatrist?

18 A. Dr. Marcus Christie.

19 Q. And have you consulted with that psychiatrist in
20 preparation for today's testimony?

21 A. No, I have not.

22 Q. Were you aware that the child stopped psychological
23 intervention at the Medical University for failure to
24 come to her appointments in the sessions prior to your
25 intervention?

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1 A. Prior to my intervention?

2 Q. Yes.

3 A. If it's in the record, yes.

4 Q. And you're aware that the psychological intervention
5 was stopped, terminated, because of the mother of the
6 child's failure to respond to phone calls and requests to
7 come back for treatment?

8 A. Again, if it's in the records, I will say, yes. But
9 I have no independent memory of that.

10 Q. Really, what we want is we want the jury to have
11 full and accurate truthful information. If you don't
12 recall, then you don't recall.

13 A. I don't recall.

14 Q. But you're not saying that that's not true?

15 A. I don't know.

16 Q. And that the records would reveal that, and you have
17 those records?

18 A. I don't have those records in front of me. But if
19 that's what they say, I'm sure it's accurate.

20 Q. So when you initially engaged in your treatment with
21 her, were you -- did you express any concerns about her
22 attendance at your weekly sessions?

23 A. Concern? No. When doing P.T.S.D. treatment with
24 any patient, attendance is a problem because they're also
25 avoidant and because the type of therapy we ask them to

1 do is so difficult emotionally. As you can imagine, a
2 lot of people will drop out. So I think I would have
3 made a blanket statement if any -- which I do with most
4 of my patients just really from the front-end sort of,
5 you know, asking them to try and come in and not avoid
6 and keep coming even though it's painful.

7 Q. And of course, your experience is with adults. In
8 this case you were not going to hold the child
9 attributable, but the mother attributable to make sure
10 that she was in compliance with your directives?

11 A. Yes, both.

12 Q. And in fact, you interviewed the mother at the
13 initial meeting you had with her.

14 A. Uh-huh (affirmative).

15 Q. Is that correct?

16 A. Yes.

17 Q. And the mother was made aware of how important these
18 sessions would be for her child's psychological benefit?

19 A. I believe so, yes.

20 Q. Do you recall how many times you saw the child?

21 A. I believe it was fifteen. I could be wrong about
22 that.

23 Q. And how many of those occasions did the child miss
24 in terms of attendance?

25 A. I'm sorry. She attended fifteen. I don't know how

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1 many she missed, but she definitely missed a few.

2 Q. And actually you testified earlier that she was
3 discharged because she had completed the treatment. But
4 actually, a review of the records would indicate that she
5 failed -- her mother stopped taking her and that you were
6 moving back to Boston?

7 A. Uh-huh (affirmative).

8 Q. And instead of passing her onto another therapist at
9 the Medical University, her case was closed?

10 A. She did stop coming. Ideally, I would have liked to
11 see her two or three more times. I would not have
12 referred her up to continue on in our clinic simply
13 because our clinic only dealt with trauma-related
14 difficulties. And those, in my opinion, had been
15 resolved. It is also not uncommon at all for people to
16 stop showing towards the end. There are two reasons for
17 that. One is they get better. They don't feel like they
18 really need to come in, to kind of drive all the way and
19 pay all the money, and so they kind of stop coming. And
20 a second is, you know, often when a therapist is leaving
21 there's a sense of loss about it. This is not true for
22 everyone. But for some people it becomes sad to say
23 goodbye, and so they avoid that goodbye.

24 Q. And again, you're speaking in reference to an adult
25 population. You certainly didn't expect this child to

1 drive herself to these sessions?

2 A. No. But I think what I just said is also relevant
3 to children.

4 Q. Well, actually, it's not because a child doesn't
5 make that decision to get in a car or call a Yellow Cab
6 or ask somebody to come. It's an adult decision. Isn't
7 that correct?

8 A. True.

9 Q. And that's one of the distinctions between adult
10 therapeutic involvement and child therapeutic
11 involvement. You must depend on a caretaker?

12 A. Yes.

13 Q. And this caretaker is the one that you referred for
14 psychiatric intervention while you were treating the
15 child?

16 A. Yes.

17 Q. You don't have the notes of that intervention?

18 A. No. That was separate from me. I did not treat the
19 mother.

20 Q. And were you aware that the mother missed and the
21 child missed the second appointment they had with you?

22 A. The appointment with me?

23 Q. Yes.

24 A. I'm not ---

25 Q. The very second meeting with you.

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1 A. I'd have to look at my notes. If they're a no-show,
2 I don't immediately recall that.

3 Q. Did you record when the mother was in attendance and
4 when the mother was not in attendance?

5 A. Typically we do, yes.

6 Q. And did the mother miss six out of the fifteen
7 meetings?

8 A. Again, I'd have to go back and count ---

9 THE COURT: Well, look at your notes and count.

10 THE WITNESS: Okay.

11 A. This might take a minute.

12 Q. Let me see if I can help you. March 1st.

13 THE COURT: Well, give her an opportunity to
14 look at her notes, please, sir.

15 A. Mr. Savage, you asked about the second session being
16 a no-show?

17 Q. The specific ones that I wanted to ask you were the
18 ones that the mother did not attend.

19 A. Uh-huh (affirmative).

20 Q. And I know you started in February, 9th, I believe.

21 A. Yes.

22 Q. I believe that the mother was present on the 15th
23 and the 22nd?

24 A. Yes.

25 Q. And March 1st she was on vacation.

1 A. Yes. So she was there for the second session.

2 Q. Yes. I'm asking you now -- I apologize.

3 A. Uh-huh (affirmative).

4 Q. On March 1st, the mother was listed in your notes as
5 being on vacation?

6 A. Yes.

7 Q. Do you know how the child got there?

8 A. I'm assuming she arranged a ride from someone.

9 Q. And the mother again missed the 16th of March. And
10 the mother missed again on the 22nd of March.

11 A. Uh-huh (affirmative).

12 Q. Which was early on in the therapeutic process,
13 correct?

14 A. Yes.

15 Q. So when you say that they started missing towards
16 the end, actually almost from the beginning the mother
17 did not show the attention that I'm sure you would have
18 expected to this child who was so traumatized?

19 A. I don't know if I'd phrase it that way. Minor1 was
20 fourteen at the time so was able to come in by herself.
21 And the mother was actually not that necessary towards
22 the beginning.

23 Q. This child who lived in Mount Pleasant could come by
24 herself at age fourteen?

25 A. Well, not by herself in the sense of walking there

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1 but arranging -- I'm sure they made arrangements. I
2 don't know how she got to sessions. But I don't believe
3 it impeded our sessions at that time.

4 Q. But you made note of it?

5 A. Yes. We always make note of who attends.

6 Q. So it must have had some importance in order for it
7 to be documented?

8 A. Sure.

9 Q. And then the mother had sporadic attendance. Then
10 in July she just was not responsive to your phone calls,
11 the multiple phone calls, that were made to remind her of
12 the sessions ---

13 A. Uh-huh (affirmative).

14 Q. --- without any returned calls?

15 A. Uh-huh (affirmative).

16 Q. And then you discharged her?

17 A. Yes. I was leaving.

18 Q. Now, we had asked earlier about the third-party
19 verification when you're dealing with a child. And I
20 know you don't have a lot of experience with that. But
21 even with adults, third-party verification of factual
22 presentations are important, are they not?

23 A. No, I would not say so. They're important, but
24 they're hardly ever done in practice.

25 Q. Well, for instance, if the child reported to have

1 traumatic events in life that interfered with social
2 relations, school, academics and whatnot, would it be of
3 some import to you to talk to the school counselors, the
4 teachers, take a look at her academic records to see
5 whether or not those records are consistent with the self
6 report?

7 A. No. Only in situations where I had reason to
8 believe an individual was malingering. In other words,
9 lying.

10 MR. SAVAGE: Your Honor, I have a matter of
11 law.

12 THE COURT: I'm sorry. What?

13 MR. SAVAGE: I have a matter of law.

14 THE COURT: Do you want to step up here real
15 quick and let me hear it?

16 (WHEREUPON, a bench conference was held off the
17 record.)

18 THE COURT: All right. Mr. Foreman ...
19 Let me see the attorneys up here just a second.

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 Q. Dr. Steenkamp, thank you for your patience. The
23 question I was asking was about whether in the practice
24 of psychology, whether it's adults or juveniles, if it's
25 a protocol for a psychologist to get information from

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1 third-parties. And when I said third-parties, I mean not
2 the reporting person, not in this case the child. You
3 indicated that you got information, I believe, from
4 medical records and you got information from the mother.
5 Was there any other source of information that you relied
6 upon to give the opinion you gave today that this child
7 suffered post-traumatic stress syndrome?

8 A. So in answer to the first question, no, I do not
9 think it is protocol to get that third-party information
10 unless there are extenuating circumstances. And the
11 second question, no, I did not rely on any other
12 information besides what you just mentioned.

13 Q. In the medical field -- and I guess you're under
14 that umbrella. I would call you a health care
15 professional. Is that fair?

16 A. Yes. That is fair.

17 Q. There is reliance on x-rays, blood tests, you know,
18 all those sorts of things.

19 A. Uh-huh (affirmative).

20 Q. Including physical observations, examinations. Did
21 you obtain any medical records regarding medical doctors'
22 examination or observations of the child involved in this
23 proceeding?

24 A. Yes.

25 Q. And you were aware that there was no manifestation

1 of any trauma?

2 MS. GORDON: Objection, Your Honor. Beyond her
3 scope of expertise.

4 THE COURT: Overruled.

5 Q. Do you have those medical records?

6 A. I believe so.

7 THE COURT: Lay a little foundation whether she
8 knew them or understood them, and then I'll allow the
9 question. Okay? If she understood the records, then
10 I'll allow the question.

11 Q. Based on your training and experience, were you able
12 to interpret the medical records, the medical -- the
13 physician's evaluation of this child?

14 A. I would have had a cursory understanding of what
15 they said.

16 Q. And are you aware today or were you aware then that
17 the medical records, which include blood analyses, urine
18 analyses and physical examination of the child from
19 pregnancy to S.T.D.'s to an observation, there was no
20 indication of pregnancy ---

21 A. Uh-huh (affirmative).

22 Q. --- no indication of S.T.D.s ---

23 A. Uh-huh (affirmative).

24 Q. --- no indication of trauma except for historical
25 trauma to the right eyebrow of the child?

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1 A. Except for?

2 Q. Historical. She had a previous ---

3 A. Historical. Yes, I'm aware.

4 Q. And it was all negative?

5 A. Yes.

6 MR. SAVAGE: Thank you, Doctor, I appreciate
7 your ---

8 THE COURT: I'm sorry. Did you have an
9 objection?

10 MS. GORDON: No, Your Honor.

11 THE COURT: Okay.

12 MR. SAVAGE: One moment. I always have one
13 more question.

14 Q. You didn't have an opportunity -- I'm sorry. Were
15 you ---

16 A. No.

17 Q. Did you ever have an opportunity to review the
18 subsequent, the aftercare -- following your going back to
19 Boston, did you ever have an opportunity to confer with a
20 subsequent psychological intervention this child had?

21 A. No.

22 MR. SAVAGE: Thank you.

23 THE COURT: Thank you.

24 Any redirect?

25 MS. GORDON: Just briefly, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MS. GORDON:

3 Q. Dr. Steenkamp, what was Minor having nightmares
4 about that resulted in your diagnosis of P.T.S.D.?

5 A. Child sexual abuse.

6 Q. And what was her -- what was she re-experiencing
7 that led to her diagnosis?

8 A. Child sexual abuse.

9 Q. Is there anything different about diagnosing a child
10 with P.T.S.D. than an adult?

11 A. No.

12 MS. GORDON: That's all, Your Honor.

13 THE COURT: Any recross?

14 MR. SAVAGE: No, thank you.

15 THE COURT: Okay. You may step down. Thank
16 you so very much.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Ladies and gentlemen of
19 the jury panel, Mr. Foreman, we're going to break for
20 lunch. And be back in the jury room at two-thirty and
21 we'll get started at that time. Please leave your note
22 pads. Please don't discuss the case amongst yourselves
23 or with anyone else.

24 (WHEREUPON, the jury exited the open court at
25 approximately 1:02 p.m.)

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1 MR. SAVAGE: Your Honor, I don't remember why I
2 came up to the bench.

3 THE COURT: My understanding is you asked her
4 did she believe in third-party verification and she said
5 no. And then you asked her again. And then she made a
6 response. And I, quite frankly, didn't hear her
7 response, but I understand that she said only if the
8 patient is lingering ---

9 MR. SAVAGE: I think she said lying.

10 THE COURT: --- or indication of a lie.

11 MR. SAVAGE: I think she said lying. And that
12 was our objection, that she is bolstering, again, which
13 was our initial problem with her questioning. The nature
14 of her testimony would be for no other purpose other than
15 to bolster the testimony of the child.

16 THE COURT: Well, what are you asking the Court
17 to do?

18 MR. SAVAGE: I think I'm required that the
19 Court would give an instruction that the testimony should
20 be stricken. I would ask the Court to do that.

21 THE COURT: Well, let me say this. I'm not
22 going to strike the whole testimony. I will seriously
23 consider giving a curative charge about the issue of
24 lying. That wasn't the purpose of her testimony. The
25 purpose of the testimony was for the treatment process,

1 not to make a determination of whether the child was
2 truthful or not.

3 MR. SAVAGE: Jean Toal tells me I have to move
4 to strike and then ask if you'd ---

5 THE COURT: I understand.

6 MR. SAVAGE: --- ask for an instruction. And
7 when you give the instruction, I've got to say, well, I'm
8 not satisfied with that instruction. So ...

9 THE COURT: I understand. That's why I asked
10 you what do you want the Court to do. Okay?

11 MR. SAVAGE: I'm doing everything I can do.

12 MS. GORDON: Your Honor, the State's position
13 is that this information was elicited by the Defense, and
14 it's to be careful what you ask for. He asked the
15 witness ---

16 THE COURT: I understand. I understand the
17 argument when you ask the question and you open the door
18 and you don't like the response, then it's right
19 difficult to ask to strike.

20 MR. SAVAGE: Except that it wasn't a responsive
21 answer. The question was, did you verify with third-
22 parties.

23 THE COURT: I understand. But my problem is
24 with this. Okay? That's the second time you asked her.
25 She said no, and then you fired it right back at her. So

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1 she wasn't going to say no again then, so she let you
2 hold it. Okay?

3 MR. SAVAGE: Yes.

4 THE COURT: But I will seriously consider
5 giving a curative charge. Now, if you would like to
6 prepare a curative charge, I would be more than happy to
7 receive it. I may give it and I may not. I'll decide
8 over lunch. Okay?

9 MR. SAVAGE: First ---

10 THE COURT: As to the lying.

11 MR. SAVAGE: The first thing we do is ask you
12 to strike ---

13 THE COURT: That motion is denied as far as
14 striking the entire testimony.

15 MR. SAVAGE: No, I'm not asking for that. I'm
16 asking to strike those references to truthfulness,
17 believability, credibility, specifically where she says,
18 unless I believe she's lying. I would ask that to be
19 stricken and then I will prepare over the lunch hour a
20 curative instruction in addition to that.

21 THE COURT: Well, prepare a curative
22 instruction and let the State look at it and present it
23 to me, and I will seriously consider giving it. Okay?

24 MR. SAVAGE: Thank you, Your Honor.

25 THE COURT: And I will also seriously consider

1 striking the testimony about indication of lying. That's
2 all you're asking me to strike, right? Not the entire
3 testimony?

4 MR. SAVAGE: Well, all the other testimony is
5 still subject to our previous objection. I know you're
6 not going to strike it all.

7 THE COURT: I'm not striking it all. You know
8 that. Okay? You might get part of the hog, but you
9 ain't getting the whole thing.

10 MR. SAVAGE: Thank you, Your Honor.

11 THE COURT: Okay. Thank you very much.

12 (WHEREUPON, court stood at recess for a lunch
13 break.)

14 THE COURT: We're still waiting on one juror,
15 so everybody ...

16 MS. GORDON: Your Honor, we're waiting for the
17 doctor from M.U.S.C. as well.

18 THE COURT: Is it -- who are you calling next?

19 MS. GORDON: Dr. Mia Amaya.

20 THE COURT: And what's her -- she's a doctor in
21 what?

22 MS. GORDON: She's a pediatrician.

23 THE COURT: Oh, okay.

24 MS. GORDON: I believe she has her board
25 certification and practice in pediatrics.

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1 THE COURT: While we're waiting on this juror,
2 did you come up with a curative, something curative?

3 MS. GORDON: They have provided me a copy of a
4 curative instruction. Your Honor, I would object to it
5 being stricken or to a curative instruction. The Defense
6 got what they asked for. They opened the door, elicited
7 testimony. And when they didn't like the answer, they
8 asked for it to be stricken. I mean, that's the chance
9 the Defense takes when they ask a question during
10 testimony.

11 (WHEREUPON, a portion of the testimony of Maria
12 Steenkamp was played back.)

13 THE COURT: I'm good.

14 Have you got the last juror?

15 THE BAILIFF: Yes, sir, they're all present,
16 Your Honor.

17 THE COURT: Is the State ready to proceed?

18 MS. GORDON: Your Honor, I did get an update
19 from Dr. Amaya. She is on her way. She was about seven
20 minutes ago on Calhoun Street. It's flooded, and she was
21 having trouble getting through.

22 THE COURT: The whole town's flooded.

23 MS. GORDON: Pardon?

24 THE COURT: The whole town's flooded.

25 MS. GORDON: Yes, that's what I'm -- so she is

1 diligently trying to make her way to the courthouse.

2 MR. SAVAGE: Judge, we've got a couple of
3 things we can do while we're waiting.

4 THE COURT: I guess that -- I mean, basically
5 it was flooded in the parking garage earlier. What can
6 we do?

7 MR. SAVAGE: There's some legal issues. One is
8 the one that the Court is currently considering. I've
9 checked.

10 THE COURT: I'm going to give a curative
11 charge. I've decided that. That's not an issue. I'm
12 going to give the charge.

13 MR. SAVAGE: I move to strike and then the
14 curative instruction.

15 THE COURT: I'm not going to strike anything.
16 Now, if you want me to strike the language that she --
17 the patient malingering or an indication of lying, I'll
18 strike that. But do you want me to draw that to the
19 attention of the jury again?

20 MR. SAVAGE: Judge, if I could have just a
21 minute to explain my situation.

22 THE COURT: All right.

23 MR. SAVAGE: In theory the gravamen of Dr.
24 Steenkamp's testimony was that this child had signs
25 consistent with post-traumatic stress arising from a

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1 sexual assault. That's essentially what she is saying.
2 The question that I had asked was, did you, Dr.
3 Steenkamp, verify the third-party information, academic
4 or whatnot, that's consistent with the signs that were
5 reported. It was all based on what she had testified to
6 in terms of consistency. The response was not to my
7 question. The response was, I only do that when I think
8 somebody's lying. I believe the court reporter will
9 verify that that's an accurate summary.

10 THE COURT: I think that's what she said.

11 MS. GORDON: May I respond? I think ---

12 THE COURT: Well, what do you want me to
13 strike?

14 MR. SAVAGE: The response to that question.

15 THE COURT: I'll strike it. I'll be happy to.
16 Now, do you want me to do it in front of the jury, or do
17 you want me to do it on the record in front of the jury?
18 Or do you want me to strike it?

19 MR. SAVAGE: The jury has to know it's stricken
20 and then you give them they charge that they can't
21 consider it.

22 THE COURT: All right. The only thing I'm
23 going to strike is the question where she said, only when
24 there's an indication of lying.

25 MR. SAVAGE: Yes, sir.

1 THE COURT: That's what I'm going to strike.

2 MR. SAVAGE: Yes, sir.

3 THE COURT: And ask them to ignore that
4 testimony.

5 MR. SAVAGE: Yes, sir.

6 MS. GORDON: Your Honor, I would like to
7 correct -- and we can read it back if necessary. But my
8 recollection of that question and for rehearing it again
9 is not did you, did you is the first question he asked.
10 Did you check? And she said, no. And then he said,
11 wouldn't it be important to do that in these instances?
12 And she said, no, not unless I have reason to believe the
13 child was malingering. And that was responsive to the
14 question of why it was important or not important. And
15 therefore, I think it is improper to strike it because he
16 elicited the testimony.

17 THE COURT: Is that basically what y'all heard
18 on the tape a few minutes ago? What the Solicitor said?

19 MR. SAVAGE: It's probably best to put in the
20 record what we listened to.

21 THE COURT: Is that basically, Jo, what -- I
22 mean, they just listed to it a minute ago. Is that what
23 the Solicitor said was the testimony?

24 MADAM COURT REPORTER: I wouldn't swear to any
25 of it. I'd rather you hear it.

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1 THE COURT: All right. Read it back to me
2 then. I want to hear his last question and I want to
3 hear her answer.

4 MADAM COURT REPORTER: You want to hear the
5 last ---

6 THE COURT: The last question he asked her and
7 the answer.

8 (WHEREUPON, a portion of the testimony of Maria
9 Steenkamp was played back.)

10 THE COURT: Okay. Thank you.

11 All right. As far as striking, I'm not going to
12 strike it, but I'm going to give a curative charge to the
13 jury.

14 Anything else we can take up? I guess we can hear
15 arguments on -- who is it -- the Minor² (phonic),
16 the stepdaughter. You said you wanted to argue about the
17 Wallace (phonic) case. On the -- I had told you several
18 days ago that the Court's concern one of the elements to
19 be considered is the time frame involved in this, I
20 believe, was twenty years; is that correct?

21 MS. GORDON: That's correct, Your Honor. And
22 what ---

23 THE COURT: Let me just ask you one more
24 question before I hear your arguments. Reading your
25 memorandum, which was very good, and reading Mr. Savage's

1 memorandum, which was also very good, did not cover the
2 manner of occurrence. In other words, what actually
3 happened to Minor 2 .

4 MS. GORDON: ?

5 THE COURT: . If it didn't actually
6 happen, what actually allegedly happened?

7 MS. GORDON: I think if you will look at the
8 chart, you will see that each individual discloses
9 rubbing and digital penetration, oral sex. And with
10 Minor 2 , it stops after attempted penile penetration.

11 THE COURT: Hang on just a second. Let me find
12 it up here. I know there's a chart attached to it. All
13 right. I've got the chart. I've got the victim, time or
14 duration, progression, the manner of abuse, the
15 progression of the abuse, secrecy. Where are you
16 referring to?

17 MS. GORDON: Specifically in there where it
18 says, manner and progression, those should include that
19 both of them disclose fondling, both of them disclose ---

20 THE COURT: All right. Defendant, manner of
21 abuse, Defendant requested she take off her clothes and
22 shoes or he would undress her. Defendant would rub her
23 vagina prior to digital penetration, oral sex and penile
24 penetration. Is that what you're referring to?

25 MS. GORDON: That's correct, Your Honor. Both

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1 of them occurred over a period of time. Both of them
2 occurred in his house. Both of them occurred while other
3 people were in the house. He gave the same explanation
4 to both of them as to why he was doing it. The first one
5 he used the words, I want to teach you about sex. To
6 Minor1 he says, I'm doing this so you won't have to
7 experiment with other boys. Both of those indicated that
8 he is going to instruct them about sex. Both of them
9 occurred, all of them, in the home except interestingly,
10 each of them indicate one of them that happened outside
11 the home. The similarities are just striking. They're
12 told, both of them, not to tell. Neither of them told
13 even when confronted by somebody who caught them. The
14 only distinction is that they're twenty years apart.

15 THE COURT: I understand.

16 MS. GORDON: But if they have to be twelve
17 years old, and both of these girls aren't twelve years
18 old at the same time, then there has to be a time limit.

19 THE COURT: I understand. But I just don't
20 think it could possibly come under the intent and absent
21 mistake. I think it would have to come under a common
22 scheme or plan. Where the Court has difficulty is the
23 common scheme or plan. I mean, you're talking about a
24 twenty-year lapse. How can that be a common scheme or
25 plan?

1 MS. GORDON: I think an additional reason why
2 it could actually come under intent is that the defense
3 is that what the witnesses are observing is innocent
4 behavior, that they are misconstruing something they saw.
5 And so I think it comes in for the purpose of showing his
6 intent in his interactions with both of those young girls
7 was the same. What he tried to explain as innocent
8 behavior in both of those was actually sexual abuse. In
9 addition, the Defense has argued that the mother and the
10 victim's prior life experiences has somehow warped what
11 they view. And I think it shows his intent in what his
12 interactions with her as to what he did twenty years ago
13 specifically because he is calling into question the
14 intent of his actions being with those children,
15 specifically with Minor 1.

16 THE COURT: Well, that may be true on the
17 rebuttal if you're going to use it in rebuttal, but we're
18 talking about your case-in-chief. And I'm not sure you
19 could justify the bad acts addressed in his cross-
20 examination. We're talking about your case-in-chief.

21 MS. GORDON: Are you ruling I can bring it in
22 on rebuttal?

23 THE COURT: I don't know. I mean, that's a
24 different standard. Now, I'm not saying you can or you
25 can't. I'm just -- right now I'm talking about your

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1 case-in-chief, and I've got a lot of difficulty saying
2 the motive or the common scheme and plan is the same over
3 a twenty-year period.

4 MS. GORDON: I mean, you can certainly employ
5 the same common scheme and plan for your entire life.
6 There is nothing about the time difference that changes
7 the common scheme or plan. That is the only distinction
8 here. And that should not be dispositive because the
9 overwhelming common scheme of everything else is so
10 similar. I mean, specifically things that are uniquely
11 similar, which you don't often find in sex abuse cases,
12 particularly that it is done in front of other people in
13 the home while other people are present, while other
14 people could have easily caught him. Both times he
15 explains to them that he is trying to teach them about
16 sex. I mean, those things are particularly uniquely
17 similar that are not similar in most of the child sex
18 abuse cases that we see. And supplement that with the
19 chart of, I think, three pages long ---

20 THE COURT: Well, do you want to mark it as a
21 Court's exhibit? I don't know if it has been marked.

22 MS. GORDON: It has been filed with the Clerk,
23 but I would like to have that also ---

24 THE COURT: That doesn't necessarily mean it's
25 going to be part of this record.

1 MS. GORDON: Yes, I would like to have that
2 marked and admitted as part of the record, Your Honor.

3 (WHEREUPON, State's Exhibit Number 8 was marked for
4 identification only.)

5 THE COURT: Anything else you want to make an
6 argument on? Is your doctor here, yet?

7 MS. GORDON: I'm going to send somebody out to
8 check on her.

9 THE COURT: Okay.

10 MS. GORDON: Your Honor, just for the record,
11 we are -- with regard to the time exception, we would
12 cite *State v. Hugner* (phonic) is what the case is stated
13 on.

14 THE COURT: Well, I don't think that the time
15 element is dispositive of the whole issue. I think it's
16 just one fact that the Court has to consider along with
17 the other *Wallace* factors, define *Wallace* factors that
18 the Supreme Court may have to look at.

19 Mr. Savage, anything you would like to add? Do you
20 want to make your brief part of the Court record?

21 MR. SAVAGE: Yes, Your Honor. I would. I
22 think we'll stand on our brief.

23 THE COURT: Get them and mark them both
24 whatever the next number will be.

25 (WHEREUPON, Court's Exhibits Number 10 and 11 were

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1 marked for identification only.)

2 MR. SAVAGE: We're a little bit surprised by

3 the Solicitor's argument on intent. Monset (phonic) is

4 very clear on that. There has been no testimony by the

5 Defendant that he was doing a medical examination or

6 giving some other explanation. He's denied what he's

7 charged with, and that's the only information that's in

8 the record. It may have been said to some third-party at

9 some distant location. It's interesting, but it has no

10 import in terms of what's going on in this trial. The

11 Supreme Court's been very clear that motive and intent

12 are not admissible grounds for conception unless the

13 Defendant tries to explain the actions in a way

14 inconsistent with criminal activity. If he absolutely

15 denies it, then intent and motive is not an issue. The

16 only issue that would remaining then of the *Lyle*

17 exception, the 404(b) exceptions, would be common scheme

18 or plan. As the Court has pointed out, it's preposterous

19 to think that independent, isolated individual actions

20 twenty years apart could be part of a common scheme and

21 plan. One doesn't spill into the other. Now, if there

22 had been repeated instances of similar conduct that would

23 show a pattern of conduct over those twenty years, that

24 would be a different thing. But these are two isolated,

25 independent ---

1 THE COURT: Let me ask you just one question.
2 On the *State versus Wallace* case, you're familiar with
3 it?

4 MR. SAVAGE: Yes, sir.

5 THE COURT: The Court of Appeals reversed the
6 circuit court in allowing it, saying it was too remote in
7 time. Then the Supreme Court reversed the Court of
8 Appeals and laid out the *Wallace* factors.

9 MR. SAVAGE: Yes, sir.

10 THE COURT: And they didn't address the time
11 issue in *Wallace*.

12 MR. SAVAGE: No, but there was a subsequent
13 case that did address that.

14 THE COURT: There was a subsequent case that
15 said it was a factor for the court to consider, along
16 with the other five factors in *Wallace*. If I understand
17 that. But my question to you, why did the Supreme Court
18 reverse the Court of Appeals on just the time issue and
19 not address it?

20 MR. SAVAGE: Wasn't that ---

21 THE COURT: Maybe it was *State versus Hugner*
22 (phonic). I'm sorry.

23 MR. SAVAGE: Wasn't that the same case with the
24 same household, the same parties involved in a two-year
25 period of time?

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1 THE COURT: Right. That's right.

2 MR. SAVAGE: We're talking here about
3 incidences across the country. We're talking about two
4 entirely different separate instances of conduct.

5 THE COURT: You're talking about the *State*
6 *versus Forensca* (phonic), and I was talking about the
7 *State versus Hugner*. That's immaterial. That's a
8 theoretical question, and that doesn't have anything to
9 do with it.

10 All right. I'm going to -- I'm not going to allow
11 you to go into it. I don't think it qualifies at this
12 point in time under the *Wallace* factors as well as the
13 time sequence.

14 Is your doctor here?

15 MS. GORDON: Someone just said ---

16 THE COURT: As I said, I'm not going to -- I'm
17 not addressing any reply. Mr. Savage, you understand
18 that?

19 MR. SAVAGE: I do.

20 THE COURT: Do you understand?

21 MR. SAVAGE: Judge, if he gets on the stand and
22 says, I did it accidentally. I'm sorry, I didn't mean to
23 do it ...

24 THE COURT: Well, I mean, if you open the door,
25 then the door's open.

1 MR. SAVAGE: Yes, sir.

2 MS. GORDON: Your Honor, let me go check on the
3 -- she's in the elevator.

4 THE COURT: Pardon?

5 MS. GORDON: She is in the elevator.

6 THE COURT: Oh, okay. What do y'all have, a
7 G.P.S. on her or something?

8 MS. GORDON: I think we've got texting going
9 on.

10 THE COURT: An ankle monitor?

11 MR. SAVAGE: Judge, I want to be clear that I
12 don't need the jury to know, but I do need your wife to
13 know ---

14 THE COURT: Do what?

15 MR. SAVAGE: I don't care about the jury, but I
16 care about your wife. I want her to know that I didn't
17 cause this delay.

18 THE COURT: Oh, okay. All right. And your
19 cross, you said, is going to be about twenty minutes?

20 MR. SAVAGE: It's going to have to be less than
21 that.

22 THE COURT: All right.

23 MR. SAVAGE: It's one thing for Gordon to be
24 mad at me; it's another thing for the Judge's wife to be
25 mad at me.

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1 THE COURT: All right. Do you oppose her
2 qualification as a pediatrician?

3 MR. SAVAGE: No, sir. I've already advised the
4 Solicitor I would not oppose Dr. Mia Amaya or Dr. Don
5 Nelson's expertise, assuming that it's in the area that
6 they're experts.

7 MS. GORDON: Your Honor, if the Defense has no
8 objection, I will go ahead and admit State's Exhibit 8
9 into evidence.

10 MR. SAVAGE: Assuming she can identify it.

11 THE COURT: What is it?

12 MS. GORDON: It's a diagram that the doctor
13 used.

14 THE COURT: Any objection?

15 MR. SAVAGE: Assuming that she's going to
16 authenticate it, I don't have any objection.

17 THE COURT: Okay.

18 MS. GORDON: Your Honor, the doctor is here.

19 THE COURT: All right. Bring us the jury,
20 please.

21 (WHEREUPON, the jury entered the open court at
22 approximately 2:58 p.m.)

23 THE BAILIFF: They're all seated, Your Honor.

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen of the jury, I'm sorry for the delay. But we

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1 had a doctor coming from M.U.S.C., and she was caught up
2 in the flooded streets of Charleston and just recently
3 arrived. And that's what we were waiting on. I'm sure
4 y'all are all familiar with the flooded streets in
5 Charleston when it rains as hard as it just rained the
6 last couple of hours.

7 I would also like to tell you that you just heard
8 the testimony of Dr. Steenkamp. Now, her testimony is
9 for the purpose of medical diagnosis and treatment of
10 post-traumatic stress syndrome, not as to the victim's
11 truthfulness.

12 Call your next witness, please.

13 MS. GORDON: The State calls Dr. Michelle
14 Amaya.

15 **MICHELLE AMAYA,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MS. GORDON:

19 Q. Good afternoon, Dr. Amaya. Can you tell us where
20 you are employed?

21 A. Yes. I work at the Medical University of South
22 Carolina at the children's hospital there.

23 Q. And what is your position there?

24 A. I am an associate professor of pediatrics, and I
25 have a board certification in general pediatrics, but

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1 also in child abuse pediatrics.

2 Q. And what is your educational background?

3 A. I -- do you want me to go back to like college and
4 medical school?

5 Q. Yes.

6 A. Okay. I attended four years of college at the
7 College of William and Mary in Virginia. Then I attended
8 medical school at the University of North Carolina at
9 Chapel Hill. And I stayed there and attended my
10 residency there, internship and residency, which is a
11 total of three more years of training in general
12 pediatrics training. And then I moved to Alabama, and I
13 got additional training in general pediatrics through an
14 academic general fellowship. And at the same time, I got
15 a master's in public health and maternal and child
16 health. And I worked in Alabama for a while, and then I
17 came to M.U.S.C. I was recruited up here to come up, and
18 I've been here for four years.

19 Q. How long have you been a pediatrician?

20 A. Let's see, add all that up. Something like twenty
21 years, something like that. 1983 -- it will be twenty
22 years next year.

23 Q. And how long have you been a pediatrician practicing
24 in the area of child abuse pediatrics?

25 A. Sixteen years.

1 Q. Could you estimate how many children you've examined
2 in regards to child abuse?

3 A. Well, I'm going to start broad because as a general
4 pediatrician, I think it's really important that we
5 assess all of our kids at all their well-child visits for
6 healthy things, including for screening. So I think I've
7 seen easily over ten thousand kids in my practice. And
8 I'd say as far as specifically referred to me for child
9 abuse assessments, maybe four thousand kids related just
10 to child sexual abuse.

11 Q. As part of your duties at the Medical University, do
12 you also perform exams related to child sexual abuse and
13 child physical abuse at the Lowcountry Children's Center?

14 A. Yes, ma'am, I do.

15 Q. Okay. How long have you been doing that?

16 A. Since I arrived in September of 2008, so almost --
17 I'm almost at my four-year anniversary here.

18 Q. And you may have mentioned this. But do you hold
19 any specific board certifications in addition to --
20 you're a board certified pediatrician?

21 A. Yes, ma'am.

22 Q. Okay. And do you hold any additional certifications
23 with regards to child abuse pediatrics?

24 A. Yes. I am board certified in child abuse pediatrics
25 which is a new sub-specialty certification by the

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1 American Board of Pediatrics. It was first offered in
2 2009, and I was certified in 2009. I was one of the
3 first people to sit for it in the country.

4 Q. And I'm just looking at your C.V. It looks like you
5 are -- you have held academic positions?

6 A. Yes.

7 Q. Do you currently hold any academic positions?

8 A. Yes. My favorite one is -- I'm the Fellowship
9 Director for Child Abuse Pediatrics at M.U.S.C., and
10 that's a teaching position. So my job doing that is I'm
11 training specifically fellows, someone who's has
12 completed pediatric residency training and then they go
13 on to do sub-specialty training in the field of child
14 abuse pediatrics. So we have a program to train in our
15 whole division, but we also have opportunity to do
16 training and teaching for medical students and residents
17 in all different, you know, family medicine or pediatrics
18 especially and nurses and P.A.'s. So that's my favorite
19 part of my job is my teaching job.

20 Q. And have you lectured and presented at conferences
21 regarding child abuse pediatrics?

22 A. Yes, I have.

23 Q. And have you ever had to testify before as an expert
24 in the area of child abuse pediatrics?

25 A. Yes, I have.

1 Q. Could you approximate how many times you have been
2 qualified as an expert in court prior to today?

3 A. About thirty. Thirty to thirty-five in sixteen
4 years.

5 Q. And have you published peer review articles in the
6 area as well?

7 A. I have.

8 MS. GORDON: Your Honor, at this time we would
9 offer Dr. Michelle Amaya as an expert in the area of
10 child abuse pediatrics.

11 THE COURT: Any objection?

12 MR. SAVAGE: As we stated earlier, we think
13 she's well qualified.

14 THE COURT: Okay. The Court so finds.

15 Q. Dr. Amaya, as part of your duties at M.U.S.C., you
16 said that you also see children at the Lowcountry
17 Children's Center related to alleged sexual assault?

18 A. Yes.

19 Q. Did you, as part of your duties, see a child by the
20 name of Minor 1 ?

21 A. Yes, I did.

22 Q. Do you recall when you saw her?

23 A. On November 17th, 2009.

24 Q. And how do children get referred to you?

25 A. A variety of ways. A lot of times, they're referred

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1 by their pediatrician. But most of them we get referrals
2 from one of the agencies in South Carolina who are
3 mandated to protect our kids. So either the Department
4 of Social Services or law enforcement. But we can get
5 them directly from families, or we can get them from
6 schools or a psychiatrist or psychologist.

7 Q. Do you recall how Minor 1 was referred?

8 A. Yes, ma'am. She was referred by Detective Bacon of
9 the Mount Pleasant Police Department.

10 Q. Can you explain to the jury what type of medical
11 exam you performed on Minor 1?

12 A. Yes. We have a standard clinical protocol for when
13 children come in for a concern of possible sexual abuse.
14 So when they come in, we typically greet them. They have
15 a child-friendly center, so it doesn't look so doctorery
16 (phonic) there because a lot of the younger kids are
17 afraid of shots, et cetera. They get met by an advocate
18 who gets all their extensive consent forms. And then
19 usually a therapist at the center and I will meet with
20 the child at the same time. Well, actually, the first
21 part with the care giver and/or police if the police have
22 brought them in, and/or DSS if DSS has brought them in,
23 get some history without the child present and then we
24 get together.

25 Sometimes the therapist has taken a history

1 separately, which is what happened in this case. We'd
2 taken it on another occasion. And so the child has come
3 back for a medical only. And then I will review all of
4 that information that the therapist -- the forensic
5 interviewer, at the center has taken, and then I'll take
6 additional history to confirm information. And then we
7 bring back the child and evaluate them. And for children
8 who are like twelve, thirteen years old, typically
9 they're starting to want to be the boss of themselves, so
10 we definitely give them the choice of who they want to
11 have with them in the exam room, knowing, of course, that
12 I'll definitely be there and I'll definitely have an
13 assistant because it's not proper for a chaperone not to
14 be there. And I need someone to help me. Many of the
15 kids want to come by themselves. Some of them want to
16 have a family member there.

17 And then we do a complete exam, head to toe,
18 starting off with height and weight. Part of it's for
19 familiarity, but also we're trying to look at whether
20 there's any other conditions that could be, you know,
21 mistakenly or thought related to whatever the finding was
22 that sent the child to us. And concentrate especially on
23 a careful skin exam. We look at every piece of skin that
24 there is and keeping parts of the body covered as we look
25 at the other parts, trying to preserve -- especially

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1 teenagers are very sensitive about their dignity.

2 And then we do a very careful detailed genital exam.

3 For girls, this typically means -- we have a gizmo known

4 as a colposcope. It's basically a giant flashlight with

5 a medical-grade light that it sits on a stand, and it has

6 a camera attached to it and binoculars so that you can

7 have a magnified image. And we attach it to a monitor,

8 like a computer screen. And many of the kids, we explain

9 it to them ahead of time and say what's going to happen.

10 We're going to examine -- they can see if they want. If

11 they want to cover their eyes and they don't want to

12 look, they don't have to. But most of them will want to

13 look and have questions. And so we go over everything

14 and we make some still images so we can review it

15 carefully later because obviously we want the child not

16 to have to be on the table too long because they get

17 uncomfortable.

18 And then depending on if it's indicted or not, we

19 take a history. And depending on any symptoms that the

20 patient may have and if there's any findings during the

21 exam, some children need to be tested for possibility of

22 infections. And so we may take some swabs or collect

23 blood or something if they need to have any tests done.

24 And then we end the exam with something innocuous,

25 not the genitalia part of the exam because we don't want

1 them to think of that as the last thing before they leave
2 the room. They get dressed and then we go over the
3 results of what's happened and bring back their care
4 giver and go over the results and then make
5 recommendations, and they're off.

6 Q. Is there a difference between the types of exam you
7 would give regarding what would be called an acute exam
8 and a non-acute exam?

9 A. There is, depending on how acute the exam is.

10 Q. And what kind of exam was Minor 1's?

11 A. Hers was non-acute meaning it wasn't -- like we
12 didn't see her within seventy-two hours of her whatever
13 event had occurred for her.

14 Q. Did you know what type of event had occurred or what
15 the history was?

16 A. Yes.

17 Q. Okay. And where did you get that history?

18 A. The Child Advocacy Center, The Dee Norton Lowcountry
19 Children's Center, they're -- we're really glad to
20 collaborate with them. They have an intake person there
21 who takes an initial history from the reporter, whoever
22 is the one who wanted to set the appointment. But then
23 they had already come in and they had seen one of the
24 senior therapist there named Don Elsey, Dr. Don Elsey.
25 And he had already taken an extensive history, so I had a

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1 chance to review the history before I saw her. But I
2 always go back and confirm details. And the family also
3 -- the family and the teenagers typically fill out a
4 questionnaire like when you go to see the doctor, you
5 kind of, while you're in the waiting room, you fill out a
6 questionnaire about your chief concerns. And they filled
7 that out so I could get the highlights there too, so ...

8 Q. I want to move to the medical exam. And Dr. Amaya,
9 I'm going to show you State's Exhibit 8. And tell me if
10 you -- what that is.

11 A. This is a diagram of a girl's genitalia up close.

12 Q. Would that diagram be helpful to you in explaining
13 to the jury how you perform your medical exam?

14 A. Yes, I think so. I think it would be helpful.

15 MS. GORDON: Your Honor, we move State's
16 Exhibit 8 into evidence.

17 THE COURT: Any objection?

18 MR. SAVAGE: No objection. Is it specific to
19 this case, or is it ---

20 THE COURT: All right, 8 is admitted without
21 objection.

22 (WHEREUPON, State's Exhibit Number 8 was admitted
23 into evidence.)

24 A. All right.

25 Q. Is that good, Dr. Amaya?

1 A. Yes, it looks good.

2 Q. And I'm going to give you this pointer if you need
3 it. This red -- the button with the red dot will work
4 the pointer for you.

5 A. Okay.

6 Q. You note on Minor 1's medical exam that she is Tanner
7 stage four. Can you explain to the jury what does that
8 mean?

9 A. Certainly. As children change from being little
10 kids to becoming teen years and going through puberty,
11 they go through a series of changes. Generally
12 predictable. They're not always in the exact same order.
13 But you can stage -- or doctors that like to stage how
14 developed they are. And so a stage -- the maximum is
15 stage five, so a fully grown developed woman or man is
16 stage five. And stage one means, you're like a baby.
17 You have no development, no pubertal development at all.
18 So four is practically fully developed. So a teenage
19 stage four girl would have well developed breasts. She
20 would have a large dispersion of the pubic hair, and she
21 would definite evidence of estrogen hormone present
22 influencing the vaginal opening and the vaginal tissue
23 that surrounds which is called the hymen tissue.

24 Q. You've mentioned the hymen. I know there's a lot of
25 misconceptions about the hymen. Can you explain for the

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1 jury what is a hymen?

2 A. Sure.

3 Q. Where it's located and what its importance is.

4 A. More than you probably even wanted to know. But if

5 I can use this diagram. So obviously, this is a girl who

6 is sitting in a frog-leg position, facing -- let's just

7 say it's facing you like if you're going to be the

8 examiner. And so we have her legs like this and she may

9 be sitting yoga style. And this part right here is the

10 outer skin that protects the girl's body, just like skin

11 like this. And then she has another layer of skin that

12 looks more like the inside of your mouth that's mucosal

13 skin. That's another layer of protection. And then

14 right inside of that is the opening to the vagina, which

15 is right here. And the vagina has tissue that supports

16 it, of course. And the tissue that's at the opening of

17 it, that's what's called the hymen. So it's just this --

18 it's kind of, you know, decorative tissue. It doesn't

19 really have a clinical significance. It has more of, I

20 think, cultural significance. But it is a remnant from

21 development because it has to be there in order for the

22 opening to develop at all starting from a fetus. So then

23 once the opening is developed, then the tissue, the

24 remaining collar of tissue, stays there. And it's very

25 soft and mucosal tissue. And once hormones come,

1 estrogen, it fluffs up this tissue and makes it instead
2 of kind of a little thin, almost see-through but still
3 stretchy tissue. It becomes thicker and fluffier and a
4 little bit pale tissue because then it becomes much
5 stretchier. So that's the hymen right there.

6 Q. Now, I've heard in the past that the hymen is like a
7 closed opening and that if there's a ---

8 MR. SAVAGE: Object to the form of the
9 question.

10 THE COURT: I'm sorry, what?

11 MR. SAVAGE: Form of the question. Leading
12 question. Testifying question.

13 THE COURT: Okay. Don't lead the witness.

14 Q. Is the hymen a closed -- does it cover the vaginal
15 opening? Is it like a flat surface? Explain ---

16 A. Generally not. It starts out that way in a fetus.
17 So when the baby girl is inside their mom's uterus, it
18 is. But there's rare times where the hymen is all the
19 way across like this, and those are unusual cases. But
20 generally, they present and you find out when the girl is
21 supposed to be having periods, and she's not having any
22 periods. What's happening is that the menstrual blood
23 gets trapped because the tissue there didn't form
24 correctly. But it's really uncommon, and almost all the
25 girls -- actually, there's never been a description in

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1 any of the literature of anyone having a congenital lack
2 of development of a hymen. Like there's nobody that's
3 ever reported in history in our country or others there's
4 no hymen there. But generally, the opening can be any
5 size or shape, but it's typically like this drawing, kind
6 of a crescent shape. And it's -- and -- with an opening
7 there. That's a little redundant. Sorry.

8 Q. Is there a way to tell from looking at the hymen if
9 a girl has had sex in the past?

10 A. I'm sorry. Will you say that one more time?

11 Q. Is there a way to tell from looking at the hymen if
12 a girl or a teenager has experienced sexual intercourse?

13 A. Unfortunately, usually not. Occasionally, you can,
14 but most of the time, no. Like I'd say ninety-eight
15 percent of the time you can't tell.

16 Q. Is there literature to support that?

17 A. Yes. Actually my favorite paper is written by Nancy
18 Kellogg. She's a child abuse pediatrician out in Texas.
19 And she did a study of like thirty-eight pregnant girls
20 just to ask this very question is how many, like,
21 pregnant girls -- I mean, how many would you expect would
22 have an abnormal hymen? So we have definitive evidence
23 that sexual intercourse did occur, and it had to occur to
24 the extent that the girl became pregnant. And of those
25 thirty-six girls, all of them had a normal exam where you

1 couldn't tell where they'd ever had any penile
2 penetration except two. So five percent of them. And
3 one of them had had a baby before. That doesn't -- I
4 don't think that's really a fair comparison. That's a
5 different kind of penetration where the baby's gone
6 through. So it's surprising that -- I think that's the
7 magic of hormones.

8 Q. Is there any diagnostic test that can be performed
9 based on the physical exam to determine if penetration
10 has occurred?

11 A. Please say that one more time.

12 Q. Is there some diagnostic test. Like can you do a
13 blood test and determine if somebody's had vaginal
14 penetration or digital -- penile penetration, digital
15 penetration?

16 A. No. Well, the only caveat I'll say is as far as
17 vaginal penetration is if it has resulted in pregnancy or
18 if it results in evidence that you can collect, which you
19 can only -- like sperm, if you can collect sperm at the
20 site from the vaginal area. And that only will be there
21 for a few days, and then it dies and it's gone. So in
22 those cases you can do a test. But if there's no
23 pregnancy, which is the vast majority of our children who
24 come through, then there -- I wish there was a test that
25 could tell us that, but there is no test to say for sure

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1 that there had been penetration or to exclude it.

2 Q. Is there anything in Minor 1's -- what was the result
3 of Minor 1's medical exam?

4 A. She had a normal exam. I saw her -- I think her
5 chief complaint, presenting symptoms, were in September,
6 and I saw her in November. So I wasn't very surprised.
7 But she had a normal, complete general exam and even
8 genital exam.

9 Q. And you said you weren't surprised by that. Explain
10 to the jury why that wasn't surprising.

11 A. Just that area of the body has an amazing capacity
12 to heal. So even -- I've seen a series of cases
13 presented by some of my colleagues where they had severe
14 injuries for various reasons. It could have been from a
15 fall or from a rape kind of thing and girls that have had
16 to have surgery. And even in those situations, it's
17 amazing like months later how well that they can look and
18 how normal they can look. If you look really carefully
19 in those really severe cases, you can tell. And then, of
20 course, there's some cases where it's very obvious.
21 They'll be missing segments of tissue. And the person
22 will be completely functional physically. It's just that
23 you can tell that there have been injuries. But in this
24 particular child's case, I wasn't surprised based on the
25 information that we had been given at the time of what

1 her disclosure had been so far.

2 Q. Would your opinion change if you received additional
3 information that additional penile penetration had
4 occurred?

5 A. No. I would want to know that, but I wouldn't
6 necessarily be able to -- I wouldn't necessarily expect
7 for there to be definitive evidence at the time I saw her
8 because ninety-five percent of the kids who come in and
9 say, hello, I'm having sex, can I have birth control, I
10 can't -- you know, you look carefully at them. I can't
11 help it because I'm a child abuse doctor, and so I'm used
12 to doing it. And I can't tell that they've had sex. And
13 I just say, sure, I believe you. And we will counsel
14 them about, you know, safe options for them.

15 Q. You described the use of a colposcope to examine a
16 child. Does the colposcope leave an injury?

17 A. No. It doesn't actually touch them at all.

18 Q. What do you use to -- do you insert anything into
19 the child's vagina when you do the medical exam?

20 A. We use swabs. We usually start with little swabs to
21 try to -- because the hymen becomes very -- like this,
22 undulating. And so it looks kind of like lace. And so
23 you're trying to pull up the edges of the hymen so that
24 you can display all the edges and make sure that you're
25 not missing any kind of subtle or even more obvious

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1 injury. And so we always do that. And typically in pre-
2 pubertal girls, if they can tolerate it -- and most of
3 them can -- we'll take a larger swab that's about thumb-
4 sized, and we'll put a glove on it to make it a little
5 bit easier for the patient. And then you insert it just
6 in the opening and lift up the edge so you can see the
7 edge. And that doesn't leave any findings.

8 Q. And I may not know the proper term for the utensil
9 that I'm referring to. But is there a utensil that you
10 would insert that kind of spreads the vagina open?

11 A. Uh-huh (affirmative).

12 Q. What is that?

13 A. A speculum exam.

14 Q. I apologize. I used the wrong word.

15 A. That's fine. It's a tool that -- it's sort of
16 shaped like an alligator, like this. And if I may, if
17 this is the vaginal opening the -- you use that so that
18 you can examine the internal vaginal walls and you can
19 examine the end of the uterus, which is called the
20 cervix. And we do that on every -- we do that exam on
21 every patient that presents in the acute fashion. So if
22 someone had an injury like in the last couple of days and
23 they call up -- and especially if there was a history of
24 bleeding or pain. But even if there wasn't, if they had
25 some kind of penetrative contact and they're a teenager

1 -- they can't be a pre-pubertal child. That would not be
2 good. Then we'll use this special speculum to, you know,
3 insert, open so that we can see the wall, the internal
4 walls, of the vagina and you can see the cervix. And
5 that's the best place to take swab specimens for like,
6 for D.N.A., because sperm likes to be right at the
7 opening of the cervix. That's its favorite place. And
8 you can swab it from there. And the same with a lot of
9 -- a fair number of germs, that's a good place to swab.
10 And you remove the -- that happens for women on their
11 regular check-ups, supposed -- they're supposed to go
12 every year, every two years to have those exams. And you
13 know, they're not supposed to leave any marks at all.
14 And typically they don't leave any findings. So you
15 can't tell -- you know, you can see a little bit of
16 redness in the next like fifteen minutes. But after
17 that, you can't tell that the person's ever -- I can't
18 look at someone and say, oh, you've had this many
19 speculum exams or that you've ever had a speculum exam
20 unless something had gone horribly wrong during their
21 exam.

22 Q. Did anything in your medical exam exclude sexual
23 abuse?

24 A. No. No, I couldn't exclude it.

25 MS. GORDON: The Court's indulgence. Nothing

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1 further at this time.

2 THE COURT: Cross-examination?

3 MR. SAVAGE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. SAVAGE:

6 Q. Dr. Amaya, it's good to see you again.

7 A. Hi, Mr. Savage.

8 Q. I don't believe that I've talked to you about this
9 specific case, but I'm familiar with you over at the
10 Medical University.

11 A. You know you're always welcome to call.

12 Q. I really appreciate your being here. And I saw how
13 you looked at this. I know that the State, it's
14 interesting how they phrased that question to you. Is
15 there anything in what you performed that would exclude
16 sexual abuse? I think that was the question. Well, the
17 mirror to that is, did you find anything that would
18 confirm or even indicate sexual abuse?

19 A. In the total assessment?

20 Q. Yes. In your physical exam. In the physical
21 observations.

22 A. Well, if you will allow me, I will precede it to say
23 that ninety percent of our assessments in any field of
24 medicine relate to the history and the symptoms. And
25 then the physical exam is kind of the clincher. But in

1 her physical exam, there wasn't any abnormalities at the
2 time that I saw her. So there was no physical exam
3 findings on November 17th.

4 Q. And that's the area in which you have been trained
5 to do physical examinations of young children. For
6 example, just from looking at this diagram, this has no
7 particular value in this proceeding. A couple of things
8 I notice. It looks like an old-timey diagram to me. It
9 looks like a man's hands.

10 A. It's a sketch, yes. I think it's from -- it's from
11 a textbook.

12 Q. And no gloves. Certainly a physician ---

13 A. We would like to see gloves worn, yes.

14 Q. So in terms of anything to do with this particular
15 case and this child who responded to you, this diagram is
16 -- it's really demonstrative about the physical
17 attributes of children?

18 A. Well, this is the same technique that we use to
19 examine children except for we use gloves. Because if
20 you go to look at somebody, you know, just sort of like
21 your throat is -- well, your esophagus is always closed.
22 Until you eat food, it's always collapsed. The same with
23 the hymenal opening and the vagina canal. It's always
24 closed unless you open it -- it's opened by either
25 position or that you take that position where you take

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1 the hands on the labia and you apply traction. We do do
2 that with them.

3 Q. I want you to have an opportunity to fully explain
4 your position. But the question was this reference that
5 we have before the jury, the State's Exhibit, is
6 demonstrative. It's not specific to the child who
7 reported abuse in this case. Is that correct?

8 A. I think I know what you're saying. That is not her.

9 Q. Yes.

10 A. That is not Minor 1.

11 Q. And you had indicated that you used an instrument
12 with like binoculars and whatnot in this specific case?

13 A. Yes, sir.

14 Q. And your report indicates that you took photographs
15 in this specific case?

16 A. Yes, sir.

17 Q. And are those photographs available for the jury to
18 see in this specific case in which they are trying to
19 make a decision?

20 A. Usually, I say no. And if the Court wants them, I
21 usually request a judge's court order for them because
22 they are of such a highly personal nature. And honestly,
23 usually we release them to like if you had another
24 medical expert who you wanted to see them so that the
25 Court will seal the records, they won't become public

1 record. And also because they're -- you know, they take
2 some expertise to interpret. So I think that unless any
3 of you guys are a child abuse pediatrician or obstetric
4 gynecologist, it might be a challenge and not really have
5 a lot of meaning to you to look at them.

6 Q. But the question was for those who need to make a
7 decision in this case, are those photographs available
8 for you to explain the specific photographs in this case?
9 Do you have them with you?

10 A. No, I don't have them with me. I have -- they're
11 available. We have them at M.U.S.C., so we could get
12 them. But again, I would have to strongly request that
13 we take the necessary precautions to seal them because
14 they're of a highly personal nature.

15 Q. Yes. The answer to that is, no, you don't have them
16 with you?

17 A. No, I don't have the pictures with me.

18 Q. Or any diagram regarding this specific examination?

19 A. Well, this diagram fairly, while it represents her
20 particular exam because -- it would be different if I
21 needed to draw in for you guys some abnormality that she
22 had or lesion or a pustule or a tear. Then I would just
23 get up there and I could draw it in for you. But in this
24 particular case -- actually, I'm sorry. I'm so sorry. I
25 misrepresented an answer. There is actually a diagram on

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1 our medical report on page -- well, I have my medical
2 report in front of me -- page eight.

3 Q. There's some writing on this, but that's what you're
4 referring to?

5 A. It's just a generic picture. It has no additional
6 drawings in it because there's no abnormalities to add.

7 Q. And that's what ---

8 MS. GORDON: Objection, Your Honor. That is
9 not the original document. Objection to the evidence.

10 Q. Excuse me. Is this what you're referring to, page
11 eight of thirteen?

12 THE COURT: Just hand it to her and let her
13 look at it, please, sir.

14 MR. SAVAGE: I do have some handwriting on it.

15 A. Yeah, this is the page. But like I -- I guess I
16 didn't write everything that's on here.

17 Q. Yes. Some of that's my handwriting.

18 A. Yes, sir.

19 Q. And this is what you're referring to, however, that
20 Ms. Gordon objected to. This is the actual report that
21 you made?

22 A. I forgot to see if I -- did I sign it, put my
23 initials on the corner.

24 Q. I think maybe your initials are on the bottom,
25 right-hand ---

1 A. Yeah.

2 THE COURT: Doctor, do you have your report
3 with you?

4 THE WITNESS: I only have a -- I have a -- I
5 have an unsigned version of it.

6 THE COURT: Do you have this page?

7 THE WITNESS: Yes, sir, I have it.

8 THE COURT: Give him the piece of paper that
9 doesn't have the writing on it because I'm not going to
10 let him put up the one with the writing on it.

11 Q. The page that you have ---

12 A. Oh, okay. It doesn't have my signature on it, but
13 it's the same.

14 Q. We're good. The page that you have in front of you
15 ---

16 A. Yes, sir.

17 Q. --- is the same page that I just showed you without
18 your initials on it?

19 A. Yes, sir.

20 Q. And that's specific to this examination, correct?

21 A. This is her medical report.

22 Q. And it's blank. There's no marking of any findings?

23 A. No, I didn't draw anything on it.

24 Q. Now, in addition to the gynecological exam, you did
25 some other technical examinations; isn't that correct?

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- 1 A. Please describe further.
- 2 Q. As a part of the protocol, did you do any blood
- 3 tests?
- 4 A. No, I did not do a blood test for her.
- 5 Q. Did you do a urine test?
- 6 A. I did do a urine pregnancy test and the urine screen
- 7 test for gonorrhea and chlamydia.
- 8 Q. So in your appraisal of the situation, for some
- 9 reason you believed that the child might have been
- 10 pregnant?
- 11 A. Well, I -- if someone is referred to me as a child
- 12 abuse specialist and there's any possibility that they
- 13 could get pregnant in any ways, shape or form, it's
- 14 considered standard of care. Once a menstruating female
- 15 walks into our office, it's going to be hard for them to
- 16 escape without the test without declining it.
- 17 Q. And did you also ---
- 18 A. We offered it.
- 19 Q. You also performed a test for gonorrhea?
- 20 A. I did. Gonorrhea and chlamydia.
- 21 Q. And those findings were negative?
- 22 A. Yes, sir.
- 23 Q. You performed this physical exam on November 17th of
- 24 2009?
- 25 A. Yes, sir.

1 Q. And you said that it was not an acute examination.
2 What would be the difference between an acute examination
3 and the examination that you performed on this child?

4 A. I understand that she stated that an event occurred
5 to her on September 20th, 2009. So if she had come to
6 see me on September 20th, September 21st, September 22nd,
7 those would all be in the range of pretty much right
8 away. So acute means pretty much right away.

9 Q. And the potential for confirmation of sexual abuse
10 would have been greater within those first seventy-two
11 hours; is that correct?

12 A. The potential would have been greater.

13 Q. Now, you had indicted to me that since, I think,
14 August of 2008, you've been associated, affiliated with
15 the Lowcountry Children's Center?

16 A. Or September, yes, sir.

17 Q. Of 2008?

18 A. Yes, sir.

19 Q. And that Lowcountry Children's Center is the same
20 thing as the Dee Norton; is that correct?

21 A. Dee Norton.

22 Q. Dee Norton and Lowcountry, one in the same?

23 A. Yes, sir.

24 Q. And Dr. Elsey is at the Dee Norton Lowcountry
25 Center?

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- 1 A. Yes, sir.
- 2 Q. And you had indicated to the jury that he examined
3 this child on what day?
- 4 A. On September 22nd, 2009.
- 5 Q. So that child who is the subject of your November
6 17th examination presented to where you work at the
7 Lowcountry Children's Center within forty-eight hours of
8 this alleged abuse?
- 9 A. Yes, she did.
- 10 Q. But no examination was performed?
- 11 A. No examination.
- 12 Q. And the examination that you performed some two
13 months later was at the direction of the Detective Bacon.
14 And no such direction was given to you by Detective Bacon
15 when the child was present at the Lowcountry Children's
16 Center on September 22nd?
- 17 A. I can't really answer that because that would be --
18 I think the intake person's -- if I had the intake
19 record, I could give you more information about. But
20 that is correct that she was not examined prior to
21 November.
- 22 Q. One thing you know in your records, and documented
23 on page five of your records, is that the child was
24 physically examined after September 20th and before you
25 saw her on November 17th, as you indicated on page five

1 under comments.

2 A. My box is blank on page five. Oh, you mean up where
3 it says -- I don't see any specific ---

4 Q. What does P.C.P. stand for?

5 A. Primary care physician.

6 Q. And what does it say on page five following P.C.P.?

7 A. Doctor's Care, Dr. Shalito, Mount Pleasant, Johnny
8 Dodds Boulevard.

9 Q. And when you turn then to the next page in your
10 notes on page six, and you go down to the physical
11 R.O.S., check all that apply ---

12 A. Oh, yes.

13 Q. --- please read to the jury what your wrote in terms
14 of other specified.

15 A. Three weeks ago full physical with Dr. Shalito.
16 Pregnancy test negative at that time.

17 Q. So the child was examined?

18 A. Three weeks earlier, yes, sir.

19 Q. Full physical examination. Did you review those
20 notes either before you examined this child on November
21 17th, consult with Dr. Shalito on or about the time of
22 that examination, or did you review those documents prior
23 to your testimony today?

24 A. No, I did not.

25 Q. And you realize that this doctor, among the things

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1 he did that day were the same things that you did in
2 terms of pregnancy test and the full physical
3 examination?

4 A. I know that they did a general pediatric full
5 physical exam, and they did a pregnancy test. It's not
6 necessarily the same level of detail that I did. Sort of
7 like if I am doing a child exam in my general pediatric
8 world with residents, and I do a heart exam, I'll listen
9 to their heart. And it will be a full heart exam from my
10 point of view, but it will be nothing compared to what
11 our pediatric cardiologist would do if they saw him.

12 Q. I know that. The point though that I'm trying to
13 let the jury understand is that the physical examination
14 that you have done, there was another one that was done
15 by Dr. Shalito. And that if such examination, which was
16 closer in time to the event, had been positive for
17 gonorrhea, chlamydia, pregnancy or a sign of trauma, that
18 you would have been made aware of that?

19 A. I hope I would have been made aware. But you're
20 right, that's an important detail. It'd be nice to know
21 those results.

22 Q. And these examinations on women, not just children,
23 but women, are uncomfortable, disruptive, unpleasant,
24 correct?

25 A. They can be.

1 Q. And of course, the doctor's primary duty is not to
2 do harm?

3 A. Yes, sir.

4 Q. Not to traumatize further the woman or man or
5 whatever through the medical process, correct?

6 A. Yes, sir.

7 Q. And the only reason you conducted this exam was to
8 gather evidence in support of a sexual assault?

9 A. Well, that's not true. It's to ascertain her health
10 and her behaviors and her -- you know, how she's been
11 doing related to the whole integral history.

12 Q. Lowcountry Children's Center, the examinations that
13 take place there are for two reasons, physical abuse and
14 sexual abuse. You don't ---

15 A. And neglect ---

16 Q. You don't ---

17 A. --- and emotional abuse.

18 Q. You don't conduct any general pediatric examinations
19 there for children who are, say, wellness examinations?

20 A. We don't do wellness exams, that's correct.

21 Q. Because the presentation of children to you, in your
22 capacity and what you do everyday, are children who have
23 allegedly been neglected emotionally or neglected
24 physically or abused physically or abused sexually?

25 A. Potentially.

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1 Q. So if thirty-five out of thirty-six children in
2 Alabama who were examined and there was no finding, why
3 in God's name would you continue to examine children if
4 the examinations don't mean anything?

5 A. I would disagree with you they don't mean anything.
6 Because as you were saying, a lot of it has to do with
7 perception. And when people come in, they don't know if
8 they have injury or they don't have injury. And I've had
9 little tiny children, four and five years, two of them
10 have told me that they had a baby in their stomach and
11 they wanted me to check for the baby in their stomach.
12 And so you come in and you examine them, you go through
13 and show them what's healthy and you tell them what
14 things they need to work on like inevitably they need to
15 brush their teeth more or something. And you tell them
16 about exactly what their body looks like because how do
17 you -- if we're in a court to try to figure out if
18 touching a girl on her vagina with a hand or a penis is
19 going to leave marks, how would a child know if someone's
20 touched them with a finger or a penis that their body
21 hasn't been disrupted or changed forever. And so many
22 times the person, the parent, the fathers will say, is my
23 child intact? We hate that word. But we say, your child
24 is healthy. So we're most -- my primary job as a
25 pediatrician, as a child abuse pediatrician, is to assess

1 for this child's wellness -- which I assess for her
2 health -- and to assess for her safety.

3 And then, of course, because we're a community
4 agency too, we want to collect any evidence if there is
5 any evidence there. So I think it's really important for
6 them to get an exam. And unfortunately, in this
7 particular situation, I didn't know until I finished
8 taking all the history and gone through all the past
9 medical history and got to the review of systems, and the
10 family goes, oh, we had an exam three weeks ago. So it
11 would have been really nice to have known that prior to
12 her coming. But at the point that we got it, it was
13 useful -- I mean, I recorded it and continued on with the
14 assessment.

15 Q. I'm switching now from the medical field to the law
16 enforcement field and what we're doing here today.
17 Really, what this jury is looking for is evidence in the
18 courtroom of whether or not sexual abuse occurred. And
19 is it your testimony that those examinations of children,
20 if there's no finding, it doesn't mean anything different
21 than if there was a finding of a torn hymen, abrasions,
22 bruising. It makes no difference. No evidence is
23 evidence of no harm?

24 A. Say that last part again?

25 Q. No evidence is evidence of no harm? No evidence is

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1 evidence of harm? Your testimony is that the analysis
2 that you performed, based on your training which is
3 extensive, and your experience, did not produce anything
4 that could be documented to support abuse. And that your
5 testimony is that the negative finding is still
6 consistent with abuse?

7 A. Yes, but I also take history. And you know, I take
8 statements from her about what's happening and what's her
9 functioning and what's her symptoms. But it's kind of
10 like -- you know, many people in this room have probably
11 had a hamburger and maybe they've had a hamburger a lot
12 of times. And they may have had a really big hamburger,
13 and they've eaten it. And if you had mustard and ketchup
14 on your face, I would be able to tell that you'd eaten a
15 hamburger. But just because your face doesn't show it
16 doesn't mean that you haven't eaten a hamburger ever. Or
17 just think about all the kids who pick their noses eight
18 million times, they get their fingers way up there and
19 they stretch their nose all around. And sometimes you
20 see that and they have a really scabby looking nose and
21 they have blood on their finger, they've had a bloody
22 nose and you know they've been picking their nose. But
23 most people when you look at them, you can't -- I can't
24 tell, you know, if any of us, how many times we've had
25 our fingers in our nose just because right now it's

1 normal. It doesn't mean it never happened.

2 Q. And of course, picking your nose, while may be
3 socially undesirable, or eating a hamburger with mustard
4 and ketchup is not criminal?

5 A. No, that's not criminal.

6 Q. And the rules are different when somebody's looking
7 at going to prison?

8 A. But if I -- I won't comment or editorialize.

9 Q. Is that correct, that the rules are different for
10 picking your nose or being charged with criminal sexual
11 conduct with a minor?

12 A. I think the rules are different. All I can comment
13 on is what the findings are and how that -- the findings
14 have to be interpreted and that you have to use -- if you
15 have a physical finding that gives you firm evidence,
16 that's wonderful. But in the field of sexual abuse, that
17 is not a common occurrence. So you have to -- when
18 you're trying to figure out if a patient, what a patient
19 needs as far as their health and what kind of referrals
20 or additional help they might need, the physical exam is
21 important. It's part of it. And it also starts them on
22 their healing. But it doesn't only tell the whole story.
23 The history the child gives is the single most important
24 thing, and it's the single most difficult thing to get.
25 But you also look at the symptoms that they've had. And

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1 you want to know if they said they want to kill
2 themselves or if they've changed their school function,
3 if they've had problems with unusual sexual activity or
4 sexual behavior reactions since it happened, if they've
5 had pain, if they have a desire -- that they can't stop
6 cleaning themselves all the time, there are sleeping
7 problems, they're having eating problems. All those
8 things go into the medical assessment of is this abuse or
9 not abuse.

10 Q. Well, you've gone a little bit beyond the physical
11 examination. But since you've brought that out ---

12 A. Yes, sir.

13 Q. --- were you aware that this child reported suicidal
14 tendencies two years before this?

15 A. I knew that she had said prior to her disclosure,
16 like in kind of the closer scenario that she had wanted
17 to die.

18 Q. And did you know that that was reported to the
19 health professionals at the Medical University ---

20 A. No.

21 Q. --- two years before any of these problems existed?

22 A. No, sir. That history was not given to me.

23 Q. Were you told that the mother had caught her
24 observing pornography on the Internet two years before
25 this?

1 MS. GORDON: Objection, Your Honor.

2 THE COURT: I sustain the objection.

3 Q. Did you say that the social history was important?
4 We got away from the physical examination. Did you say
5 that the social history was important?

6 A. I think it contributes, yes, sir.

7 Q. And did you ask questions of the social history?

8 A. I did ask for a social history.

9 Q. And were you told that the mother observed her
10 watching pornography two years before these allegations
11 arose?

12 MS. GORDON: Objection, Your Honor. He's
13 asking ---

14 Q. On page six ---

15 THE COURT: Hold on a second, Mr. Savage.
16 We've got an objection.

17 What's your legal objection?

18 MS. GORDON: Asking to show ---

19 THE COURT: You've ask it twice. I sustained
20 the objection the first time; I'll sustain it again.

21 Q. Do you have page six of thirteen of your report?

22 A. Yes, sir.

23 Q. On that page six of thirteen of that report, did you
24 rely on that report for your testimony today in the
25 courtroom?

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1 A. Yes, sir.

2 Q. Did you ask social questions regarding the child's
3 observation of pornography two years prior to the report
4 of misconduct?

5 A. Yes, sir.

6 Q. And what was the answer?

7 A. Mom observed child observing pornography on the
8 Internet two years ago. Mom blocked the sights. Uncle
9 gave her access to the Internet and did not block the
10 pornography sites.

11 Q. Do you know where the mother saw the pornography,
12 observed it?

13 A. No, sir.

14 Q. Do you know what computer it was or whose computer
15 it was?

16 A. No, sir.

17 Q. Thank you.

18 THE COURT: Any redirect?

19 MS. GORDON: Yes, Your Honor, briefly.

20 REDIRECT EXAMINATION

21 BY MS. GORDON:

22 Q. Dr. Amaya, you said that that history that Mr.
23 Savage referred to -- I believe it's page six of your
24 report. He didn't have you read all of that. In
25 addition to that, what else -- what other social history

1 did you gain regarding the background of what had
2 happened to Minor 1 ?

3 MR. SAVAGE: Your Honor, we're in the same
4 situation again. I'm sorry.

5 THE COURT: What's your objection?

6 MR. SAVAGE: The question -- because the
7 Prosecutor knows it's an improper area, it's a question I
8 think we need to bring this up outside the presence of
9 the jury.

10 THE COURT: Overruled. You asked her about the
11 history. She's going into what else history she has.

12 MR. SAVAGE: Then we're going to be here for a
13 long time. I know Your Honor wanted me to be through by
14 two thirty ---

15 THE COURT: No. You asked her about the
16 history.

17 MR. SAVAGE: If she opens this door ...

18 THE COURT: I'm going to allow her to fully
19 explain it. Overruled. Thank you very much.

20 Please proceed, Solicitor.

21 Q. Dr. Amaya, what additional information did you
22 receive from the mother regarding the sexual history and
23 the background that Mr. Savage indicated was important to
24 your indictment -- to your treatment?

25 A. Well, the rest of that box?

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1 Q. Yes.

2 A. In the context of she was talking -- we always ask
3 questions in the review of systems about any kind of
4 sexualized behavior the child may have had because it
5 could be developmentally appropriate or it could be a
6 reactionary kind of behavior. So we use that to just
7 kind of help us assess risk. And so in addition to about
8 the business about the not blocking the pornography
9 sites, the history per the mom was that the uncle had
10 said some grooming talk, quote, you will make a man a
11 very happy husband, unquote. And she reported that the
12 police was involved. The uncle's on house arrest. The
13 mom has a restraining order against him and that prior to
14 disclosure, Minor 1 would say she wanted to die. I hate it
15 here. She did not have a specific plan. Or it says, no
16 plan. No longer -- she no longer says this. There are
17 no guns in the house, but there are a lot of prescription
18 medications and knives.

19 Q. Why was that important information for you to get?

20 A. I was trying to make an assessment of risk as far as
21 if she would -- how worried to be about if she would hurt
22 herself and what mechanisms she might have available to
23 her. But I would like to think that we asked her about,
24 I'm sure -- like we usually ask about drinking or smoking
25 or sexual behavior or sexual activity, self-harm, running

1 away. That's kind of all in our kind of screening.

2 Q. In your experience as a child abuse pediatrician,
3 does it occur where -- is it uncommon -- and I may use
4 the wrong term. Is it uncommon for children to under-
5 disclose the extent of the sexual abuse?

6 A. Please say that one more time so I make sure I
7 answer correctly.

8 Q. In your experience as a pediatrician, is it uncommon
9 or is it common -- and you correct me on the language.

10 A. Okay.

11 Q. --- for a child not to give you all the details of
12 the sexual abuse?

13 A. It's especially common for teenagers. Younger
14 children -- I'll just say, yes. Yes.

15 Q. And you said specific to teenagers. What about
16 teenagers?

17 A. Teenagers are going through a lot of developmental
18 issues. And when they present, even just trying to get
19 basic history from them, a lot of times they just sort of
20 sit there and look at you, you think, I don't know, like
21 they think you can -- you already know all the answers to
22 the questions. And we have to specifically tell them,
23 you know, you're the boss of this checkup. I work for
24 you. And so I'm not going to know what -- how to help
25 you unless you tell me and we kind of go through it. But

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1 it's difficult for them. They tend to either disclose in
2 a moment when they're in trouble or they're angry that --
3 they'll tell things then. Or some of them just don't
4 ever tell, and some of them will -- there are some that
5 will tell early, but it's usually a process of delayed
6 disclosure. Younger children, you know, from the
7 pediatrician's standpoint, they're more likely to just
8 blurt something out kind of right away unless someone has
9 made it into a game for them or has threatened them about
10 -- because they usually don't understand really what's
11 happening.

12 Q. I want to go back to the acute versus non-acute. If
13 the event that occurred on September 20th of 2009 -- if
14 that event was thwarted and didn't result in any penile
15 or digital penetration or any penetration of the vagina,
16 would there have been anything of evidentiary value to
17 obtain from an acute medical exam?

18 A. No, you wouldn't have got -- there wouldn't have
19 been any D.N.A.

20 Q. Dr. Amaya, I'm going to show you -- this is the
21 report from Doctor's Care from October 23rd of 2009.
22 That's approximately a month after the disclosure. If
23 you could just take a moment to review that and tell the
24 jury if there's anything about -- well, number one, can
25 you tell from that report -- I mean, did the Doctor's

1 Care do a vaginal exam or a gynecological exam?

2 A. Let me -- it's not organized like this. It's kind
3 of all over the place, so let me just look at it for a
4 minute.

5 Q. Okay. Thank you.

6 A. There's no genital exam.

7 Q. Is there anything that the doctors from that report
8 did on October 23rd of 2009 that changed your opinions?

9 A. Let's see. It says, chief complaint right foot
10 injury, bilateral knee pain. It says, forensic exam next
11 week. This I can't read. That might be a lab test. But
12 it's just like an order. It doesn't -- I don't see any
13 results. I don't actually see the pregnancy test. Oh,
14 here it is. Serum H.C.G., but I don't see the result.
15 Oh, 148. Maybe that's what it is. No. There's acne
16 treatment. There is diagnosis of flat feet or pes
17 planus. There's diagnosis of ankle strain, diagnosis of
18 acne, prescription of benzol peroxide. There's no
19 symptom assessment related to anything genital or
20 urinary, and there's no exam findings related to anything
21 genital or urinary.

22 Q. Is that record consistent with the history that you
23 got that they went in for a regular physical exam a few
24 weeks prior to them showing up to their appointment at
25 the Lowcountry Children's Center?

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1 A. Yes. I would qualify that I think there may be some
2 people who get well-child care at Doctor's Care. But I
3 have the conception that Doctor's Care is used more like
4 an urgent care. So people go for like a specific
5 complaint. So I'm not used to seeing reports from there
6 that have comprehensive physical exams, so we tend to go
7 ahead and do comprehensive follow-ups even if they've
8 been sometimes to the urgent care. And frequently, the
9 urgent care people say we want you to follow up.

10 MS. GORDON: Thank you, Doctor. I have nothing
11 further at this time.

12 THE COURT: Recross, Mr. Savage?

13 RECROSS EXAMINATION

14 BY MR. SAVAGE:

15 Q. Doctor, I'm going to try to be brief.

16 A. Yes, sir.

17 Q. The records that you just saw from Doctor's Care,
18 were there four evaluations that were done that day by
19 Dr. Shalito for four ---

20 A. Were there four problems?

21 Q. For four problems, yes? And you mentioned acne.
22 That's number four, correct?

23 A. Uh-huh (affirmative).

24 Q. And there's an orthopaedic problem. And there were
25 two other problems. What was the first problem?

1 A. Right ankle strain.

2 MS. GORDON: I have a copy if she needs it.

3 A. Okay. The first one is right ankle strain.

4 Q. Let me give you this.

5 A. Oh, sure.

6 Q. Is this the first time you've seen these records?

7 A. Yes, sir.

8 Q. Do you know whether those records are complete or
9 not?

10 A. I don't know that. I only know that you gave it to
11 me.

12 Q. Well, actually, the Prosecutor gave you those. Do
13 you know whether those records are complete or not?

14 A. Well, I don't -- what do you mean by complete?

15 Q. In other words, did Dr. Shalito review with her ---

16 A. I haven't talked to Dr. Shalito.

17 Q. What is the first complaint on the report?

18 A. The first complaint -- the chief complaint?

19 Q. Yes.

20 A. Or the diagnosis, one, two, three, four?

21 Q. The diagnosis one?

22 A. Well, in the lineup -- oh, it says amenorrhea.

23 Q. All right. What does that mean?

24 A. That means not having a period.

25 Q. So in this report, there is a mention of

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- 1 gynecological problems?
- 2 A. I didn't see that. Thank you.
- 3 Q. So that's what I'm talking about. I mean, you
- 4 haven't talked to the doctor. You missed the primary
- 5 reason for being there.
- 6 A. Well, the chief complaint is the primary reason for
- 7 being there. And it says, right foot injury, bilateral
- 8 knee pain, and talks about soccer practice.
- 9 Q. It's doctor's handwriting. We all know what that's
- 10 ---
- 11 A. But there's not -- the reason that it's hard to see
- 12 is that there's not a -- there's not a one beside it.
- 13 And so I missed it.
- 14 Q. Right. Let me show you another record for -- in
- 15 terms of the history. Do you recognize this document?
- 16 A. No. I recognize the general form. It's an M.U.S.C.
- 17 record, but I haven't see it before.
- 18 Q. What is the date on that record? You can find it at
- 19 the top right-hand side of a plate that was used?
- 20 A. January 11th, 2008.
- 21 Q. Now, 2008, that would be before this report of abuse
- 22 took place?
- 23 A. Yes, sir.
- 24 Q. Does it say on that the symptoms that the child
- 25 presented?

- 1 A. It looks like it's anger, anger management. Yells,
2 defiant toward mother.
- 3 Q. What about suicide? What about killing self?
- 4 A. There's something in the corner. I can't read it.
5 But then highlighted says, threatens to run away ---
- 6 Q. What does it say on ---
- 7 A. --- wants to die, kill self, no plan or intent.
- 8 Q. And so when we testify in the court, we like to get
9 the complete picture?
- 10 A. Uh-huh (affirmative).
- 11 Q. Two years before these allegations took place ...
- 12 A. Two years?
- 13 Q. Correct?
- 14 A. Yes, it was before the allegations.
- 15 Q. Two years?
- 16 A. So when she was -- how old was she? Like nine years
17 old.
- 18 Q. I really don't know.
- 19 A. I don't see her birth date.
- 20 Q. But this child has had a history -- you said that
21 history's important -- of suicide. And so when the
22 Solicitor asked you about guns in the house ---
- 23 A. Well, it doesn't say that she attempted suicide. It
24 just said she had suicidal ideation.
- 25 Q. She wants to kill herself. And in your report, some

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1 two years later or more, the social history that the
2 Judge allowed you to talk about in response to the
3 Prosecutor's questions, you talked about guns and knives.

4 A. No. I asked about the guns and knives. But they
5 told me that she had said right before her disclosure
6 that she had said she hated it there. She wanted to die.

7 Q. Well, that's her life's history with this child.
8 Now, you knew that because in your report on page -- in
9 the summary page, you knew that in Orlando, Florida, as
10 early as 2005, there was a Department of Social Services
11 intervention with this family. And the basis for that
12 intervention in your handwriting was accusing me of child
13 abuse. Your handwriting.

14 A. May I see? Sir, that's not my handwriting.

15 Q. I'm sorry?

16 A. This is my signature at the end that I reviewed it.
17 This was the parent questionnaire that the mother filled
18 out.

19 Q. Did you authenticate that document with Mia Amaya,
20 M.D., and dated it?

21 A. M. Amaya, M.D., and dated it. Yes, sir.

22 Q. And on that page that you have authenticated with
23 your signature and date, is it reported in 2005 and 2006
24 that the mother was accused of child abuse and there was
25 a D.S.S. investigation into that?

1 A. It says 2005 -- the question is, has your family had
2 any previous involvement with D.S.S.? And it's checked
3 off as yes. And then it says in mom's handwriting or
4 somebody's handwriting -- I guess the mom's -- 2005
5 Orlando, Florida, grandmother. Doesn't say why there.
6 2006 -- oh, I see what you're saying. In 2006 it says,
7 accusing me of child abuse. So I do think he's correct.
8 It says Orlando, Florida, grandmother accusing me of
9 child abuse.

10 Q. So all this information was available to all the
11 healthcare professionals who were involved in the
12 assessment and treatment of this child after September
13 20th of 2009, knowing there was this history?

14 A. Uh-huh (affirmative).

15 Q. And every treatment after?

16 A. Yes.

17 MR. SAVAGE: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 Q. Thank you, Doctor.

20 A. Certainly.

21 THE COURT: Doctor, you may step down. Thank
22 you very much.

23 THE WITNESS: Certainly.

24 THE COURT: Can I see the attorneys up here
25 just a second?

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1 (WHEREUPON, a bench conference was held off the
2 record.)

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury. I'm going to break at this time.
5 It's four o'clock and I need to go to -- today is my
6 anniversary. And if I don't get to the store and home, I
7 may not have another anniversary. So I'm going to break
8 at this time. Please don't discuss the case with anyone
9 else. And we're going to have to start in the morning at
10 ten o'clock rather than nine-thirty. So be here at ten
11 o'clock in the morning. I'll see you in the morning.

12 Please don't read anything or talk to anybody about
13 the case. See you in the morning at ten o'clock.

14 (WHEREUPON, the jury exited the open court at
15 approximately 4:03 p.m.)

16 THE COURT: All right. We'll adjourn until ten
17 o'clock in the morning.

18 MS. GORDON: Thank you, Your Honor.

19 (WHEREUPON, court stood at recess for the day.)

20 **July 12, 2012**

21 (WHEREUPON, court convened with all parties present
22 and the following proceedings were had commencing at
23 approximately 10:28 a.m.)

24 THE COURT: Sorry for the delay. We were
25 waiting on one juror to get here. They're now here.

1 I understand there's something you would like to put
2 on the record before we bring the jury in.

3 MS. GORDON: Your Honor, we can do it now or we
4 can do it before the witness, but she will be the second
5 witness. Instead of taking the jury out, I just thought
6 we could do it before.

7 THE COURT: Hold on just a second.

8 (WHEREUPON, court stood at ease.)

9 THE COURT: Okay. I'm sorry, Solicitor. Go
10 ahead.

11 MS. GORDON: That's all right, Your Honor.
12 It's with regards to our second witness. And I just
13 thought we could take it up now instead of sending the
14 jury out after we got started.

15 THE COURT: Which witness would it be?

16 MS. GORDON: Her name is Joyce Salese Arroyo.

17 THE COURT: Uh-huh (affirmative).

18 MS. GORDON: Yesterday you had ruled that at
19 this point you would not allow the 404(b) evidence
20 regarding Mr. Arroyo's first arrest for criminal sexual
21 conduct with a minor that occurred in Washington State.
22 I just want to go on record that Joyce Salese Arroyo is
23 the mother of that victim and the wife of the Defendant.
24 And a lot of the information that they talked about in
25 opening regarding divorce goes to both this incident and

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1 the past incident. I'm not going to ask her what led to
2 the divorce starting with the first incident of sexual
3 abuse. But if they start going into their other marital
4 problems or questioning why she, you know, believed what
5 she saw in the garage was inappropriate, it all started
6 with her knowledge that he had done this before. And I
7 just want to put them on notice that that information
8 would come out so that they don't unintentionally open
9 that door.

10 THE COURT: Okay. Fine.

11 Anything, Mr. Savage, on that issue?

12 MR. SAVAGE: Judge, I think, you know, that's
13 up to me. I've got to make sure that I don't ---

14 THE COURT: I understand. I mean, either you
15 do or you don't.

16 MR. SAVAGE: I'm going to do my best. If I
17 make an error, I'm sure that the State will point it out.

18 THE COURT: All right.

19 MR. SAVAGE: Judge, two things. And one may
20 not be a proper thing to say. But I understand this has
21 nothing to do with this trial. The judiciary is always
22 questioned. I've always felt that it was the
23 responsibility of attorneys to speak up for the
24 judiciary. I know that when judges that are up for re-
25 election, just an evaluation, I can say on the record --

1 I want to say on the record for no purpose other than the
2 defense of the judiciary that no client of mine has
3 gotten a more respectful or fairer trial than this case.
4 That doesn't necessarily mean I agree with the Court's
5 rulings, but it does mean that the principles that we all
6 live under in terms of laws have been carried out, in my
7 opinion, to the fullest extent. There's a reason why I'm
8 saying that because of somebody who's in the courtroom.

9 THE COURT: I don't know if they're in the
10 courtroom or not.

11 MR. SAVAGE: But getting back to the case, the
12 first witness that will testify may or may not talk about
13 an interrogation of the Defendant. If that is, in fact,
14 part of that testimony, we would ask for a *Jackson Denno*
15 hearing prior to that. There may be some legitimate
16 legal issues depending on what she says.

17 THE COURT: Well, let me say this, Mr. Savage,
18 so we'll be on the same wave length. Okay? I know your
19 prior cross-examination has been about divorce and about
20 the death of the father and about the suicide, et cetera,
21 et cetera, et cetera. And if we get in -- as the
22 Solicitor said, if you get in it on cross with Joyce
23 Arroyo about the divorce, et cetera, et cetera, et cetera
24 -- I'm just saying, be careful and just don't open the
25 door, okay? And that's strictly up to you.

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1 MR. SAVAGE: So the Court knows my intention, I
2 intend to get into the divorce but restrict it within the
3 pleadings of that case. I believe that I'm allowed to
4 discuss the judicial documents in the divorce.

5 THE COURT: What was the grounds for the
6 divorce, one year's separation?

7 MS. GORDON: Adultery.

8 MR. SAVAGE: It depends on ---

9 THE COURT: Adultery?

10 MR. SAVAGE: Yes.

11 THE COURT: Okay.

12 MR. SAVAGE: And there's an unnamed party in
13 the adultery.

14 THE COURT: Was the adulterer the wife or the
15 husband?

16 MR. SAVAGE: The Defendant in this case.

17 THE COURT: I don't have any problem with that.
18 I don't think that that gets into the issue about the
19 child and the prior bad acts of sexual abuse.

20 MR. SAVAGE: We're going to very delicately get
21 into that.

22 THE COURT: Well, all I'm trying to say -- let
23 me say this to you. Let me just be very blunt, okay?
24 You're a good lawyer. You're well prepared. And you've
25 spent hours getting prepared. You've got your questions

1 prepared beforehand. Don't get carried away too far.

2 Think about what you're asking ---

3 MR. SAVAGE: You sound like my wife.

4 THE COURT: Okay? I'm sure your wife will tell

5 you the same thing. And I don't mean that derogatory.

6 Okay? Because sometimes you get carried away and you

7 don't realize where you're going. Okay?

8 MR. SAVAGE: Thank you.

9 THE COURT: Are we on the same wave length?

10 MR. SAVAGE: We're too much on the same wave

11 length.

12 THE COURT: Okay?

13 MR. SAVAGE: I've heard that before.

14 THE COURT: Okay? Now, if you want me to say,

15 Mr. Savage, where are you going? I will be happy to do

16 that.

17 MR. SAVAGE: I'll get the facial expression.

18 THE COURT: Will you get the facial

19 expressions? Okay? All right.

20 MR. SAVAGE: There is an issue on that second

21 one because I was just sort of focused on the first one.

22 The second witness -- you remember in the Solicitor's

23 opening argument she talked about massage oil.

24 THE COURT: About what, now?

25 MR. SAVAGE: Massage oil. And a comment that

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1 Erick had supposedly made regarding massage oil. The
2 massage oil has not been testified to by the principles,
3 so ---

4 THE COURT: I don't remember that. Refresh my
5 memory. I'm not sure I follow you.

6 MR. SAVAGE: In the opening statement, the
7 Prosecutor -- tell me if I'm wrong -- said something to
8 the effect that the second witness this morning, Joyce
9 Arroyo, found massage oil in the couch.

10 THE COURT: Found what?

11 MR. SAVAGE: Massage oil.

12 THE COURT: Oh, massage oil. Oh, okay.

13 MR. SAVAGE: And she confronted her husband
14 about it. And he said, oh, don't tell Minor1 about that.
15 Well, Minor1 never testified about massage oil. There's
16 no evidence that massage oil was an ingredient in the
17 accused misconduct. There's no evidence from the
18 complaining party, the child. There's no evidence from
19 the complaining party, the mother. There's no indication
20 from the medical examiner that some lubricant was used.
21 There's no evidence at all of massage oil. We think that
22 it's highly prejudicial under 403. First, we don't think
23 it's relevant.

24 THE COURT: Well, is she planning on going into
25 the massage oil?

1 MS. GORDON: She will testify -- I think it
2 goes into ---

3 THE COURT: Well, are you planning on bringing
4 out that they found massage oil where?

5 MS. GORDON: She found it in the couch. And
6 the Defendant's statement was, don't tell Minor1 you found
7 that. Now ---

8 THE COURT: Did the Defendant make that
9 statement to Joyce Arroyo?

10 MS. GORDON: To Joyce Salese Arroyo, yes.

11 THE COURT: Pardon?

12 MS. GORDON: To Joyce, to his wife.

13 THE COURT: So what you want to do is exclude
14 that statement, Mr. Savage; is that correct?

15 MR. SAVAGE: Yes, on the grounds that it's
16 highly prejudicial because that is the couch that's the
17 subject of the misconduct.

18 THE COURT: What's the time frame of this?

19 MR. SAVAGE: Don't know.

20 THE COURT: I mean, this is when the mother was
21 on the love seat or ---

22 MR. SAVAGE: I have no idea of the time frame.
23 It's not in the discovery.

24 THE COURT: Okay.

25 MR. SAVAGE: But the import is that it's not

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1 relevant because the child ---

2 THE COURT: I don't mean to interrupt you, but
3 let me try to short circuit you. When we get to that
4 point, that point the Solicitor's telling me, I'm going
5 to listen to it in-camera. I'll make a decision.

6 MR. SAVAGE: Thank you.

7 THE COURT: Now, Solicitor, don't go into that
8 until you tell me. And I'm going to send the jury out,
9 and I'm going to listen to it and I'll make a decision.
10 Because it's extremely difficult to make a decision in
11 the vacuum without hearing what the witness is going to
12 say. And I don't mean to be cutting you off. I'm just
13 not going to grant your motion one way or the other at
14 this point in time. Okay?

15 MR. SAVAGE: So Judge, that is the motion in
16 limine that we filed specifically for that. The other
17 motion we filed with reference to Joyce is we have asked
18 for any assistance that the Solicitor may have given this
19 witness in terms of compensation for coming here, in
20 terms of compensation for her costs for being here, in
21 terms of any solicitation of an attorney to assist her in
22 her divorce.

23 THE COURT: Are you talking about -- well,
24 attorney to assist her. But are you talking about
25 airfare or travel expenses?

1 MR. SAVAGE: Any compensation she may have
2 received to be here.

3 MS. GORDON: I'll be happy to disclose it.

4 THE COURT: I'm sorry, what?

5 MS. GORDON: I said, I'll be happy to disclose
6 it. She is the -- she was provided -- I don't know that
7 she's actually been provided a per diem.

8 THE COURT: Well, where does she live?

9 MS. GORDON: She lives in Texas. So we paid
10 her travel expense. I don't have any idea what the cost
11 of an air ticket is, but that was provided. She is
12 staying at the same hotel that we put every witness.

13 THE COURT: I mean, I'm certain the State's
14 going to bring it out on direct.

15 MR. SAVAGE: We suspect that the Solicitor did
16 not follow the statutory requirements to solicit out-of-
17 state witnesses, so ---

18 THE COURT: If they come in voluntarily, you
19 don't have to go through the interstate compact for
20 subpoenaing witnesses.

21 MR. SAVAGE: Correct.

22 THE COURT: I mean, you don't have to if they
23 come voluntarily. Okay?

24 MR. SAVAGE: And that, of course, is part of
25 cross-examination, motive, intent.

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1 THE COURT: That's fine. I don't have any
2 problem with that.

3 MR. SAVAGE: We also believe -- we have been
4 told that the Solicitor's staff has provided
5 recommendations and facilitation of an attorney to
6 represent her in her divorce.

7 THE COURT: Well, is the divorce still going on
8 or, is it over?

9 MR. SAVAGE: Yes, it is.

10 THE COURT: Okay.

11 MR. SAVAGE: Whether that's true or not, I'm
12 not saying.

13 MS. GORDON: I'll be happy to address that as
14 well, Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. GORDON: In one of my conversations with
17 Ms. Arroyo, she asked -- she was like, can you tell me
18 somebody to call for a divorce attorney. I said, I can't
19 recommend a divorce attorney for you or a civil attorney
20 for you. I'm just not allowed to do that. I said, but I
21 can try to -- you know, I will see if there's somebody
22 else that might be able to refer you to somebody. Like,
23 you could call Legal Aid. And she said, Legal Aid
24 doesn't do it. So I just contacted an attorney that I
25 know. And I said, there's a lady and she needs a lawyer.