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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHESTER COUNTY

R. Knox McMahon, Circuit Court Judge

ORIGINAL

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APR 05 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN HENRY LOWERY II,

APPELLANT

APPELLATE CASE NO. 2014-002653

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE OF SOUTH CAROLINA,

4 Plaintiff,

5 Case No.

6 -against-

2014-GS-12-084

7 JOHN HENRY LOWERY, II

8 Defendant.

9 -----x

10 December 1-3, 2014

11 Chester, S.C.

12

13 B E F O R E:

14 HONORABLE R. KNOW MCMAHON, Judge.

15

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18 Assistant Solicitor

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20 DEVON NELSON, Esquire

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23 COURT REPORTER

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1 THE COURT: All right, solicitor you may
2 call your first case for trial.

3 MS. HALL: Thank you, Your Honor. The
4 State calls docket number 2014-GS-12-034, State
5 of South Carolina versus John Henry Lowery, II.
6 It is an Indictment for criminal sexual with a
7 minor in the first degree.

8 The State is ready to proceed on that
9 Indictment.

10 THE COURT: Thank you. Mr. Lowery is
11 represented by Mr. Nelson?

12 MR. NELSON: That is correct Your
13 Honor.

14 THE COURT: And Mr. Frick?

15 MR. FRICK: Yes, Your Honor.

16 THE COURT: And Mr. Lowery present?

17 MR. NELSON: He is, Your Honor.

18 THE COURT: And are you all ready for
19 trial Mr. Nelson?

20 MR. NELSON: We have one matter for
21 pretrial, but for most part, yes, Your
22 Honor.

23 THE COURT: Ladies and gentlemen of the jury
24 panel if you please give me your complete and
25 undivided attention.

1 If you show them out and show them where to
2 return sheriff.

3 Thank you. Thank you, very much, if you go
4 with the sheriff. Hope you all have pleasant
5 lunch.

6 (Whereupon, the jurors leave the courtroom.)

7 THE COURT: All right, solicitor, Mr.
8 Nelson, what is y'all's pleasure?

9 MS. HALL: I didn't know if you wanted to
10 take up the bond matter and the plea real quick
11 or you wanted to do the pretrial motions first.

12 MR. FRICK: I would ask we do the plea after
13 lunch. I have got to get him signed up.

14 THE COURT: All right. My preference would
15 be to take up the bond matter and go to lunch.

16 (WHEREUPON, a different case was put on the
17 record and court took luncheon recess.)

18 THE COURT: All right, Mr. Nelson.

19 MR. NELSON: Yes, Your Honor.
20 First of all we would make a motion at this time
21 before any testimony is made and before any
22 statements are made to the jury that this case
23 be continued. We are waiting the arrival of
24 some medical evidence that won't be necessary
25 today but might be necessary by the time our

1 case in chief comes up over the next couple of
2 days. It may be here by then, it may not, but
3 we are asking for a continuance until that
4 medical evidence comes in.

5 THE COURT: And what is the status of it?
6 What agency?

7 MR. NELSON: We learned about this evidence
8 within the past couple of weeks. We sent off
9 for it as soon as we learned about it and it is
10 just arriving from the hospital in West
11 Virginia.

12 THE COURT: And how did you come to learn
13 about it?

14 MR. NELSON: Through my client.

15 THE COURT: How did he come to learn about
16 it?

17 MR. NELSON: It's his own medical records,
18 Your Honor, so he knew it was there.

19 THE COURT: He knew about them?

20 MR. NELSON: Well, he knew what he was
21 diagnosed with, yes, Your Honor.

22 THE COURT: Before two weeks ago?

23 MR. NELSON: Yes, Your Honor.

24 THE COURT: When will he have first known
25 about it?

1 MR. NELSON: When he went to the hospital in
2 West Virginia years ago.

3 THE COURT: Years ago?

4 MR. NELSON: Yes, Your Honor. Do you have
5 ETA of the evidence?

6 MR. NELSON: We do not. We have contacted
7 the hospital and they said they sent it right
8 before Thanksgiving. So it has been sent and
9 been in the mail for almost a week now, Your
10 Honor.

11 THE COURT: All right. Well, at this time I
12 will deny your motion.

13 MR. NELSON: Okay. Thank you, Your Honor.

14 THE COURT: Do you have other motions?

15 MR. NELSON: Yes, we have a variety of
16 motions; motions in limine that have been made
17 in this case, Your Honor. I will go through
18 them one by one unless you want to rule on them
19 all at the end.

20 THE COURT: One by one is my preference.

21 MR. NELSON: Okay. Our first motion is to
22 ask the State to reveal if there are any plea
23 bargains that have been made with any potential
24 witnesses in this case, either plea bargains
25 involving this case or plea bargains involving

1 other cases. And this is basically made due --
2 as part of the confrontation clause of the sixth
3 amendment, of the constitution as well as
4 article one, section 14 of the South Carolina
5 Constitution, Your Honor.

6 THE COURT: All right, solicitor.

7 MS. HALL: The other person in the case
8 having pending charges is one witness named
9 Michael Sanders. That is Miss Fryer's case and
10 she tells me no plea offer has been made to him.
11 I believe it is a fairly new charge and I don't
12 even know what the charge is quit frankly. But
13 no, there have been no plea bargains related to
14 this case made. There have been none offered to
15 any testifying witnesses during the course of
16 preparation for this trial at all.

17 THE COURT: Anything further in that regard?

18 MR. NELSON: No, Your Honor.

19 THE COURT: All right.

20 MR. NELSON: Secondly, we ask the State to
21 allow the defense to have copies of all rap
22 sheets of lay witnesses in this case, Your
23 Honor. We have them on most witnesses in this
24 case. We do not have a rap sheet on Michael
25 Sanders at this point and we would ask for that

1 rap sheet to be provided.

2 MR. HALL: Just one second, I got it.

3 (Handed)

4 THE COURT: Do you have all the others?

5 MR. NELSON: We do, Your Honor. Thank you,
6 Your Honor.

7 Third, we would ask the State to just verify
8 that Brady has been complied with in this case,
9 Your Honor, in that we have been given all
10 statements, oral or otherwise that have been
11 given to their office. Either confirm with what
12 their initial Discovery was as well as anything
13 that would contradict the initial Discovery, and
14 I believe that has been done because I have been
15 receiving some information throughout this case
16 but I would like some verification that has been
17 complied with Your Honor.

18 THE COURT: Solicitor?

19 MS. HALL: It has been. The only thing that
20 I don't know is the statement of Michael Sanders
21 which -- they would never differ because he was
22 never interviewed.

23 THE COURT: So there is no --

24 MS. HALL: Nothing different, except for
25 what I have already given him. Fatima Head did

1 say something to me that she learned after she
2 was interviewed by law enforcement and I emailed
3 that to Mr. Nelson last week.

4 MR. NELSON: I received that.

5 MS. HALL: And Michael Sanders was never
6 interviewed by the police.

7 MR. NELSON: Okay. Next we would ask the
8 State to reveal which, if any, potential
9 convictions they would like to use for
10 impeachment purposes should my client decide to
11 take the witness stand and we would ask the
12 Court to rule whether the probative value of
13 those convictions outweighs the prejudicial
14 effect of bringing up his prior conviction. And
15 actually that in conjunction with our 5th motion
16 in that we believe the probative value of any
17 mention of his previous criminal sexual conduct
18 convictions out of West Virginia would be far
19 more probative than -- or far more prejudicial
20 then they would be probative and we would ask
21 the Court to exclude any mention of those
22 convictions either by name or by what he was
23 charged with or by the evidence which the State
24 of West Virginia believe they had to convict my
25 client in this case.

1 THE COURT: I am not going to rule on the
2 609 impeachment purposes at this time.

3 MR. NELSON: Okay.

4 THE COURT: I will rule on it after. At the
5 time I advise him of his rights.

6 MS. HALL: Can we go back to be number three
7 real quick. I just wanted to clarify. Fatima
8 Head she did not give any statement that was
9 different then what she had originally said.
10 She said something to me in addition after she
11 initially made the statement to law enforcement.
12 So I just wanted to get that clear.

13 I'm sorry, I didn't mean to change the train
14 of thought.

15 THE COURT: Okay. Again, I am not going to
16 rule -- go to number four -- I am not going to
17 rule on 609 at this time until such time as we
18 get to that stage of the proceedings.

19 MR. NELSON: Okay.

20 THE COURT: I assume you are not going to
21 bring in the criminal sexual conduct conviction
22 during your case in chief?

23 MS. HALL: The only thing I was going to
24 bring up is -- I think it's another motion Mr.
25 Nelson made. I made a motion and he made a

1 motion and filed something in response to it.

2 But one of the elements of this crime is that he
3 is included on the sex offender registry and I
4 believe that I -- I do intend to offer evidence
5 about that. I do not intend to go into the nuts
6 and bolts of it as to what exactly happened and
7 the facts of the case because I don't think I am
8 entitled to. That would bring the prior bad
9 acts under Lyle which I have researched that old
10 case and I can tell you that although it is
11 similar in some instances it is very different
12 in others. I didn't even bring a Lyle motion
13 because I don't think it's a violation a Rule 11
14 and I do think I have a good reason to bring it.

15 I do intend to call a witness, the woman who
16 was the record keeper of the Chester County
17 Sheriff's Department for the Sex Offender
18 Registry. She's is in charged of the Sex
19 Offender Registry and she will testify that he
20 is on the Sex Offender Registry and that he has
21 been convicted of an offense that requires him
22 to be on the registry. And I don't intend to go
23 into any of the facts of that old case and it
24 wasn't a South Carolina case, it was in West
25 Virginia.

1 He was charged with criminal sexual conduct
2 in the third degree and it was somewhat similar
3 to this. The child was under the age of 16, but
4 all of those facts I intend to keep out because
5 I think it is prejudicial and I don't intend to
6 introduce it.

7 THE COURT: All right.

8 MR. NELSON: And the only thing that I want
9 to make clear and clear up for both sides is I
10 am asking that -- I'm okay with bringing the
11 person in to testify that he is on the registry
12 and on the registry properly, but I believe it
13 is also prejudicial to say any mention of what
14 he is actually on the registry for.

15 The statute itself does not require any
16 mention of what he is on the registry for. It
17 just requires them to prove that he is on
18 registry, and we have no problem that says he is
19 on the registry and he is on the registry
20 properly. We agree with all of that.

21 My client would -- as I wrote in my motion
22 -- we would proffer that if we needed to; that
23 he is on there and he is on there correctly.
24 We just believe it is going to be prejudicial to
25 the jury if they hear what he is on the registry

1 for. He can be on sex registry for a lot of
2 different things and we don't want any mention
3 of what he is actually on there for. We believe
4 they meet the elements of the crime by just
5 proving that he's on the registry itself.

6 MS. HALL: I don't disagree with that
7 statement.

8 MR. NELSON: Okay.

9 THE COURT: All right.

10 MR. NELSON: Number six, we're asking that
11 all witnesses other than those allowed by
12 statute, the lead detective, the victim in the
13 case, be sequestered throughout the duration of
14 the trial. There is going to be a lot of
15 witness's testimony in this case and we're
16 asking that those witnesses not be allowed to
17 hear each other's testimony before they testify
18 here, Your Honor.

19 MS. HALL: I don't have any objection to
20 that at all. The only thing I would ask for
21 guidance on, there is a PCASA woman with the
22 child. She was the forensic interviewer. She
23 interviewed the child to begin with. Obviously
24 they interviewed the child. They have a video
25 of that, which obviously I do not intend to

1 introduce because the child is old enough that
2 we aren't allowed. Unless, you know, the
3 defense opens the door to it I have no intention
4 of bringing that in. The woman will not testify
5 to anything she didn't already know. And I
6 think that it would be comforting for the child
7 to know that person who has been following her
8 through this case would be allow to be in the
9 room during her testimony and I would ask that
10 request be granted.

11 MR. NELSON: As long as she is not called as
12 a witness after the child testifies.

13 MS. HALL: I intend to call her as a
14 witness. Just as to the process through which
15 she interviewed the child and any recommendation
16 she made after interviewing the child. Not to
17 be cumulative. Not to testify about anything
18 about what the child said except for time and
19 place which is allowed under the hearsay rules.
20 But she's not going to corroborate the child's
21 testimony and any corroboration that came from
22 any door they open, what any door they do open
23 will come from the video itself and not through
24 testimony.

25 MR. NELSON: And my argument to that would

1 be that they can craft their case however they
2 would like, but if she's in the room to hear any
3 of the other oral testimony she should not be
4 allowed to testify herself.

5 If they want to craft their case in a way
6 where she testifies before -- before the victim
7 testifies, then I would have no problem with her
8 staying in here. But if they are going to craft
9 their case in a way where she testifies
10 afterwards I think she should be sequestered. I
11 don't see any reason in statute or case law that
12 allows -- that says that the victim -- or that
13 witness -- needs to be in the courtroom with the
14 victim, Your Honor.

15 THE COURT: Tell me what rule, case,
16 requires sequestration?

17 MR. NELSON: I don't believe it is a
18 requirement. I believe it is in the discretion
19 of Your Honor.

20 THE COURT: All right, in my discretion I
21 will allow her to -- her --

22 MS. HALL: Her name is Morgan Dickson.

23 THE COURT: Miss Dickson.

24 MR. NELSON: Lastly -- and my last motion is
25 we are asking that the State be disallowed from

1 using any evidence that's found after the call
2 of this case that the State has not made the
3 defense privy to, that was in either their
4 control or in the control of any law enforcement
5 agency or officer that has not been previously
6 disclosed to the defense.

7 We are asking any evidence that is found
8 from here on out until the end of this case be
9 disallowed from being used in trial, Your Honor.

10 THE COURT: I believe that's an
11 anticipatory matter. If evidence comes up and
12 you believe it has not been turned over to you
13 or something you can object. Bring up the
14 matter and I will be glad to rule on it.

15 MR. NELSON: Okay, thank you, Your Honor,
16 and that is all of my motions at this time.

17 THE COURT: Solicitor, do you have any
18 additional motions?

19 MS. HALL: I do. I have just a couple that
20 are simple --

21 THE COURT: Say that again. I'm sorry.

22 MS. HALL: I have a couple that are simple
23 ones and one that is little more complicated.
24 I needed to amend the Indictment. There was
25 a scrivener's error on the number. It should be

1 the end digits 84 rather than 34. Thirty-four
2 has already been adjudicated in another case. It
3 was correctly entered into our system but the
4 person who typed these documents put a three
5 instead of an eight.

6 THE COURT: All right. Do you have any
7 objection to that Mr. Nelson?

8 MR. NELSON: We have no objection to that.

9 THE COURT: I don't have the Indictment.

10 MS. HALL: Miss Carpenter, do you have the
11 Indictment?

12 THE CLERK: No, I gave it to the law clerk.

13 THE COURT: What is it, solicitor, you need
14 me to correct?

15 MS. HALL: It's should be 84. 2014-GS-12-84
16 on the top.

17 THE COURT: Instead of 34?

18 MS. HALL: Right.

19 THE COURT: And there is no objection by Mr.
20 Nelson?

21 MR. NELSON: No objection, Your Honor.

22 THE COURT: All right. That will be
23 corrected with my initials placed on it.

24 MS. HALL: Okay. And then I would just like
25 to have the courtroom cleared of all people

1 accept essential courtroom personnel during the
2 testimony of the child; both child witnesses.
3 Her sister is going to testify too.

4 THE COURT: Mr. Nelson.

5 MR. NELSON: I don't know who is going to be
6 here at that point or who is not going to be
7 here at that point, but I believe Mr. Lowery and
8 any support system that he has should be allowed
9 to be in here for the entirety of the trial.
10 I mean we have -- you have already ruled that
11 Miss Dickson can stay in here for support and
12 she will have her mother in here and other
13 people that will support the victim through the
14 testimony. I don't see the need to clear the
15 courtroom, but if Your Honor feels that's
16 necessary we don't have a great objection to it.

17 MS. HALL: No, and I said in the motion and
18 I may not have articulated this. I apologize.
19 Obviously the defendant can stay, but anybody in
20 the gallery just for the child's personal --
21 this is a personal issue. I know she would feel
22 more comfortable if we had people in here who
23 absolutely had to be in here while this was
24 going on.

25 THE COURT: You can bring it up at that time

1 and let me see who is in the courtroom.

2 MS. HALL: Okay.

3 THE COURT: All right.

4 MS. HALL: And then -- I also had a motion
5 for the Court to determine prior convictions to
6 be used for impeachment of State witnesses.
7 I am going to ask Mr. Nelson, I have three
8 witnesses with prior criminal records, may be
9 four, and I wanted to clarify which convictions
10 would be -- he would be allowed to use in cross
11 examination of those individuals.

12 MR. NELSON: Yes, Your Honor. I believe --
13 I believe that based on the rules of criminal
14 procedure with witness, Monique Boyd, we would
15 be able to bring up 2012 shoplifting as a the
16 crime of dishonestly, 2014 forgery less than ten
17 thousand dollars as a crime of dishonesty and
18 crime that would carry more than one year in
19 prison.

20 Under Jaemil Hardin, I do not believe
21 anything on her criminal record actually meets
22 the statute or the rules for us to bring up for
23 impeachment. And for Miss Fatima Head, we have
24 a 2009 assault and battery high and aggravated
25 nature and a 2009 possession of less than one

1 gram of methamphetamine or cocaine which both
2 are within the last ten years and carry more
3 than one year in prison. I believe we would be
4 allowed to use both of those to impeach Miss
5 Head, and I have not as I was just handed Mr.
6 Sanders's criminal record as we were doing these
7 motions, I have not looked through it to decide
8 which ones we should or should not be allowed to
9 used, but I will do so in the break before we
10 get to his testimony most likely, Your Honor.

11 THE COURT: And do you agree to that as to
12 Boyd?

13 MS. HALL: Yes.

14 THE COURT: Do you agree with that as to
15 Head?

16 MS. HALL: Yes.

17 THE COURT: And then Hardin had none?

18 MR. NELSON: Hardin I do not believe had
19 any.

20 MS. HALL: Well, wait. As to Fatima Head, I
21 do not. As to Miss Hardin I do and to Miss Boyd
22 I do. As to Miss Head I do not.

23 I don't think he is absolutely automatically
24 entitled to use them just because they carry
25 more than one year within the last ten years. I

1 believe there has got to be probative versus
2 prejudicial value analysis given to those things
3 and the State would submit ABHAN and possession
4 of drugs does not -- the probative value of
5 that, that doesn't go to dishonesty. That
6 doesn't go to anything -- let's see -- narcotic
7 offenses are generally not considered probative.
8 State versus Cheeseborough. Narcotic
9 convictions generally do not fall under this
10 rule; Green versus State.

11 THE COURT: So you are questioning the '09
12 meth conviction, solicitor?

13 MS. HALL: I can't remember what year it
14 was, but yes.

15 MR. NELSON: It was 2009 meth or cocaine.

16 MS. HALL: And there is ABHAN too that I am
17 questioning that also.

18 THE COURT: All right. Mr. Nelson, what
19 about Rule 403?

20 MR. NELSON: Your Honor, I would submit that
21 all convictions have some level of prejudicial
22 effect and so if you are going to just rule it
23 out because there is prejudicial effect and to
24 say we can't use that for impeachment purposes
25 then that makes this entire rule null and void.

1 I do not believe with the amount of
2 convictions we are asking to be allowed to ask
3 about, for purposes of impeaching her testimony
4 it shows she does have a criminal record. It's
5 relevant that she has been involved in criminal
6 activity. Both of these two are very serious
7 charges that carry more than a year. This is
8 the purpose for which the rule is adopted for
9 the defense to be able to question a witness
10 about their previous criminal history of more
11 than one year. Yes, we do have to look at
12 whether it is more prejudicial then probative.
13 I would argue that all cases, all convictions,
14 have a somewhat prejudicial effect. I don't see
15 how these two convictions are more prejudicial
16 then they are probative to prove the criminal
17 record of the witness, Your Honor.

18 THE COURT: Well, it's not prejudicial
19 effect. Although relevant evidence may be
20 excluded if it's probative value substantially
21 outweighs the danger of unfair prejudice. There
22 are several key words in there, but obviously
23 it's not the danger of prejudice. It's just
24 unfair prejudice that can be excluded.
25 Obviously 609.2 goes to the issues of dishonesty

1 of a false statement. There has been somewhat
2 of a history all the way back to State versus
3 Majors concerning the issue on drugs. So I will
4 allow the '09 assault and battery of a high and
5 aggravated nature. I will not allow the
6 possession of meth. I find that it would --
7 it's probative value would be substantially
8 outweigh the danger of unfair prejudice. I
9 would allow the assault and battery of a high
10 and aggravated nature.

11 All right. Anything further?

12 MR. NELSON: Thank you, Your Honor.

13 MS. HALL: Yes, sir.

14 The State filed a motion in Limine for
15 compliance of the rape shield law to prohibit
16 the defense from a eliciting evidence of the
17 victim's prior sexual assault.

18 In 2012, this young lady was unfortunately a
19 victim of a sexual assault. I handled that
20 case. That individual did enter a plea of guilt
21 and he is currently serving time in the
22 Department of Corrections.

23 I want to get clarification from the Court.
24 The State's position is that there should be no
25 reference to that conviction whatsoever or any

1 of that incident having to do with this child.

2 I believe that it will cause undo embarrassment
3 for the child. It would cause confusion for the
4 jury and I have done some research on this and
5 the State of South Carolina has -- the Rape
6 Shield statute obviously says -- and I know the
7 Court is familiar with that -- that any
8 reference to prior sexual conduct of the victim
9 is not admissible and that the only reason that
10 it might be admissible would be to show that the
11 victim had some prior sexual knowledge.

12 This child is 13 years old. We would assume and
13 I will elicit testimony from her if the Court
14 asked me to, that she's been through sex
15 education in school and that would be the source
16 of her age, would be the source of the prior
17 sexual knowledge. The only instances I can find
18 the State of South Carolina has allowed this
19 type of situation to go on, there is a case be
20 State versus Grovenstein (phonetics), that was
21 in 2000. The facts in this case are extremely
22 different. That case went up, I believe to the
23 Supreme Court, and they remanded it for a new
24 trial. In that case there were three child
25 victims. They were all males, and the

1 allegations were that the mother's boyfriend had
2 sexually assaulted them anally. The two
3 youngest children were six and seven at the time
4 and those children had been supposedly sexually
5 assaulted with a rolled up piece of paper. The
6 older child I think he was 15, and he had been
7 actually assaulted. The man had committed
8 sodomy on that child. Those children had been
9 previously accused of sexual misconduct similar
10 to the conduct that they alleged against the
11 defendant. They had both been accused of
12 inserting objects into the vagina and rectum of
13 a young girl. The Court in that case at trial
14 level excluded that testimony. It went up again
15 like I said to the Supreme Court, and they said
16 the victim having engaged in sexual relations
17 with another man. There was another case
18 Finley, State versus Finley, the victim engaged
19 in sexual relations with another man in the
20 defendant's presence on the evening before the
21 defendant allegedly attempted to rape her and
22 that she had a motive to falsely accuse him.
23 That has not been established in this case. And
24 the idea on that was that she was falsely
25 accusing him because he was threatening to tell

1 somebody else that she had done this.

2 These -- the prior sexual experiences of the
3 child, what the Court in Grovenstein did is,
4 they went and they look outside since there
5 wasn't a precedent. They went and looked
6 outside the jurisdiction of South Carolina and
7 they found evidence relevant. It rebutted, that
8 said, yeah, in some instances you can allow this
9 in, but you can't -- under the assumption that
10 there is no way the child would know anything
11 about these types of sexual acts unless the
12 defendant had actually done these things to her.
13 These children were much younger than the child
14 in our case. I will tell the Court that the
15 allegations in this case are not of any strange
16 behavior. I mean, it's basically missionary
17 position sexual encounter between she and the
18 defendant and digital penetration with his
19 finger. And those I would submit to the Court
20 would be within the sex education realm and
21 would also be within the knowledge of a 12 to
22 13-year-old child. She was 12 at the time it
23 happened. She is 13 years old now.
24 Going into this prior situation that she had
25 with this other defendant who she did not

1 falsely accuse. He's plead guilty and he is
2 serving time. That those would be irrelevant to
3 this. It would only cause confusion for the
4 jury and I do not intend to elicit any testimony
5 from her, nor do I intend to close or anything
6 else saying how else would this child have
7 known. And I believe that unless the State was
8 to do such a thing the defendant is not allowed
9 to elicit testimony. I would submit that he
10 shouldn't elicit testimony from this child
11 victim about anything that happened to her in
12 the past at the hands of another perpetrator.

13 THE COURT: What were the times.

14 MS. HALL: The other guy was-- this was in
15 January of 2012, and then this crime was
16 perpetrated about -- it was almost two years
17 later in November 2013.

18 THE COURT: Thank you. Thank you,
19 solicitor. Mr. Nelson.

20 MR. NELSON: Yes, Your Honor, if it please
21 the Court. I am not in disagreement with really
22 anything the solicitor said. We are not asking
23 to be able to elicit testimony about the alleged
24 incident in the past, anything to do with
25 alleged incident. All I want to leave open is

1 that we have the right to cross -- cross examine
2 her about her knowledge of sexual -- her sexual
3 knowledge and sexual consequences, wherever that
4 comes from. If it comes from school, if it
5 comes from classes, if it comes from wherever,
6 that's fine. And if she doesn't -- if she
7 doesn't open the door and if the State doesn't
8 open the door to testimony about that alleged
9 incident -- that incident that happened in her
10 past, I have no issue not bringing up that
11 incident. What I do want to bring up to still
12 be able to cross examine her about is her
13 knowledge of -- of -- not necessarily even her
14 sexual knowledge, but her knowledge of the
15 punishment to sexual crime. I believe that is
16 going to have an important part when we get to
17 our case in chief. I understand the solicitor
18 might say that she doesn't see how that can be
19 relevant, but the State hasn't seen our case in
20 chief yet, and for me to be able to cross
21 examine her about those issues I believe will be
22 important to our case in chief.

23 We will not bring up the incident. We will
24 not bring up the prior perpetrator in any way.
25 We're not planning on doing that. We're not

1 planning on trying to elicit any of that
2 information through the form of questioning that
3 we ask questions in. All we're asking for is
4 that you only restrict us to what the code says,
5 which is we can not bring up evidence of
6 specific incidences of conduct. Conduct is
7 mentioned in that code multiple times, because
8 conduct is not what we can bring up. It doesn't
9 say the word knowledge anywhere in the code
10 under the Rape Shield Act. And so we're asking
11 that you not limit us from bringing up sexual
12 knowledge, but limit us from bringing up sexual
13 conduct which I believe we are properly limited
14 from doing.

15 THE COURT: Thank you, Mr. Nelson.

16 MS. HALL: And Your Honor, that has many
17 things I would like to talk about. When Mr.
18 Nelson responded to that motion, he said -- the
19 last paragraph and actually the last two lines
20 of his response says that the defense would not
21 be allowed to ask about any specific instances
22 of sexual conduct, but should be allowed to ask
23 questions to the victim or other witnesses about
24 sexual knowledge which we just covered, I
25 believe. Knowledge of right and wrong, which

1 obviously -- I mean, I guess he could ask about
2 that. That is covered in 601. She's assumed
3 competent unless shown otherwise. And then the
4 thing I have the biggest issue with, is the
5 general principals of penalties of violating
6 South Carolina law regarding criminal sexual
7 conduct.. That is completely inadmissible.

8 The jury is not suppose to consider anything
9 having to do with a penalty, and the fact that
10 this child has any knowledge of penalties or
11 anything that has -- it's not even in the
12 purview of the jury. I don't understand how he
13 would be allowed to elicit that on cross
14 examination under any circumstances unless I
15 said something crazy like, you know he's not
16 going to get in any trouble unless he gets
17 convicted of this.

18 MR. NELSON: Your Honor, let me make myself
19 perfectly clear what I am talking about here. I
20 am not talking about trying to elicit from the
21 solicitor that my client is going to get so many
22 years in prison. That's not what I am talking
23 about. I'm not talking about her knowledge as
24 far as that. I am talking about the simple
25 ability to ask her questions such as what

1 happens when people get in trouble for
2 committing sexual crimes. If she says they get
3 in trouble that's all I am looking for. I am
4 not looking for her to expound and be an expert
5 on South Carolina criminal law and the penalties
6 that come along with it. I'm simply asking for
7 her mindset, because I believe her mindset as a
8 potential victim in this case is going to become
9 very important. Become very -- and it is going
10 to become very obvious why that's important as
11 we go throughout this trial. But without
12 disclosing what the State's defense actually --
13 what's going to be in the State's -- in the
14 defenses's in chief case, I believe we need to
15 have the ability to ask her those general
16 principles. Not principles about South Carolina
17 law. And as I read through that I would have
18 confused myself as I read that. But we're not
19 asking for her to be an expert on South Carolina
20 law, South Carolina punishment, South Carolina
21 penalties. We are however, asking Your Honor to
22 allow us to ask questions of general -- just
23 general questions about what happens when people
24 commit crimes.

25 THE COURT: It's not relevant. It is not

1 relevant as far as what any victim thinks about
2 what happens to an individual when they are
3 convicted of a crime. It's just like a jury
4 charge. They have to follow the law. Now,
5 there's that vendetta case, which I think is out
6 of Horry County -- that obviously if there is an
7 allegation of some type of vendetta -- I don't
8 what it is. But obviously in the competency of
9 a younger witness, you can ask, you know, the
10 difference between right and wrong and perjury
11 and what happens if you tell a lie and all you
12 get in trouble and things like that, but when
13 you specify as to a particular act of conduct as
14 far as the crime itself, I don't see the
15 relevance.

16 I'm not tracking you, I guess.

17 MR. NELSON: I guess I am not even talking
18 about the specific incident. Really what I am
19 wanting to be able --

20 THE COURT: Excuse me. I mean the specific
21 incident alleged by this victim. When you get
22 in trouble if you commit a sexual act.

23 MR. NELSON: Okay. More what I'm -- and I'm
24 looking even more general than that. What I
25 want to be allowed to do, Your Honor, is I want

1 to be allowed to ask the victim what happens
2 when you get in trouble, or what happens when
3 you do something wrong. That's all I want to
4 ask. Not even about this specific type of
5 conduct. Leave the type of conduct out I'm okay
6 with it. What I am asking is that I be allowed
7 to ask the victim what happens when you do
8 something wrong.

9 THE COURT: Isn't that part of the process
10 of determining the competency of the victim? I
11 mean you got a 13-year old. A child that comes
12 in here, puts her hand on the bible; swears to
13 tell the truth, the whole truth and nothing but
14 the truth, so help you God.

15 Now you say, well, what does that mean? You
16 understand if you don't tell the truth you can
17 get in trouble. You know what happens if you do
18 something wrong, well you can get in trouble.

19 Is that what you are referring to?

20 MR. NELSON: And that's what I want to be
21 able to ask the victim, Your Honor.

22 THE COURT: Solicitor.

23 MS. HALL: I think there's a big difference
24 between do you know what happens when you don't
25 tell the truth you get in trouble and what

1 happens when you commit some act that's wrong,
2 you get in trouble. I mean, it's basically he's
3 trying to do what I believe is not allowed.
4 I mean, we'll cover what happens if you tell a
5 lie, you get in trouble and I think that's it.
6 I think it can only go to the competency of the
7 witness, which would be knowing the difference
8 between a truth and a lie and knowing what
9 happens when you tell. Not when you commit a
10 certain act of conduct what happens to you. If
11 you do bad things you get in trouble.
12 I think we need to be very clear about how this
13 is worded.

14 MR. NELSON: And if Your Honor limits me to
15 being able to say what happens when you get in
16 trouble or what happens when you -- do you know
17 the difference between right and wrong. I am
18 okay with that. That's really all I'm asking to
19 be able to do.

20 THE COURT: Well, I think you can ask that.

21 MS. HALL: What happens when you do
22 something wrong?

23 MR. NELSON: Yeah.

24 THE COURT: No, what happens if you tell a
25 lie. That goes to competency. You got to have

1 the intelligence and ability to tell the truth
2 to know that you have consequences if you tell a
3 lie.

4 MR. NELSON: Yes, Your Honor.

5 THE COURT: Do you agree with me now?

6 MR. NELSON: I think so.

7 MS. HALL: I just want to be real clear. We
8 are not going to ask her anything about like
9 acts. It's just what happens if you tell a lie.
10 I guess she will say is you get in trouble. But
11 not what happens when you do something wrong
12 like an act.

13 We are just talking about truth and lies and
14 not acts.

15 MR. NELSON: See and I am asking to extend
16 it to what happens when you do something wrong.
17 That doesn't bring up a specific act. It
18 doesn't bring up her past convictions. It
19 doesn't bring up anything. All it does is it
20 establishes her base knowledge, this victim's
21 base knowledge as to what happens when you do
22 things that are wrong. I don't think that's
23 outside the purview. I don't think it's covered
24 by the rape shield statute. If it's not
25 relevant then counsel can object for relevancy

1 reasons, but I don't think it is covered by the
2 rape shield law.

3 THE COURT: Specifically, what question do
4 you want to ask?

5 MR. NELSON: What happens -- what happens
6 when you do something wrong?

7 THE COURT: It depends. You might go to
8 PTI, the solicitor might non-pros, you might
9 have to do community service, some judge might
10 through the book at you or now-a-days the
11 computer.

12 MR. NELSON: And I am asking from her
13 perceptive not from a court employee or a
14 judge's perceptive what happens when you do
15 something wrong.

16 THE COURT: I'm not tracking you well. I'm
17 not tracking the relevancy, herself. What
18 happens from your perceptive. I don't see the
19 relevance. If you think it becomes relevant you
20 let me know and I will hear it as matter of law.
21 Right now I don't think it's admissible.

22 MR. NELSON: Okay.

23 THE COURT: I don't think you can tack it on
24 to the rape shield. I understand you are
25 talking about rape shield statute goes to

1 conduct, but at the same time that can be direct
2 circumstantial evidence. But I don't think you
3 can try to track it back -- and that might not
4 be what your are doing -- that might not be
5 tracking back to the rape shield statute.

6 MR. NELSON: And with that being said, what
7 may end up having to happen, we may have to
8 recall Minor at the end of our case for a
9 potential witness.

10 THE COURT: And if you have her under your
11 subpoena you can call her as part of your case,
12 then solicitor can object at that time or
13 whatever. I don't have any control over that.

14 MR. NELSON: Okay. Thank you, Your Honor.

15 THE COURT: I may have control over the
16 ruling on admissibility of evidence, but I don't
17 have control over who you all may or may not
18 call as witness.

19 MR. NELSON: Because what I am saying is I
20 think what we are trying to do would be more
21 clear to everyone in the courtroom once our case
22 in chief is actually done.

23 THE COURT: Is that a promise?

24 MR. NELSON: Yes.

25 MS. HALL: Your Honor, if comes to that we

1 would ask for en camera hearing.

2 THE COURT: Sure, you can.

3 MS. HALL: Because I don't want this child
4 to have have to testify in front of a jury
5 again, you know, if in any way possible to keep
6 her from having to do that.

7 THE COURT: Do you want an en camera hearing
8 with the child victim now?

9 MS. HALL: No. No, not with regard to what
10 he's talking about. No, she's fine to testify
11 once, you know, but we don't need to bring her
12 back in here in front of a jury on some theory
13 that we don't understand at this point. You
14 know, I am just saying if Mr. Nelson intends to
15 call her at the end of his case in chief, the
16 State would ask before we do that that we have
17 an en camera hearing to find out if it's going
18 to be first of all relevant. I don't want her
19 to get up there and testify in front of a jury
20 and then object to relevancy and have her go
21 through that again. Do it with the Court and
22 see where it goes.

23 MR. NELSON: All right, and that can all be
24 solved by allowing me to ask that one question
25 that I want to ask. That's really what I am

1 asking to be able to do, and then we won't risk
2 doing that if I am allowed to ask that one
3 question.

4 THE COURT: Well, I ruled on that.

5 MR. NELSON: Okay.

6 THE COURT: Anything further solicitor?

7 MS. HALL: Let me just make sure.

8 I would put on the record -- and it's not a
9 motion or anything, but I just want to call to
10 the Court's attention we did give notice about
11 an enhanced sentence pursuant to statute. That
12 this does pull the case -- the sex offender
13 registry -- would pull the case from a second to
14 a first, and so, we gave notice that the penalty
15 is enhanced from -- from I think zero to 20, but
16 this is a minimum of ten and maximum of 30 years
17 and Mr. Nelson did acknowledge receipt of that
18 and he understands that would be the case, but I
19 just want to put it on the record so it is no
20 surprise.

21 MR. NELSON: Without objection.

22 THE COURT: All right then, anything
23 further?

24 MS. HALL: No.

25 THE COURT: All right, we will take a ten

1 to the evidence; so help you God, you do?

2 (Jurors respond, I do).

3 THE CLERK: Thank you. Be seated.

4 THE COURT: Thank you. Thank you, very
5 much. Ladies and gentlemen of the jury panel
6 welcome back. I do apologize for the delay. It
7 is not the fault of either of the parties. They
8 were back not on time but earlier and have been
9 working very diligently since about 2:20, 2:25
10 in an attempt to resolve all the matters that
11 had to resolved outside of your presence.
12 You will find many of the South Carolina Circuit
13 Court judges can't tell time and many of them
14 have no personalities, but you can make your
15 decision on both the time and the personalities
16 at the end of this trial. Your time is very
17 valuable to me and I will try to manage it much
18 more efficiently.

19 The case with are about to trial is the case
20 of John Henry Lowery, II. My remarks now are
21 not instruction on the law, but give you a kind
22 of some guidelines and some direction in which
23 we will be going during the course of this
24 trial.

25 You have heard Mr. Lowery is charged with

1 criminal sexual conduct of a minor in the first
2 degree. The elements of which will be explained
3 to you at a later time. Mr. Lowery has pled not
4 guilty to this Indictment and as you recall the
5 Indictment is not evidence. It contains mere
6 allegations. It is the formal charging document
7 by which an individual is placed on notice for
8 the charges that have been brought against him
9 or her, and by which the case comes before the
10 Court for resolution. By that plea of not
11 guilty it places the burden on the State of
12 South Carolina, the party to my front left, to
13 prove its case each and every element of the
14 crime charged beyond a reasonable doubt. And
15 that burden of proof is on and upon, and will
16 remain on the State of South Carolina until such
17 time you are satisfied by the evidence presented
18 before you in this courtroom that that case, the
19 elements of that crime, have been proved by
20 proof beyond a reasonable doubt.

21 Mr. Lowery, a defendant in this matter, is
22 presumed to be innocent regardless of the
23 serious nature of any crime charged in South
24 Carolina. A criminal defendant is always
25 presumed to be innocent and has no burden of

1 proof to prove himself or herself innocent. I
2 would like to think even in the more modern
3 courtroom, or the newer courtrooms that aren't
4 necessarily my favorite, I actually like the
5 older courtrooms probably because I practiced in
6 them. Most of the newer ones weren't even built
7 when I was still trying cases as a lawyer. I
8 would like to think of the party closest to the
9 jury has the burden of proving it's case, and in
10 this case means the State has to prove beyond
11 reasonable doubt.

12 Now, evidence will be presented to you by
13 the witnesses, testifying under oath from this
14 witness stand and any charts, diagrams, or
15 exhibits. You are the soul and only judges of
16 the facts in this case. It will be up to you
17 and you alone to determine the facts of the
18 case. I can not and will not comment on and
19 will not have any opinion about the facts of the
20 case. That is your responsibility. The same
21 law that makes you the judges of the facts of
22 the case make me the judge of the law. I can
23 not tell you what the facts are, you can not
24 disagree with me about what the law is, or what
25 the law should be. You must follow the law.

1 You were sworn to follow the law as I tell you
2 the law is.

3 Ladies and gentlemen, momentarily, the
4 solicitor will make what is known as opening
5 statement in which the solicitor will explain to
6 you what the issues are in the case or at least
7 what the solicitor thinks the issues are in the
8 case. Either Mr. Nelson or Mr. Frick may also
9 make an opening statement to you if they choose
10 to do so. However, again, a defendant is not
11 required to prove himself or herself innocent.
12 Remember ladies and gentlemen, the opening
13 statements are not evidence. The closing
14 arguments after all the evidence has been
15 presented to you is not evidence. The
16 questioning by the attorneys is not evidence.
17 It's the responses from the sworn witnesses.
18 The questioning is the framework by which the
19 evidence, the testimony is elicited from the
20 witnesses and that's what you use to bring your
21 good judgement and your common sense and your
22 focus like a laser on the testimony of the
23 witnesses testifying under oath before you.
24 The testimony you can use you can use anything
25 with that backdrop of your good judgement and

1 your common sense in determining the
2 believability, the credibility of the witnesses
3 testifying for you under oath. You may believe
4 one witness over many. You may believe many
5 over one. You may believe part of the testimony
6 of a witness and reject the remaining part of
7 the testimony of that same witness. You may use
8 those things that you use that good judgement
9 and that common sense that you use in every day
10 life in making life's important decisions. Was
11 the testimony consistent within itself. Was the
12 testimony made stronger or weaker by subsequent
13 witnesses. In other words was it corroborated
14 in any manner or was it not corroborated. Was
15 it impeached in some manner. You may also look
16 at the way, the manner, the demeanor in which a
17 witness exhibits to you during his or her
18 testimony before you in this courtroom. You may
19 look at anything in this record; not passion,
20 not prejudice not speculation, not surmise, but
21 anything other in this record that will help you
22 determine the truthfulness of each and every
23 witness that testifies before you.

24 Once you decide, once the case is given to
25 you and you decide what are the true facts?

1 What do we find individually and unanimously as
2 a jury? What are the true facts? And then you
3 have the yard stick, the standard of the law.
4 You apply those facts to the standard of the law
5 if the it State has made its burden of proof
6 then the State is entitled to a verdict of
7 guilty. If the State has failed to meet its
8 burden of proof beyond a reasonable doubt then
9 the defendant is entitled to a verdict of not
10 guilty.

11 I ask you during the course of the trial and
12 I reiterate, you may not discuss this case with
13 anyone, breaks overnight, at any time
14 whatsoever, until such time as it had been
15 submitted to you after you heard all the
16 evidence, all the testimony, closing arguments
17 by the attorneys and the instruction on the law
18 by the Court.

19 I ask you to pay attention to the witnesses,
20 to the attorneys and to the Court. Don't let
21 your thoughts wander. Give strict attention to
22 the evidence in this case so that at the end of
23 all the evidence when you heard all the
24 witnesses, you heard those closing arguments,
25 when you heard the instruction by the Court, you

1 will then be in that position to reach a verdict
2 that speaks the truth and find the defendant
3 either guilty beyond a reasonable doubt or not
4 guilty.

5 Ladies and gentlemen, just a few
6 administrative issues. If you can not hear or
7 see a particular witness, although we do have a
8 sound system in here, please let me know. I
9 have him or her speak up as best I can and as
10 best they can, I should say. Also, if any items
11 are offered into evidence; charts, diagrams,
12 exhibits, photographs, what have you, many times
13 they are handed to the foreperson while you are
14 in here in the courtroom and passed among
15 members of the jury while you are in here in the
16 courtroom. You may look at those items all you
17 wish while you are in the courtroom in your jury
18 box. Keep in mind if I allow it into evidence
19 you will also have that item in your jury room
20 at the time of your deliberations. I tell you
21 that to say that again you may look at it all
22 you wish out here in the courtroom but just keep
23 in mind you'll also have another opportunity to
24 review it in your jury room during your
25 deliberations.

1 Another thing ladies and gentlemen, from
2 time to time you may see me on the computer. I
3 don't tweet, I don't repeat, I don't voicemail
4 and I am faceless. I do that because these very
5 fine attorneys handling the trial of this case
6 and sometimes when I look at in a distance I may
7 think I see a legal issue kind of coming around
8 that slow and dusty road and I will do some
9 research in that manner. That's the only thing
10 I do and I do stay focused and attentive during
11 the trial of the case.

12 You may sit -- once I appoint a foreperson I
13 will have that foreperson sit right here closest
14 to the bench where this young lady is sitting
15 now. Once I appoint a foreperson the other 11
16 of you on the primary jury may sit anywhere you
17 like in the jury box and of course our two
18 alternates if you all maintain those seats for
19 me I will appreciate it. I have found, I have
20 observed, over the course of my time as a trial
21 judge that many jurors are very territorial.
22 They like to sit in the same place, the same
23 seat each and every time and have the same view
24 of the witness. If you want to do that's is
25 perfectly all right. I just advise you the 11

1 can sit wherever they would like in the jury
2 room except the foreperson's seat and the two
3 alternates. I need to keep up with the
4 foreperson and the two alternates and the other
5 11 folks are fine.

6 What am I really in charge of, taking
7 breaks. I am in charge of taking breaks. I
8 have a real simple rule. When I want to take a
9 break, we take a break. It works out.

10 Ladies and gentlemen this is not some type
11 of judicial marathon. If you sit out here too
12 long your thoughts gets to wander. You know,
13 you just won't be able to recall what the true
14 facts are. Please raise your hand. As I say
15 this is not some type of judicial marathon. Any
16 of you, if you want a break I'm sure you are not
17 the only one. Again, raise your hand. We all
18 will take a break.

19 Thank you. Thank you, very much. Thank you
20 for your participation in our criminal justice
21 system today.

22 Any objections to anything I told the jury
23 from the State, solicitor?

24 MS. HALL: No.

25 THE COURT: From the defense, Mr. Nelson?

1 MR. NELSON: None, Your Honor.

2 THE COURT: Thank you, very much.

3 Solicitor, you may address the the jury.

4 MS. HALL: Okay, ladies and gentlemen, as I
5 told you earlier my name is Julie Hall and I am
6 a prosecutor here in Chester County, and I'm
7 obviously working in that capacity today.

8 Many times I get up here and tell jurors
9 this is going to be a quick case. It shouldn't
10 take very long and I'm not going to tell you
11 that. You guys are in for a fairly long ride.
12 It is not going to be an easy ride. There is
13 going to be some difficult subject matter. I
14 ask you that you listen to as closely and
15 carefully as you possibly can to the witnesses
16 as they testify. As Judge McMahon just told you
17 that is where the evidence comes from. And he
18 is going to give you the law at the end of the
19 case. Anything that I say that is not exactly
20 the way he says it please take it the way he
21 says it. But I think it is helpful of having an
22 overview of what you are looking for before we
23 start.

24 The defendant in this case is charged with
25 criminal sexual conduct with a minor in the

1 first degree. There is three elements of that
2 that we have to prove. The first is that sexual
3 battery occurred. The sexual battery is defined
4 by the code of South Carolina; sexual
5 intercourse, cunnilingus or fellatio which is
6 oral sex, anal intercourse or any intrusion
7 however slight, however slight, of any person's
8 body or of any object into the genital openings
9 of another person's body, except when you are
10 going to the doctor because obviously we are not
11 going to charge a doctor. They are doing it for
12 a medical diagnosis.

13 So any kind of penetration, however slight,
14 into a vaginal opening or any kind of oral sex
15 or digital penetration even with a finger would
16 be considered that because that is an intrusion
17 of a person's body into a genital openings of
18 another person. That's the first thing, the
19 sexual battery. The second thing is the age of
20 the child.

21 Criminal sexual conduct with a minor in this
22 instance when coupled with the third element
23 which I will explain in a minute. The child has
24 to be under the age of 16 years at the time when
25 the event occurred. You will hear testimony

1 that the child in case although she is 13 now
2 was 12 at the time when this happened.

3 The third element in this instance is the
4 defendant is currently on the sex offender
5 registry and required to register under South
6 Carolina Law and you will hear testimony that he
7 is at the time that this happened and he is
8 still now -- not because of this -- was required
9 to register on the sex offender registry in the
10 State of South Carolina. And those are the
11 three things we have to prove.

12 As His Honor stated, we have to prove them
13 beyond a reasonable doubt. That's all going to
14 be explained at the end. You can't ever know
15 anything beyond a shadow of any doubt. It just
16 has to be something that is going to cause you
17 to hesitate to act. That is why it is so
18 important you listen so carefully. And your job
19 is not only to listen to the facts as they come
20 off the witness stand, but to judge the
21 witnesses -- not to stand in judgement of them,
22 but to judge their credibility, motivation, what
23 they're saying, their demeanor while they are
24 testifying. Things like that are going to be
25 super important. There is going to be many,

1 like I said, witnesses in this case. You are
2 going to hear from the victim in the case. You
3 will hear from her little sister. You will hear
4 from their mom. You will hear from their aunt
5 where they were spending the night when this
6 occurred. You are going to hear from several
7 law enforcement officers and other another
8 person who was in the house toward the end of
9 night and then you are also going to hear from
10 the nurse who examined the child after this
11 happened. You are going to hear from a doctor
12 who examined the child after this happened. And
13 there was a forensic interview done where the
14 child goes and talks to a counselor who is
15 someone that does forensic interviews. You will
16 hear from her and she will tell you how she does
17 that and what she did as a result in this case
18 when she talked to the child.

19 You will hear also from some individuals
20 from SLED, a DNA analysis and people like that
21 at the end of case who did analysis in this
22 case. So those are basically what you are
23 looking at. Like I said, it is going to be a
24 long ride, but you got to just make sure you are
25 paying attention. Pay very good attention to

1 every single person.

2 The word verdict, it means to speak the
3 truth and that's all the State seeks. Is just a
4 verdict that is truthful. And I would submit to
5 you after you heard all the testimony in the
6 case the only truth that you are going to be
7 able to find is that this defendant is guilty of
8 those three elements and that he did commit the
9 sexual act upon this child and I would submit
10 that the truth is that he is guilty.

11 Thank you.

12 THE COURT: Thank you, solicitor. Mr.
13 Nelson.

14 MR. NELSON: Yes, Your Honor, thank you.
15 Ladies and gentlemen of the jury, standing
16 before you I first want to introduce myself, my
17 name is Devon Nelson. I said that earlier but I
18 want you to know who standing before you today.

19 My name is Devon Nelson. Sitting with me in
20 this case would be another attorney by name the
21 William Frick who you can see sitting over here
22 at the corner of our table, and also you see a
23 man by the name of John, John Lowery. I want as
24 we go throughout this case, I want you to be
25 aware of a few things and I will go through a

1 few of those things and I will talk about them.

2 First of all, I agree with the solicitor.

3 This is not going to be an easy case. It is one

4 thing we can agree on. You will hear some

5 things that are going to be very hard to hear.

6 You are going to hear some things that are going

7 to be very difficult. You are going to -- you

8 are probably not going to want to hear this,

9 what comes from the witness stand in this case.

10 As a defense attorney I don't stand before

11 saying that is going to be easy. It's going to

12 be hard to watch. You will hear a story being

13 told by a 12-year old girl and what she -- what

14 she says happened to her and that is going to be

15 hard to hear, and thank you for your service in

16 coming today to hear that story and for being

17 willing to judge this case and be the judge of

18 what really took place that night.

19 I want to talk for a minute and the judge

20 has already talked to you about it, but I want

21 to talk about it a little bit more about what

22 this is. This Indictment. A copy of the

23 indictment that was signed by a Grand Jury with

24 Mr. John Lowery's name on it. This is not

25 evidence. Just because Mr. Lowery is here today

1 that doesn't make him guilty. You heard the
2 solicitor say they are going to offer proof that
3 he was on the sex offender registry. That
4 doesn't make him guilty. None of that makes him
5 guilty of this crime. We are asking you to look
6 at this case and look at it truly and decide
7 whether or not the State proves that Mr. John
8 Lowery did what's in this Indictment, which is
9 has already been read to you by the judge.
10 All this does is tell John Lowery that he has to
11 be here today to answer to you. Not to answer
12 to the judge. Not to even answer to the State,
13 but to answer to what you judge to be true and
14 what you judge to be credible.

15 The Indictment -- John doesn't have to prove
16 anything in this case. The judge just told you
17 right now in every single one of your minds Mr.
18 Lowery must be presumed innocent. Because he's
19 innocent until he is proven by the State to be
20 guilty through witnesses and through testimony.
21 So in everybody that I am talking to mind's he
22 must be presumed innocent at this point.
23 The State must prove their case beyond a
24 reasonable doubt. The solicitor gave you a
25 definition of what reasonable doubt means, and I

1 am not even going to disagree with that
2 definition. At the end of this case what you
3 need to each individually ask yourself is do I
4 have hesitation to say John Lowery is guilty of
5 criminal sexual conduct in the first degree.
6 That's what you must ask yourself. Do you doubt
7 any of the elements the solicitor just went
8 through with you and I'm not going to repeat
9 them.

10 What I am asking you to do, as the defense
11 attorney, what John is asking you to do through
12 me, is to be willing to question. I am asking
13 you to question the evidence. I am asking you
14 to question the testimony. I am asking you to
15 ask yourself why would someone say that. And
16 really think about that question, why would
17 someone say that. I am asking you to ask
18 yourself what's missing in this case. Is there
19 something that should be here that's not.
20 Because all of these questions will go into
21 whether or not you find a specific witness, a
22 specific testimony to be credible. And
23 ultimately at the end of this trial -- however
24 long it takes, however long this road that none
25 of us and I am sure none of you want to go down

1 takes -- you will have find that there is
2 reasonable doubt. You will find that there is
3 hesitation to say John Lowery is guilty of this
4 charge.

5 The last thing I want to remind you and then
6 we will get on with it -- but the last thing I
7 want to remind you of, is remember that you are
8 a group. But you're also 14 individuals, 12 on
9 the jury and two alternates... Each of you has
10 the ability to individually make up your mind.
11 You get to decide whether or not John Lowery is
12 guilty of this charge. You get to decide
13 individually. That might be difficult. That
14 might be hard. But you have that right as an
15 individual juror to stick to your convictions
16 regardless of what side -- of what side that
17 conviction falls on. You have that ability.
18 You have that right. We put 12 individuals plus
19 two alternates on this jury so that we could
20 have 12 individuals's opinions and thoughts.
21 And I am not saying don't listen to your fellow
22 jurors, but be willing to stick up for what you
23 believe and if you individually have that
24 hesitation to act, that hesitation to go, is
25 that really what I want to do, then I will be

1 asking you to bring back a verdict of not
2 guilty. And at the end of this trial find that
3 John Lowery is not guilty of the charge that he
4 is charged with.

5 Thank you.

6 THE COURT: Thank you, Mr. Nelson.
7 All right, under South Carolina Article One,
8 section 24, Victim's Bill of Rights,
9 specifically A(1) and A(6) along with all the
10 other sub-sections of the constitution
11 amendment, I would ask that all parties beyond
12 the rail on both sides of the courtroom now exit
13 the courtroom. Thank you. Thank you, very
14 much.

15 All right, solicitor, you may call your
16 first witness.

17 MS. HALL: The State calls Minor 1
18 called as a witness, having
19 been duly sworn by the clerk, was examined and
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. HALL:

23 Q. State your full name again for the record?

24 A. Minor Mickel Lexia Hardin.

25 Q. Okay. Minor 1 how old are you?

1 A. Thirteen.

2 Q. And when is your birthday?

3 A. June 13th.

4 Q. Okay. Tell me about your family. How many
5 brothers and sisters do you have?

6 A. One brother and four sisters.

7 Q. Four sisters. And in birth order which one
8 are you in that family?

9 A. The oldest.

10 Q. And can you name the sisters as you go down
11 and your brother too, include him.

12 A. It's me, Ledansa (phonetics), Minor 2
13 Michael and Victoria.

14 THE COURT: Can you all hear? Can you
15 speak up just a little bit.

16 MS. HALL: Try to speak up. Let's move
17 the mic up closer to your mouth, okay.

18 Q. All right. So, what grade are you in now?

19 A. Seventh.

20 Q. I am going to take your attention back to
21 November the third of last year. Do you remember that
22 night?

23 A. Yes, ma'am.

24 Q. And what did you do that night?

25 A. Me and my sister Minor 2 went over to my --

1 Q. You have to slow down and speak up and I talk
2 real fast so I understand how it is hard not to do that,
3 but slow down and speak up because these people over
4 hear have to hear what you are saying. Tell me what you
5 did that night?

6 A. Me and my sister Minor 2 went to our Aunt's
7 Fatima's house so we could get our hair done.

8 Q. You went to your Aunt Fatima's house so you
9 all could get your hair done?

10 A. Uh-huh.

11 Q. Does Aunt Fatima do hair?

12 A. Yes, ma'am.

13 A. Is that her job?

14 A. It's like a hobby.

15 A. In Brooklyn.

16 Q. And is that in Chester?

17 A. Yes ma'am.

18 Q. And how old were you at that time?

19 A. Twelve.

20 Q. And you said your birthday is June 13th, what
21 year?

22 A. 2001.

23 Q. And do you remember what day of the week that
24 was?

25 A. Probably on Saturday.

1 Q. Do you know if was weekend night or during the
2 week?

3 A. Weekend.

4 Q. And do you remember what time you got there?

5 A. No. I just know it was dark outside.

6 Q. It was dark outside. Okay. And who took you
7 over there?

8 A. My mom.

9 Q. And did she drop you off with your sister
10 Minor 2

11 A. Yes, ma'am.

12 Q. All right. And did any of your other sisters
13 or brother go with you?

14 A. No, ma'am.

15 Q. And did your mom go with you?

16 A. No, ma'am.

17 Q. And when you got to the house who was there?
18 Who did you see?

19 A. My Aunt Fatima.

20 Q. And do you remember where in the house she
21 was?

22 A. She was sleeping on the couch on the wall
23 toward the door.

24 Q. Okay, was that in the living room?

25 A. Yes, ma'am.

1 Q. And what did she do when you got to the house?

2 A. She said she was tired so she went back in
3 room and went to sleep.

4 Q. So she went in her bedroom?

5 A. Uh-huh.

6 Q. And where were you?

7 A. Me and Minor2 were in the living room
8 watching TV.

9 Q. And where did you and Minor2 go to sleep
10 that night?

11 A. On the floor on a pillow cushion.

12 Q. On the floor on a pillow cushion. Was that in
13 the living room?

14 A. Yes, ma'am.

15 Q. All right. And did you fall asleep watching
16 TV?

17 A. Yes, ma'am.

18 Q. And at any time during that night were you
19 waked up?

20 A. Yes, ma'am.

21 Q. When -- what happened? What happened with
22 that?

23 A. My Auntie Fatima woke me up and asking me --

24 Q. Slow down again and pull that thing up closer
25 to your mouth so we can hear you. Go ahead.

1 A. My Aunt woke me up. Did I want anything from
2 the store? So we went to store that night and got
3 something to snack on and then went back to the house.

4 Q. So you went with Auntie Fatima and got a snack
5 and when back to the house and what room were you in
6 when you went back to the house?

7 A. The living room.

8 Q. Okay. And where was Minor 2

9 A. Still on the floor asleep.

10 Q. Okay. And what did you do after you ate your
11 snack?

12 A. I went back to sleep.

13 Q. And do you remember if the light was on or if
14 the TV was on or off when you went back to sleep?

15 A. The TV was still on. The only light came from
16 the TV.

17 Q. Okay. And did you go back to sleep after the
18 snack with the TV on?

19 A. Yes, ma'am.

20 Q. And at any point in time were you waked up any
21 other time during the night?

22 A. Yes, ma'am.

23 Q. Tell me about that?

24 A. I felt something someone poked me in my side
25 and woke up and then then the person left.

1 Q. Did you know who it was at that time?

2 A. No, ma'am.

3 Q. And do you remember when you opened your eyes
4 were the lights on or off at that moment?

5 A. Off.

6 Q. And was the TV on or off at that moment?

7 A. Off.

8 Q. And so did you see the person who poked you on
9 the side?

10 A. No, ma'am.

11 Q. Was it dark in the room?

12 A. Yes, ma'am.

13 Q. Okay. And what did you do after that?

14 A. I went back to sleep.

15 Q. Okay. Now, when -- at any point in time later
16 on that night were you waked up again?

17 A. Yes, ma'am.

18 Q. Okay, and tell us about that. Just go real
19 slow okay and try to put your mouth close to that
20 microphone.

21 A. I felt the covers being lifted off of me and
22 Minor 2 moved.

23 Q. Okay, you have to talk loud. You said you
24 felt the covers lifted off of you and you felt Minor 2
25 move.

1 Put your mouth up close to the microphone and try
2 and talk slow. I know this is hard but try and talk
3 slow and talk loud so they can hear and you will have to
4 go through it once. Okay. Go ahead.

5 Q. I felt the covers lifted off me and Minor 2
6 moved and he went and turned on the lights?

7 Q. Okay, who went and turned on the lights? You
8 said he, but who went and turned on the lights?

9 A. Rabbit.

10 Q. Okay. And do you -- how do you know it was
11 Rabbit?

12 A. I could see his face from the light.

13 Q. Okay, and when you say he turned on the light
14 let's just stop for a moment and let's talk about the
15 light in the room. Was it an overhead light? Was it a
16 lamp? Tell me. Was it the TV? Tell the jury about the
17 light in the room?

18 A. There's a stand where the TV is. One on the
19 left side of the TV and one on the right side and he
20 turned the one on the right side.

21 Q. So it's a light on TV stand?

22 A. Uh-huh.

23 Q. And could you see his face?

24 A. Yes, ma'am.

25 Q. All right. And after he turned on the light

1 what happened?

2 A. He looked to Minor2 awoke and --

3 Q. Say that again please, he looked to Minor2

4 was what?

5 A. Awoke.

6 Q. Okay, she was awoke. Okay, go ahead?

7 A. Then I felt his fingernail go inside me trying
8 to guide his private parts into mine.

9 Q. Wait. Say it again. Let's break it down.
10 Say the first thing you said again so they can hear you.
11 I know it is hard.

12 A. I felt his fingernail go inside me trying to
13 guide his private part inside mine.

14 Q. You said you felt his fingers go inside you or
15 his fingernail go inside?

16 A. Fingernail.

17 Q. His fingernail and he -- okay -- and you said
18 it felt like he was trying to guide his private part
19 into yours?

20 A. (Nod.)

21 Q. Okay. Go ahead and keep going. I'm sorry. I
22 didn't mean to interrupt you.

23 A. He was trying to get his private part inside
24 mine.

25 Q. Slow down, baby.

1 A. He was trying to get his private part to go
2 inside mine, but he couldn't get it all the way in. So
3 he did it as far as he could get it to go.

4 Q. Okay. And let me show you -- I am going to
5 show you this cup. Okay? And when I talk about this cup
6 I am going to talk about the outside of the cup and the
7 inside of the cup. You said he felt his finger go
8 inside of you. Was it on outside of your private part
9 or the inside of your private part?

10 A. Inside.

11 Q. You said that he was using his hand to guide
12 his private part into your private part. Was his -- was
13 his private part on the outside of yours or on the
14 inside?

15 A. Inside.

16 Q. And how do you know it was on inside?

17 A. I feel his skin.

18 Q. You felt what?

19 A. His skin.

20 Q. Okay. Did it hurt?

21 A. Yes, ma'am.

22 Q. And you said he did it as far as could but it
23 wouldn't go all the way in?

24 A. Yes, ma'am.

25 Q. All right. When you saw him and the light was

1 on did you notice what he was wearing?

2 A. He had on no shirt and black basketball
3 shorts.

4 Q. And did he say anything?

5 A. He asked me if I was going to tell anybody.

6 Q. And what did you tell him?

7 A. No.

8 Q. Where was he when he asked you that?

9 A. In the door frame of my aunt's room.

10 Q. So after -- after he tried to put his private
11 part in yours as best he could and got up -- he got up,
12 right?

13 A. Uh-huh.

14 Q. And where did he go?

15 A. He went in my aunt's room to get a cigarette.

16 Q. He went to get a cigarette out of your aunt's
17 room?

18 A. Uh-huh.

19 Q. And then where did he go after that?

20 A. He came back and asked me if I was going to
21 tell anybody and I said to him no and he sat on the arm
22 of the couch until I fell asleep.

23 Q. All right. And was he smoking the cigarette
24 or did he just go get it as far as you know?

25 A. He smoked it.

1 Q. Okay. You said he sat on the arm of the chair
2 or on the arm of the couch watching you until you went
3 to sleep?

4 A. Yes, ma'am.

5 Q. All right, and did you fall asleep?

6 A. Yes, ma'am.

7 Q. What is the next thing you remember?

8 A. He was opening the door for Monique and
9 Mickey.

10 Q. For Monique and Mickie?

11 A. Uh-huh.

12 Q. Who is Monique and Mickie?

13 A. Monique is my cousin and Mickie is her
14 boyfriend.

15 Q. And what did you do after that?

16 A. I went back to sleep.

17 Q. Okay, were you awake for a long time? Did you
18 get up or did you go right back to sleep?

19 A. Just went back to sleep.

20 Q. And when is the next time you woke up?

21 A. It was morning time when Camarian came over.

22 Q. What happened? It was morning time and what?

23 A. Camarina --

24 Q. Who's Camarian?

25 A. Monique's friend.

1 Q. All right. Keep going.

2 A. Him and Minor2 were fighting over remote to
3 the TV and that's when Rabbit came in and told them to
4 sit down and then Minor2 told me that she seen --

5 Q. Okay, wait a minute. Slow down. You said
6 Rabbit came in and he kind of intervened over the fight
7 of the remote control over your little cousin and your
8 little sister?

9 A. Uh-huh.

10 Q. What was he wearing at that time?

11 A. He still had on no shirt and black basketball
12 shorts.

13 Q. Okay, and let me ask you this. How long had
14 your Aunt Fatima been dating him, do you know?

15 A. No, ma'am.

16 Q. How many times, if you can guess, how many
17 times had you met him in the past

18 A. Three.

19 Q. Had he always been introduced to you as
20 Rabbit?

21 A. Uh-huh.

22 Q. Did you know what his real name was?

23 A. John Henry Lowery.

24 Q. All right. So you said he intervened in the
25 fight and then what happened after that?

1 A. He went back in his room.

2 Q. Sorry, say it again? I can't hear you.

3 A. He went back in his room and Minor 2 told me
4 she seen his pants off and I said I am going to tell
5 Auntie Fatima.

6 Q. You said what? I am going to do what?

7 A. I was going to tell Auntie Fatima.

8 Q. You were going to tell Auntie Fatima. And did
9 you tell Auntie Fatima?

10 A. Yes, ma'am.

11 Q. Okay. And do you remember where -- and how
12 soon after that did you tell her?

13 A. She was just in her room going to the front
14 door answering to my mom and I whispered in Auntie
15 Fatima what had happened.

16 Q. You whispered in Auntie Fatima's ear what had
17 happened?

18 A. Yes, ma'am.

19 Q. Okay. And you said she -- what was she going
20 to the door to do?

21 A. She was answering my mom.

22 Q. So your mom came by that morning?

23 A. Yes, ma'am.

24 Q. And what was she coming by for?

25 A. She was coming to pick me and Minor 2 up.

1 Q. Okay. And did she pick you up?

2 A. No, ma'am.

3 Q. Why not?

4 A. Because Auntie Fatima didn't get to finish or
5 didn't even start on Minor 2 hair.

6 Q. So Auntie Fatima hadn't done her hair yet so
7 she was going to leave you there to get the hair done?

8 A. Uh-huh.

9 Q. At any point in time did you try and get to
10 your mom to talk to her?

11 A. No, ma'am.

12 Q. Why not?

13 A. Because she was already stressed and I didn't
14 want to stress her out.

15 Q. But you told Auntie Fatima right after your
16 mom left?

17 A. Yes, ma'am.

18 Q. And what happened after that?

19 A. Then she went in her room.

20 Q. Who is she? When you say "She" who do you
21 mean?

22 A. Aunt Fatima.

23 Q. She went in to her room?

24 A. Uh-huh.

25 Q. Okay.

1 A. And her and Rabbit start arguing and she
2 called me and Minor2 in there and she asked me what
3 happened and she asked Minor2 did it happened, but
4 Minor2 didn't answer. She just started crying.

5 Q. She started crying?

6 A. Uh-huh.

7 Q. How old was Minor2 then do you know?

8 A. Seven -- six.

9 Q. And so what did Fatima do after that?

10 A. She took Minor2 -- well, after that Monique
11 started crying.

12 Q. Wait. Who is Monique?

13 A. My cousin.

14 Q. And she's the one that had come in with her
15 boyfriend after everything had happened. Okay. And so
16 you said Aunt Fatima took Monique somewhere?

17 A. No. Auntie Tima and Monique took Minor2 in
18 the back room asking her questions because she didn't
19 want to say anything because he was right there.

20 Q. Say it again.

21 Q. Monique and Auntie tima took Minor2 in the
22 back room because Minor2 was trying to say something
23 but she couldn't because he was right there.

24 Q. Who was right there?

25 A. Rabbit.

1 Q. And what happened after that?

2 A. While they went back there he came in and said
3 something and Minor2 started crying.

4 Q. Let me just make sure we are painting the
5 picture. So Monique and Fatima have Minor2 in the
6 back room by herself, just the three of them in the
7 room?

8 A. Uh-huh.

9 Q. And you said Rabbit went back in the room and
10 then Minor2 started crying?

11 A. Uh-huh.

12 Q. What did everybody do at that point?

13 A. Then I think Auntie Tima took him to his mom's
14 house.

15 Q. Okay, you said Auntie Tima took who to his
16 mom's house?

17 A. Rabbit.

18 Q. And then what?

19 A. Then me and Minor2 and Monique we went to go
20 to my mom's house.

21 Q. How did you all get there?

22 A. Auntie Tima drove us.

23 Q. Okay. So she went and took Rabbit to his
24 mom's house and then you came back and got you and your
25 sister and your cousin Monique?

1 A. Yes, ma'am.

2 Q. And she took you to your mom's house; is that
3 right?

4 A. Yes, ma'am.

5 Q. And what did you do when you got to your Mom's
6 house?

7 A. Aunt Fatima told her what happened with me and
8 my Mom was in the car. We had to explain. Well, I had
9 to explained. Then we were brought to Chester Hospital
10 but they said they didn't have a rape kit so they told
11 her to go back to where it happened.

12 Q. So, you went to Chester Hospital but they
13 couldn't see you because they hadn't the right supplies
14 to see you so they said go back to where it happened and
15 call the police; is that right?

16 A. Uh-huh.

17 Q. Okay, is that what you did?

18 A. Yes, ma'am.

19 Q. Okay. And after you called the police what
20 did you do?

21 A. The police told me to go to Piedmont.

22 Q. And did you go to Piedmont Medical Center?

23 A. Yes, ma'am.

24 Q. And were you examined by a nurse when you got
25 to Piedmont Medical Center?

1 A. Yes, ma'am.

2 Q. And did you talk to any police officers while
3 you were there?

4 A. Yes, ma'am.

5 Q. Who did you talk to, do you remember?

6 A. Officer Tammy.

7 Q. Officer Tammy. Let me ask you something real
8 quick. When you went to sleep that night did you have
9 on pajamas or did you have on clothes?

10 A. Clothes.

11 Q. Did you bring a change of clothes or did you
12 wear the same clothes the next day?

13 A. The same clothes.

14 Q. So the clothes that you had that night are the
15 clothes that you wore to the hospital when you went to
16 Piedmont?

17 A. Yes, ma'am.

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

19 Q. Let me ask you something. The man that you
20 referred to as Rabbit, do you see him in the courtroom
21 today?

22 A. Yes, ma'am.

23 Q. Can you just point to him? You don't have to
24 get up. You can just point to him?

25 (Witness points.)

1 Q. He is wearing a yellow shirt? Kind of gold?

2 A. Yes, ma'am.

3 MS. HALL: Please let the record reflect
4 she has pointed to defendant.

5 THE COURT: So reflect.

6 MS. HALL: Nothing further.

7 THE COURT: Thank you, solicitor. Mr.
8 Nelson.

9 MR. NELSON: Okay, Your Honor.

10 CROSS EXAMINATION

11 BY MR. NELSON:

12 Q. Okay Minor 1 you stated as part of your
13 testimony to the solicitor that you were on the floor,
14 correct?

15 A. Yes.

16 Q. And you were laying on the floor on cushions?

17 A. Yes.

18 Q. Was Minor 2 also on cushions or was she
19 laying on something else?

20 A. She was also on cushions.

21 Q. She was also laying on cushions. When you
22 felt -- when the lights were off and you testified the
23 lights were off and you felt a poke, did you know who it
24 was that poked you at that time?

25 A. No.

1 Q. Okay. And then you fell back to asleep?

2 A. Yes.

3 Q. Okay. When you were poked do you know if

4 Minor 2 was awake or asleep?

5 A. No.

6 Q. Okay. Later after -- when you were first
7 awoken when you were poked were the TV lights on or off
8 at that time?

9 A. Off.

10 Q. Then later you testified somebody else came
11 into the room, correct?

12 A. Yes.

13 Q. Did -- and you testified that that person
14 touched you inside your private parts, correct?

15 A. Yes.

16 Q. Were the lights on or off when that happened?

17 A. Off.

18 Q. They were still off?

19 A. Uh-huh.

20 Q. Okay. Do you know if Minor 2 was awake or
21 asleep when that happened?

22 A. No, I don't know.

23 Q. Okay. Now you testified that you looked over
24 at Minor 2 right.

25 A. No, I just felt her move.

1 Q. You just felt her move. Okay. I apologize.
2 When you first got to your Aunt Fatima's house that
3 night was Rabbit there?

4 A. No, not that I know of.

5 Q. Okay. When did he -- to the best of your
6 knowledge when did he come to the house?

7 A. I don't know. I was asleep.

8 Q. Okay, so it was sometime when were you asleep.
9 Did you have any conversations with him that night?

10 A. No.

11 Q. You didn't --

12 A. Well, yeah.

13 Q. What did you guys talk about?

14 A. He had asked me was I going to tell and I said
15 no.

16 Q. Okay. In the living room -- in the living
17 room what else was in the living room? Was there
18 anything else on the floor, on the furniture or anything
19 else? What was in living room?

20 A. Like ---

21 Q. What was in the living room that night? Was
22 there any clothes? Was there pictures? What kind of
23 stuff was in the living room?

24 A. I don't remember.

25 Q. Okay. Did -- but other than your conversation

1 with Mr. Lowery about whether or not he was going to
2 tell, you say you didn't have a conversation about
3 anything else?

4 A. Yes.

5 Q. How long was he sitting there watching you
6 before you fell asleep?

7 A. I don't know.

8 Q. Okay. Was it like a long time or short time?

9 A. I don't know.

10 Q. Okay. But you didn't have any conversation
11 with him during that time?

12 A. No.

13 Q. Other than whether or not he was going to
14 tell?

15 A. No.

16 Q. Okay. The next morning you say that -- you
17 say -- and correct me if I am wrong, but you say that
18 after you told your Aunt Fatima what had happened, you
19 and her and Minor2 all went in to her bedroom to
20 confront Mr. Lowery?

21 A. No, Auntie Tima did first and then she called
22 me and Minor2 in.

23 Q. All right. So Aunt Fatima did first and then
24 you guys came in and then after she confronted him you
25 said that her and Monique took Minor2 to the back

1 room?

2 A. Uh-huh.

3 Q. Where were you at that time?

4 A. I was still in the living room.

5 Q. Who was in the living with you?

6 A. I was in living room with Camarian and he was
7 standing right there before.

8 Q. And where was John at this time?

9 A. Who?

10 Q. Mr. Lowery?

11 A. Repeat that.

12 Q. Where was --

13 MS. HALL: Your Honor, I am going to
14 object. She's already answered that question.
15 He asked her and she explained the situation
16 and she's already explained it.

17 THE COURT: I will allow it.

18 Q. Where was Mr. Lowery when your mom took

19 Minor2 -- when your mom and Monique took Minor2 into
20 the back room?

21 A. My mom?

22 Q. I'm sorry, not your mom, your aunt?

23 A. He was standing right there for a short amount
24 of time before he went back there.

25 Q. He was there and he went in to what room?

1 A. The back room.

2 Q. The back room where your aunt was with

3 Minor 2

4 A. Yes.

5 Q. Okay.

6 MR. NELSON: Beg the Court's indulgence?

7 THE COURT: Yes, sir.

8 Q. Did you and John ever have a conversation that
9 night about a head scarf?

10 A. Huh?

11 Q. About a head scarf?

12 A. No.

13 MR. NELSON: No further questions Your
14 Honor.

15 MS. HALL: I just want to clear something up
16 real quick Minor 1

17 REDIRECT EXAMINATION

18 BY MS. HALL:

19 Q. When you said that -- let's talk about the
20 light. Okay? Because you said that when you first --
21 we talked about -- I want to talk about when you said
22 Rabbit came in and turned the light on. You said that
23 he came in and he picked up the covers and you felt
24 Minor 2 move and I think you said -- but correct me if
25 I wrong -- he got up and turned the light on?

1 A. Yes.

2 Q. Did he leave the light on?

3 A. Yes.

4 Q. And was the light on during the -- did he come
5 back to you with the light still on or was it dark in
6 the room?

7 A. With the lights on.

8 Q. So the whole time that all of these things
9 were going on with him under the covers with you was the
10 light on or off?

11 A. On.

12 Q. Okay.

13 MS. HALL: Thank you, I don't have
14 anything else.

15 THE COURT: Recross Mr. Nelson?

16 MR. NELSON: No further questions.

17 THE COURT: Thank you. Thank you, very
18 much. You may step down.

19 MS. HALL: We ask that she be excused.

20 MR. NELSON: Your Honor, we have her under
21 subpoena for potentially calling her in our case
22 in chief.

23 MS. HALL: Okay, just for now.

24 MR. NELSON: Absolutely.

25 THE COURT: Thank you.

1 All right, solicitor, you may call your next
2 witness.

3 MS. HALL: Minor 2

4 Minor 2 called as a witness, having
5 been duly sworn by the clerk, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. HALL:

9 Q. Can you tell the jury what your full name is?
10 Okay, you got to talk real loud into the microphone.
11 Tell

12 A. Mikella (phonetices) Minor 2

13 Q. Does your family call you Minor 2

14 A. Yes, ma'am.

15 Q. And how old are you?

16 A. Nine.

17 Q. When is your birthday?

18 A. November the 8th.

19 Q. Okay. So you just had your birthday, right?
20 You just turned nine?

21 A. Yes, ma'am.

22 Q. Now, I am going to ask you a few questions
23 about telling the truth. Okay? Do you know what it
24 means to tell the truth?

25 A. Yes, ma'am.

1 Q. And do you know what it means to tell a lie?

2 A. Yes, ma'am.

3 Q. And what happens to you if you tell a lie?

4 A. Something bad happens to you.

5 Q. Something bad can happen to you. Okay. And
6 if I tell you that my hair is purple. That the truth or
7 is that a lie?

8 A. Lie.

9 Q. And if I tell you that George Washington was
10 the first president is that the truth or is that a lie?

11 A. Lie.

12 Q. George Washington was the first president, is
13 that the truth?

14 A. Truth.

15 Q. Okay. And if I tell you Barrack Obama is the
16 president now is that truth or is that a lie?

17 A. Truth.

18 Q. And if I tell you that cats are falling out of
19 the sky outside is that truth or is that a lie?

20 A. Lie.

21 Q. Okay. And you promised like Miss Carpenter
22 just gave you that oath and you put your hand on the
23 Bible and you promised to tell the truth, right?

24 A. Yes, ma'am.

25 Q. And you promise to tell the truth here today?

1 A. Yes, ma'am.

2 Q. Okay. Now, do you remember about this time
3 last year right before your birthday going to spend the
4 night at your Aunt Fatima's house?

5 A. Yes, ma'am.

6 Q. And who was there with you?

7 A. Aunt Fatima, Monique and Rabbit.

8 Q. When you first got there was Minor with you?

9 A. Yeah.

10 Q. Okay. And when you first got to the house
11 Minor was there with you and did you sleep close to Minor
12 that night?

13 A. Yeah.

14 Q. Okay. And did you go to sleep -- when you
15 went to sleep was Minor there?

16 A. Yes, ma'am.

17 Q. And was she sleeping next to you?

18 A. Yes.

19 Q. And where were you guys sleeping, what room?

20 A. In the living room.

21 Q. All right. And did you get waked up in the
22 middle night by anything?

23 A. Yeah.

24 Q. Okay. And do you -- at the time you got waked
25 up did you know what it was that woke you up?

1 A. No.

2 Q. What do you remember about getting waked up?

3 A. I thought a cup had fell down because a cup
4 was on table and then it fell.

5 Q. You thought a cup fell down, is that what you
6 said?

7 A. Uh-huh.

8 Q. Because at first it was on the table and it
9 fell on the floor. Oh, okay. And so did you think
10 anything about that? Did you think that was anything
11 weird?

12 A. Not really.

13 Q. Okay. Did you go back to sleep?

14 A. Yes, ma'am.

15 Q. And do you remember -- do you remember was the
16 light on or was the light off when you woke up?

17 A. The light was on.

18 Q. And do you remember waking up again?

19 A. Uh-huh.

20 Q. Do you remember seeing anybody in the room
21 when you woke up?

22 A. No.

23 Q. Do you remember seeing anything else unusual
24 in the room when you woke up?

25 A. Nod.

1 Q. What?

2 A. I had saw smoke coming out of the TV.

3 Q. Smoke coming from the TV? Was it a fire or
4 was it something else?

5 A. No, it was like coming up from the TV.

6 Q. Okay. Did you know what kind of smoke it was?
7 Was it spoke from a fire? Was it some other kind of
8 smoke?

9 A. Some other kind of smoke.

10 Q. Did you know what it was?

11 A. I thought it was a cigarette because Minor told
12 me it was smoke in her face.

13 Q. Okay, did you see that?

14 A. Uh-huh.

15 Q. All right. And did your momma come and pick
16 you up the next day?

17 A. No, someone took us to our house.

18 Q. How did you get there?

19 A. My Aunt Fatima had took us.

20 Q. And do you remember what day it was?

21 A. No.

22 Q. Do you remember anything special that was
23 going to be happening that day?

24 A. Our hair was going to be getting done.

25 Q. Your hair was going to be getting done. Was

1 it anybody's birthday or anything special like that?

2 A. My sister Pam.

3 Q. Your sister Pam. How old was she going to be
4 do you remember?

5 A. She was going to be three.

6 Q. She was going to be three? All right. Were
7 you guys going to have a party for her?

8 A. Yeah.

9 MS. HALL: I don't have anything further.
10 Please answer anything Mr. Nelson has.

11 THE COURT: Thank you, solicitor. Mr.
12 Nelson.

13 MR. NELSON: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. NELSON:

16 Q. Okay, Minor 2 Let me just ask you a few
17 questions and make sure I heard you, okay, all right?

18 A. Okay.

19 Q. Okay. You said that when you work up when you
20 thought you said the cup fell. Was the light on or off
21 at that point?

22 A. On.

23 Q. It was on at that point. Okay. And after
24 that -- but was anybody in the room when that happened?

25 A. Not so far as I seen.

1 Q. Who was in the room with you when that
2 happened?

3 A. Aunt Fatima, Minor 1 Monique and Rabbit.

4 Q. Okay. And while you were sleeping did anybody
5 else wake you up during the night that night?

6 A. No.

7 Q. Were you sleeping right next to Minor 1 You
8 said you were sleeping on the floor with Minor 1 right?

9 A. Uh-huh.

10 Q. Were you sleeping right next to Minor or were
11 you sleeping a long ways away from Minor 1

12 A. A long ways.

13 Q. How long do you think it was? Could you touch
14 her from where you were sleeping?

15 A. Yeah.

16 Q. So it was close enough that you could reach
17 out and touch her?

18 A. Uh-huh.

19 Q. Okay. And then you said -- you said you
20 thought that Rabbit blew smoke in Minor 1 face?

21 A. Yeah.

22 Q. Did you see him do that?

23 A. No.

24 Q. Okay. Did you see him in the room when the
25 smoke was going?

1 A. No, I went back to sleep.

2 Q. You just went back to sleep. Okay.

3 MR. NELSON: No further questions, Your
4 Honor.

5 THE COURT: Redirect solicitor?

6 MS. HALL: No, sir.

7 THE COURT: Thank you. Thank you, very
8 much.

9 MS. HALL: I would ask she be excused as
10 well.

11 THE COURT: You may step down.

12 Any objections to Minor2 being excused?

13 MR. NELSON: No, Your Honor.

14 THE COURT: Okay, she can be excused.

15 MS. HALL: The State would call Fatima
16 Head.

17 FATIMA HEAD, called as a witness, having
18 been duly sworn by the clerk, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. HALL:

22 Q. What is your full name?

23 A. Fatima Antavia Head.

24 Q. Fatima Head?

25 A. Yes.

1 Q. Okay. And what is your relationship to Minor
2 Hardin?

3 A. I am her aunt.

4 Q. Okay. How are you related to her?

5 A. I'm her mother's sister.

6 Q. And what does she call you?

7 A. Auntie Tima.

8 Q. And did you have any point in time have a
9 relationship with John Lowery?

10 A. Yes.

11 Q. And did you -- what did you know him by? Did
12 he have a nickname?

13 A. Bunny Rabbit.

14 Q. Okay, and was it romantic relationship?

15 A. Yes.

16 Q. And did he live with you?

17 A. Yes.

18 Q. About how long did that relationship go on?

19 A. A year.

20 Q. Can you point -- well, let me just start with
21 this. You've gotten in a little bit of trouble before
22 with the Court system haven't you?

23 A. Yes.

24 Q. And in 2009 you got convicted of assault and
25 battery of a high and aggravated nature, is that

1 correct?

2 MR. NELSON: Objection. May we approach?

3 THE COURT: Sure.

4 (WHEREUPON, there was an off the record
5 discussion.)

6 Q. Where do you live?

7 A. [REDACTED] Sterling Street, Chester, South Carolina.

8 Q. Were you living -- how long have you lived
9 there?

10 A. Since I have been 18, 19 years old on and off.

11 Q. Since it is on and off, were you living there
12 back on November 3rd of last year?

13 A. Yes.

14 Q. And during that time was Rabbit living there
15 with you?

16 A. Yes.

17 Q. And did you have -- do you braid hair some
18 times as a hobby?

19 A. Yes.

20 Q. And have you braided the hair of your nieces,
21 Minor and Minor 2

22 A. Yes.

23 Q. And on November the 3rd -- 2nd or 3rd were you
24 suppose to braid their hair?

25 A. Yes.

1 Q. And did they come over to your house for that
2 to happen?

3 A. Yes.

4 Q. And how did they get there if you recall?

5 A. Their parent. The mother, Jaemil, dropped
6 them off.

7 Q. And was the intention for them to spend the
8 night or was it the intention for them to go home later
9 on that night?

10 A. No, the intention wasn't for them to stay the
11 night but we kind of lingered around and, you know,
12 played around and they just ended up staying the night.
13 And I still never really got to do their hair because of
14 laying around.

15 Q. I understand. Please pull that microphone a
16 little bit closer or sit up just a little bit.
17 Okay, you said you had been lying around?

18 A. Just hanging out as far as them just being
19 there. Wasn't pressed to do their hair just there to
20 have fun.

21 Q. And when they got over to your house who was
22 there if you recall?

23 A. When they first got there just me and Bunny
24 Rabbit was there earlier that day.

25 Q. Earlier that day. Do you remember if he was

1 there when they actually got to your house?

2 A. Not quite. Not quite.

3 Q. You don't remember?

4 A. Not quite. He was there. I know he came at
5 some point during the girls was there.

6 Q. Okay. And did he stay the entire -- like was
7 he there the whole night or did he leave at some point?

8 A. He left at some point and he didn't come back
9 to later on that night.

10 Q. And when he came back were you awake or were
11 you asleep?

12 A. I was lying down but I wasn't asleep.

13 Q. And where were the girls at this time?

14 A. They were in the living room.

15 Q. And tell me about the sleeping arrangements
16 for them?

17 A. Okay. And tell me about the sleeping
18 arrangements for them?

19 A. I made them a pallet on the floor with couch
20 pillows and let them sleep in there.

21 Q. And do you remember taking Minor to the store
22 that night?

23 A. Yes, it was around one o'clock.

24 Q. Around one o'clock in morning. And was Rabbit
25 at the house?

1 A. At that time he wasn't there. He was still
2 gone.

3 Q. And -- and you came back and what did you do
4 you when you came back?

5 A. We came back. We ate. Minor sat up for a
6 second to watch TV and I went in to my room and waited
7 for him to get there.

8 Q. You were still waiting for Rabbit to get
9 there?

10 A. Yes.

11 Q. Okay. And did you stay awake until he got
12 home?

13 A. Yes.

14 Q. Do you remember about what time that was?
15 It's okay if you don't remember, but if you do I am just
16 asking.

17 A. Somewhere around two or after two o'clock.

18 Q. And did you -- where were you when he came
19 home?

20 A. I was in our bedroom.

21 Q. In your all's bedroom when you say "our
22 bedroom"?

23 A. Our bedroom at the time, front room.

24 Q. You and the defendant's bedroom?

25 A. Yes.

1 Q. And did he come in to your bedroom when he got
2 there?

3 A. Yes, he did.

4 Q. And did he stay in the bedroom the whole time
5 or did he leave out of there again?

6 A. He left out.

7 Q. And why did he leave out?

8 A. He left out at the time because we were having
9 a debate about some money.

10 Q. So you guys had gotten in an argument so he
11 left out of the bedroom?

12 A. Yes.

13 Q. Do you know where he went?

14 A. Not at the time.

15 Q. Okay.

16 A. I just thought he went out the door. I
17 assumed he went out the door at the time.

18 Q. You thought he left the house?

19 A. Yes. At the time no, I don't know whether he
20 left or not. I assumed.

21 Q. That he left the house?

22 A. Yes.

23 Q. I want to go back and talk about in 2009.

24 What we talked about when Mr. Nelson had to ask the

25 judge a question. You had gotten in some trouble with

1 assault and battery of a high and aggravated nature; is
2 that right?

3 A. That's correct.

4 Q. Okay, but you have done everything you needed
5 to do to resolve that and that is like five, six years
6 ago; is that right?

7 A. Yes, that's correct.

8 Q. And that didn't have anything to do with the
9 defendant?

10 A. No.

11 Q. Now, did you -- at any point in time you said
12 Rabbit -- well, you thought he left the house. Do you
13 remember him coming back in?

14 A. I heard him come back in but I didn't get up
15 at the time to -- you know, really pay attention to it
16 because at the time I was upset with him.

17 Q. You were still upset because of the argument?

18 A. Yes.

19 Q. Did he come back in the bedroom?

20 A. He did but I told him to get back out.

21 Q. Where did you think he went at that point or
22 did you know?

23 A. I thought he went in to the living room and
24 you know, sat down to cool off or what not and stay away
25 from me because there was serious tension there at the

1 time.

2 Q. And about how long if you remember was it
3 before he came back in?

4 A. I think Rabbit came back in the room four or
5 five o'clock in the morning almost.

6 Q. Now, did you go to sleep?

7 A. No, I kind of was just laying down. I was too
8 upset to go to sleep. I was kind of just laying there
9 at the time.

10 Q. And so the next morning did you -- did anybody
11 else come in during the course of the night?

12 A. My cousin and her boyfriend came in after the
13 club.

14 Q. What are there names?

15 A. Monique Boyd and Michael Sanders.

16 Q. And do you know about what time that happen?

17 A. They came in around three, three-thirty.

18 Q. And did you talk to either one them?

19 A. No, not at the time. I just let them go in to
20 their rooms because I didn't want to let them know what
21 was going on between me and him at the time.

22 Q. Okay. Did they live there, Monique and
23 Michael?

24 A. My cousin lived there, but he came from time
25 to time and stayed the night with her.

1 Q. Okay, so your cousin Monique was living with
2 you?

3 A. Yes.

4 Q. Does she still live with you?

5 A. No.

6 Q. Now -- okay, so they came in and did you go to
7 sleep at that point?

8 A. I think I was kind of just falling asleep.
9 Somewhat falling asleep.

10 Q. And do you remember waking up next morning?

11 A. Yes.

12 Q. Okay. And tell me what you observed when you
13 woke up that morning?

14 A. When I woke up that morning Minor and Minor2
15 -- well that morning I woke up because Monique's son was
16 getting dropped off by his grandfather.

17 Q. And what's his name?

18 A. His name is Tony Crank.

19 Q. The child?

20 A. Oh, Camariara.

21 Q. Camariara?

22 A. Camariara Boyd Crank. So he was getting
23 dropped off and as he was coming Minor and Minor2 is
24 eating cereal, watching TV and the mother came by.

25 Q. Who is the mother? Whose mother? Who is

1 that?

2 A. Minor¹ mother, Jaemil, came by to bring them
3 breakfast and that's when Monique and Micky and everyone
4 else walked up. As time went on Micky and Monique went
5 back in the room that morning and me and Jaemil
6 continued the conversation outside.

7 Q. Did Jaemil ever come in the house?

8 A. No, she never set her foot in the house. So
9 Fatima is outside, got the kids food and she left and
10 that's when Minor came and let me know what was going on?

11 Q. Okay, now I want you to listen real carefully
12 when I ask you this question. Because of the rules of
13 evidence that we have in the State of South Carolina,
14 without saying who did it to her and without saying what
15 happened to her, can you tell me -- did she tell you
16 that something did happen to her?

17 A. Yes, she did.

18 MR. NELSON: Objection, Your Honor.

19 THE COURT: Overruled.

20 MS. HALL: Thank you.

21 Q. And when she told you this did she tell you
22 where she was?

23 A. Yes, she did.

24 Q. Okay, and what did she say?

25 A. She said that she was in living room lying on

1 the floor and Bunny Rabbit came --

2 Q. No, wait. You are not to say who or what.
3 Okay. She was in the living room lying on the floor; is
4 that right?

5 A. In the living room lying on the floor.

6 Q. Okay. And then did she say -- did she tell
7 you what time or when it happened? Was it the night?
8 Was it day?

9 A. She said it was late. Late that night.

10 Q. Okay. And in response to what Minor told you
11 what did you do?

12 A. I immediately went in to the house and me --
13 and -- argued.

14 Q. Okay. Now you can say who did you argue with?

15 A. Me and John Lowery, Rabbit, argued about the
16 situation and I then woke Monique Boyd up, her and her
17 boyfriend, Michael Sanders, and tell them to wake up so
18 they can be aware of the situation too, as well and
19 Rabbit left.

20 I called the police.

21 Q. And do you remember how he got out of there,
22 Rabbit left?

23 A. We drove at the time. I was arguing with him,
24 you know, telling him to get the "H" away from me and we
25 were arguing. He left and I went back to the house. I

1 got Minor and went to immediately to her mother, Jaemil
2 Hardin, and told her we need to take her to the hospital
3 and for a rape kit and we went straight to the hospital
4 from there.

5 Q. Okay, what hospital did you go to?

6 A. Chester.

7 Q. Okay, and was she examined at the Chester
8 Hospital?

9 A. No, they didn't have a rape kit at the time so
10 we were sent to Piedmont.

11 Q. Okay, and you called the police at some point
12 during the course of all of this?

13 A. Yes, while she was at Chester County the
14 police were at my home, [REDACTED] Sterling Street, asking Minor
15 and us questions at that time.

16 Q. Okay, and so did you actually go with Minor to
17 Piedmont Medical Center?

18 A. Yes.

19 Q. And who else went with you?

20 A. My cousin Monique, her mother.

21 Q. Whose mother, Minor's mother?

22 A. Minor's mother, Tammy, me, was there at the
23 time.

24 Q. When you say "Tammy" are you referring to
25 Lieutenant Levister?

1 Q. Yes, Levister.

2 Q. But she didn't ride up there with you?

3 A. She didn't ride up there with us, but she was
4 there when we got there and we talked to her about it.

5 Q. All right. Miss Head, let's talk real quick
6 about a couple of things. At the time -- okay, you said
7 you dropped Rabbit off at his mom's house; is that
8 right?

9 A. Yes.

10 Q. When was the next time you saw him?

11 A. At the time I saw Rabbit was on TV the screen
12 getting locked up while I was in jail.

13 Q. Okay. And did you have any -- did you have
14 any conversations with him?

15 A. Over the phone.

16 Q. Okay. Was he calling you or were you calling
17 him?

18 A. He was calling me.

19 Q. All right. And did -- when you had asked him
20 what had happened did he make any statements to you?

21 A. Yes, he did.

22 Q. Okay. At first when you were talking in the
23 room what was he saying?

24 A. He denied it at the time in the room in the
25 bedroom at my house.

1 MR. NELSON: Objection. What my client said
2 to this witness is definitely hearsay.

3 THE COURT: Well, some of it is under 801
4 (D) (2). I will sustain the objection.

5 Q. At any point in time did he -- did he ever
6 tell you that anything had happened between he and Minor 1

7 A. Yes, he did.

8 Q. Okay. About how long was it from the time you
9 dropped him off at his mom's house until the time he
10 made this statement to you about anything having
11 happened between the two of them?

12 A. It was a couple days after the incident he
13 called and told me.

14 Q. Okay. And what did he tell you?

15 A. He told me that when he came out of the shower
16 that Minor offered him fellatio and she tried to kiss him
17 and he pushed her off of him and he let her continued
18 on, I guess. That's what he said. And he said he came.
19 He ejaculated in her mouth and let her rub it around her
20 private area.

21 Q. All right.

22 MS. HALL: I don't have anything else.
23 Please answer any questions Mr. Nelson may
24 have?

25 THE COURT: Mr. Nelson.

1 MR. NELSON: Yes, Your Honor.

2 CROSS EXAMINATION

3 BY MR. NELSON:

4 Q. You said when John came home that night you
5 had an argument with him. What was the argument about?

6 A. He stole some money from me and he was getting
7 high.

8 Q. Okay. The argument was about him getting
9 high?

10 A. And money.

11 Q. And money. Okay. Was he high that night?

12 A. Yes.

13 Q. How could you tell he was high that night?

14 A. As they say in my neighbor, I could tell when
15 someone's high when their mouth is twitching and they
16 can't talk. When he stays away from me a certain period
17 of time throughout the day I knew he was getting high
18 because he tries to stay away from me.

19 Q. Okay. So during this time period when you
20 were dating him and he was living with you when he tried
21 to stay away from you you knew he was getting high?

22 A. Uh-huh.

23 THE COURT: Is that a yes?

24 THE WITNESS: Yes, sir.

25 Q. And when -- that night, was there any other

1 signs of him getting high? Any other body things that
2 would show that he was high at that time?

3 A. He couldn't -- his mouth was so locked he
4 could barely talk to me. He was talking to me like this
5 with his teeth together like this. (Indicating).

6 Q. Anything else?

7 A. His eyes. They were like they were going to
8 pop out of his head.

9 Q. Okay. So his eyes were about ready to pop out
10 of his head?

11 A. Yes.

12 Q. Okay. Does he look like -- does he normally
13 look like that when he is not high?

14 A. No. No, he does not.

15 Q. So, he left your room and he was gone for a
16 while it sounds like; is that correct?

17 A. Yes.

18 Q. Okay. And then he eventually came back,
19 right?

20 A. Yes.

21 Q. And you -- because you testified on direct
22 that you kicked him out of your room and that's when he
23 left, right?

24 A. Yes.

25 Q. And then he came back. Did you allow him to

1 stay at that point?

2 A. No. He didn't come back in to the room until
3 later on in to the night when I was just falling asleep.
4 The second time he came back I did kick him out. So he
5 came again where I had probably fell asleep when he came
6 in that morning -- over in the morning.

7 Q. Okay. So by the time he came back in you were
8 already asleep?

9 A. The third time he came, not the second or the
10 first.

11 Q. Okay. The third time that he came in did you
12 wake up at all with him in the room?

13 A. I kind of -- you know, when you kind of wake
14 up you kind of stir and I kind of went back to sleep.

15 Q. Did you see anybody else come in room?

16 A. No.

17 Q. Did you see anybody come to doorway?

18 A. No.

19 Q. Did you see either one of your -- from the
20 time you went to bed until the morning when you got up,
21 did you see either one of your two nieces at all come in
22 to your room? Stick their head into your room or
23 anything like that?

24 A. No.

25 Q. Okay. The next morning after, you said you

1 and John got in an argument again, right?

2 A. The next morning?

3 Q. Yes.

4 A. No, not the next morning. Not the next
5 morning when Minor came to me we didn't get in an
6 altercation that morning. I didn't even talk to him.

7 Q. Okay. You said you confronted him, right?

8 A. Oh yeah, when she came to me I confronted him
9 afterwards, but before she came to me we had no words
10 with each other.

11 Q. Okay. So when she confronted -- when you
12 confronted him did he say anything?

13 A. He denied everything. He said at the time he
14 said she was lying.

15 Q. Did he tell you to take her to the hospital?

16 A. Yes, he did at the time.

17 Q. So he told you to take her to the hospital
18 that day?

19 A. To make himself look good at the time.

20 Q. Okay. But -- you say that he said that to
21 make himself look good. Did he say he was doing that to
22 make himself look good or did you assume that's why he
23 was saying it?

24 A. I dated this man for a year. I didn't assume.
25 I know.

1 Q. Okay, but did he say that? Did he say that
2 I'm saying that to make myself to look good?

3 A. As time went on after he kept calling me and
4 he kept trying to tell me the truth then, after the
5 fact -- after he denied it.

6 Q. Then he literally told you I'm saying this to
7 make myself look good?

8 A. He literally told me he lied at the time -- at
9 the time that Minor said it in his face when it was put
10 on the record he said he lied. He then told me what he
11 had done to her word for word.

12 Q. And is that what you testified to the
13 solicitor what he said he did?

14 A. Yes.

15 Q. Okay. But he never specifically told you that
16 he told you to take Minor to the hospital to make him
17 look good?

18 A. He told --

19 Q. That's an assumption based on you knowing him,
20 correct?

21 THE COURT: Let her answer.

22 A. He told me that he lied when he denied it. He
23 lied about everything he told me. Now specifically what
24 he said he lied about I took as the whole situation
25 because he didn't specify. He said he lied about

1 everything.

2 Q. Okay, but my question is -- one more time.
3 Did he tell you that he was trying to make himself look
4 good when he told you to take Minor to the hospital?

5 A. He told me he lied about everything what was
6 he doing.

7 Q. Okay.

8 MR. NELSON: No further questions, Your
9 Honor.

10 THE COURT: Solicitor?

11 MS. HALL: Beg the Court's indulgence for
12 one second, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. HALL:

15 Q. Let me ask you this Miss Head, what Lowery
16 told you -- what the defendant told you later on on the
17 phone, is that same thing that Minor told you that
18 morning when she whispered it in your ear?

19 A. It was similar but not exactly the same.

20 MS. HALL: May we approach?

21 THE COURT: Yes.

22 (WHEREUPON, there was an off the record
23 discussion.)

24 MS. HALL: Thank you, nothing further. That
25 is it. I don't have any further questions of

1 this witness.

2 THE COURT: Any redirect?

3 MR. NELSON: One moment. Just a couple of
4 questions, Your Honor.

5 RE CROSS EXAMINATION

6 BY MR. NELSON:

7 Q. After -- after that morning, did you continue
8 to have a relationship with Mr. Lowery?

9 A. No.

10 THE COURT: After that morning what?

11 MR. NELSON: Did you continue to have a
12 relationship with Mr. Lowery?

13 THE COURT: And your answer was --

14 THE WITNESS: No. As far as communicating
15 on the phone -- calling on the phone those were
16 random numbers.

17 Q. And that morning you were the who drove Mr.
18 Lowery away from the house, is that correct?

19 A. Yes, I took him to Pickney Street, but not
20 exactly to his mother's house. I just told him to get
21 away from me at the time because I was wanting to find
22 out the truth.

23 Q. Okay. Does he have any family that lives on
24 or near Pickney Street?

25 A. He has a mother and sister and an aunt.

1 Q. That live in that general area?

2 A. Yeah.

3 Q. So you basically took him to his mom, sister
4 or his aunt's house, that area?

5 A. Yeah, I took him wherever he could go. I just
6 got him away from my house and was getting my home
7 situated.

8 Q. So your goal wasn't to take him anywhere
9 specifically, just to get him away from your home?

10 A. Yes.

11 Q. Okay.

12 MR. NELSON: No further questions, Your
13 Honor.

14 THE COURT: Thank you. Thank you, very
15 much. You may step down.

16 MS. HALL: Your Honor, we ask that she be
17 excused.

18 THE COURT: Any objection?

19 MR. NELSON: No objection.

20 THE COURT: Thank you. You may be step
21 down. You may be excused.

22 MS. HALL: The State calls Jaemil Hardin.

23 JAEMIL HARDIN, called as a witness, having been
24 duly sworn by the clerk, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MS. HALL:

3 Q. Miss Hardin, I will get you to scoot up to
4 that microphone. Okay. Pull it over near your mouth so
5 we can hear what you are saying.

6 All right. State your name please for the record?

7 A. Jeamil Wandin Hardin.

8 Q. And can you spell you first name for me.

9 A. J-a-e-m-i-l.

10 Q. And what is your relationship to Minor 1

11 A. I'm her mom.

12 Q. And what Minor 1 birthday?

13 A. June 13th, 2001.

14 Q. On November the 2nd of last year which would
15 have been 2013 -- let me ask you this. What is your
16 relationship with Fatima Head?

17 A. She's my sister.

18 Q. Okay. And on November the 2nd of last year
19 did you take Minor over to Fatima's house?

20 A. Yes, ma'am.

21 Q. And do you have other children?

22 A. Yes, I have five other children.

23 Q. All right. And did you take any of other
24 children over to Fatima's house that day?

25 A. Yes, Minor 2

1 Q. How old was Minor at that time?

2 A. She was 11 -- turned 12.

3 Q. She just turned 12?

4 A. She just turned 12.

5 Q. And what about Minor2 do you remember how
6 old she was at that time?

7 A. I want to say she was eight -- no, seven.

8 Q. She was seven about to turn eight?

9 A. Yeah.

10 Q. Okay. And what was the purpose of them going
11 over to Fatima's house?

12 A. She was suppose to be doing their hair.

13 Q. Okay. And did she do that often?

14 A. Yes.

15 Q. And did you leave the girls over there to
16 spend the night?

17 A. Yes.

18 Q. Okay. And when you went the next morning to
19 pick them up -- or did you go back there over there the
20 next morning at any point in time?

21 A. I went over there about seven o'clock that
22 morning.

23 Q. Okay. And what were you going over there for?

24 A. I took them breakfast that morning.

25 Q. And did you ever go in the house?

1 A. No, I met -- they all met me outside.

2 Q. Okay. And did you have some time to talk to
3 Fatima by herself?

4 A. Later on that day.

5 Q. Okay, but I just want to talk about that
6 morning. Okay. So did you leave the house at some
7 point after you talked to Fatima?

8 A. Yes.

9 Q. Okay, and where did you go?

10 A. To the emergency room.

11 Q. To the what?

12 A. To the emergency room.

13 Q. No, I mean, once you left Fatima's house had
14 Minor told you anything odd at that point?

15 A. No.

16 Q. Okay, where did you go?

17 A. I went back home.

18 Q. Went back to your house.

19 Okay, now I want you to listen really carefully to
20 what I am about to say to you. This are our rules of
21 evidence. It's really important that we adhere to them.
22 Without saying who she said did anything to her and
23 without saying what she said was done to her, did she
24 tell you that someone had done something to her that
25 night at that house?

1 A. Yes.

2 Q. Okay. And did she say where she was?

3 A. Yes.

4 Q. Okay. Where was she?

5 A. In the living room.

6 Q. And did she tell you about what time it had
7 happened?

8 A. Yes.

9 Q. And I will back up for just a second. You
10 said you went back home. You saw them on the porch and
11 you went back to your house. Did they come over to your
12 house at some point in time?

13 A. Yes, later on that evening they did.

14 Q. Did they come over there that morning? Did
15 Fatima come over there that morning?

16 A. No.

17 Q. Where were you when Minor reported to you?

18 A. I was at home. They called me.

19 Q. They called you on telephone?

20 A. Yeah, after I dropped off breakfast.

21 Q. Okay, they called you on the telephone. Did
22 they tell you on the telephone or did they tell you face
23 to face or do you remember?

24 A. They told me face to face.

25 Q. Where did you meet them?

1 A. I met them back at her house.

2 Q. So you actually came back over?

3 A. Yes.

4 Q. All right, and what did you do based on what
5 Minor had said happened?

6 A. I called the police.

7 Q. You called the police?

8 A. Yes.

9 Q. Okay, and did you take her anywhere?

10 A. I took her to Chester County Emergency Room.

11 Q. You took her to the emergency room at Chester
12 County. And what did they tell you when you got there?
13 Did she ever see anybody?

14 A. They wouldn't treat her. They told me I had
15 to take her either to Lancaster County or Piedmont.

16 Q. And did you take her to one of those two
17 places?

18 A. Yes, I took her to Piedmont Medical Center.

19 Q. And in follow-up after she was seen by the
20 nurse at Piedmont Medical Center did you take her
21 anywhere else for any types of interviews or anything?

22 A. Oh, yes. I took her back to Lancaster to the
23 rape crisis center.

24 Q. Okay. And do you know who she met with there?

25 A. Margo.

1 Q. Margo Dixon?

2 A. Yes.

3 Q. And do you know the defendant in this case,
4 John Lowery?

5 A. I know of him through my sister.

6 Q. And what was the nature of your relationship
7 with him or what his relationship with between he and
8 your sister as far as you know?

9 A. Say that again.

10 Q. Sorry. Between -- you said you know him
11 because of your sister. What was her relationship with
12 him?

13 A. She was dating him. He staying with her.

14 Q. So you had met him many times before?

15 A. Yeah.

16 Q. Okay. And does he go by a nickname?

17 A. Yeah, Rabbit.

18 Q. All right, and do you see him seated in the
19 courtroom here today?

20 A. Yes.

21 Q. Can you point him out for the jury?

22 A. (Witness points).

23 Q. Does he have on a yellow, golden shirt?

24 A. Yes.

25 MS. HALL: Please let the record reflect

1 she has pointed to the defendant in this case.

2 THE COURT: So reflected.

3 MS. HALL: Please answer any questions Mr.

4 Nelson may have.

5 THE COURT: Thank you, solicitor. Mr.

6 Nelson.

7 MR. NELSON: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. NELSON:

10 Q. Miss Hardin, once you dropped the girls off at
11 Fatima's house that night, did you have any personnel
12 knowledge from viewing what went on at the house that
13 night to say like who went in to what rooms when, where
14 people were sleeping, where people were staying; any of
15 that kind of knowledge?

16 A. No.

17 Q. So anything that you know about that night was
18 information that was told to you by someone else?

19 A. Yes.

20 MR. NELSON: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 MR. NELSON: No further questions.

23 THE COURT: Redirect.

24 MS. HALL: None.

25 THE COURT: Thank you. Thank you, very

1 much, you may step down.

2 MS. HALL: Your Honor, this will be my last
3 witness for the day. I will call Michael
4 Sanders.

5 THE COURT: One more?

6 MS. HALL: Yes, one more for the day and we
7 will stop.

8 THE COURT: You may call your next witness.
9 Thank you.

10 MS. HALL: And Your Honor, if I may confer
11 with Mr. Nelson real quick.

12 (Whereupon, there was an off the record
13 discussion.)

14 MICHAEL SANDERS, called as a witness, having
15 been duly sworn by the clerk, was examined and
16 testified as follows:

17 MS. HALL: Your Honor, may we approach.

18 THE COURT: Yes.

19 (WHEREUPON, there was an off the
20 record discussion held at the bench.)

21 DIRECT EXAMINATION

22 BY MS. HALL:

23 Q. Ok, Mr. Sanders. Please tell the Court your
24 full name?

25 A. Michael Jeremy Sanders.

1 Q. Okay. Michael Jeremy Sanders; is that right?

2 A. Yes, ma'am.

3 Q. And do you -- did have a relationship with a
4 lady by the name of Monique Boyd?

5 A. Yes, I did.

6 Q. Okay. Back in November of 2013 did you have a
7 relationship with her?

8 A. Yes.

9 Q. All right. And did you you know the defendant
10 in the case, Rabbit --

11 A. Yes, I did.

12 Q. John Henry Lowery?

13 A. Yes.

14 Q. How long had you known him?

15 A. I've known him may be a couple of years.

16 Q. All right. And how -- in what capacity did
17 you know him? How did you know him?

18 A. He was going with her cousin and me and him
19 kind of linked back up then, but I've know him through
20 family for a couple of years. It hasn't been like all
21 my life or nothing.

22 Q. And on the night of November 3rd, did you know
23 Fatima Head? Let me start with that?

24 A. Yes.

25 Q. Did you ever stay at Fatima's house?

1 A. Yes.

2 Q. And was Monique living there?

3 A. At the time.

4 Q. Is back in November of 2013?

5 A. Yes, ma'am.

6 Q. And on the November 3rd, 2nd or 3rd, the
7 night, morning, did you have occasion to go -- did you
8 go out with Monique that night?

9 A. Yeah, we went out.

10 Q. Where did you all go, do you remember?

11 A. Probably People's Choice. I'm not sure.

12 Q. And did you go home with her that night to the
13 house that she shared with Fatima Head?

14 A. Yes, I did.

15 Q. All right. And do you remember going in to
16 the house that night?

17 A. Yes.

18 Q. Okay. And tell me what you remember about
19 that?

20 A. I remember walking in the house. There was
21 two people laying on the floor. I thought it was him
22 and Fatima that was laying on the floor.

23 Q. When you say "him", tell me who are you
24 talking about?

25 A. Mr. Lowery.

1 Q. Okay.

2 A. I thought it was Mr. Lowery and Fatima laying
3 on the floor, but as we went to the back of the house
4 I'd seen Mr. Lowery come out of the bathroom with a
5 towel wrapped around him. And I asked Monique, I'm like
6 so that's how you all do, you just run around -- walk
7 around the house with towels on and that was the end of
8 it. I went back in the room and went to the bed.

9 Q. So it's safe to say I guess that you thought
10 it was usual for in the middle of the night to be
11 walking around with a towel on?

12 A. Pretty much.

13 Q. All right. And you saw -- who did you say had
14 the towel around them?

15 A. Mr. Lowery.

16 Q. And when you are referring to Mr. Lowery you
17 are talking about the guy sitting at the defense table?

18 A. That's right.

19 Q. And what color shirt is he wearing, like right
20 now?

21 A. A goldish color.

22 MS. HALL: All right. Just again, let
23 the record reflect he has pointed out the
24 defendant.

25 Q. And that's who you know to be Rabbit or John

1 Lowery?

2 A. Yes, ma'am.

3 MS. HALL: If the record could please
4 reflect.

5 THE COURT: So reflected.

6 MS. HALL: Thank you. Nothing further.

7 THE COURT: Thank you, solicitor.

8 Mr. Nelson do you have any questions?

9 MR. NELSON: Yes. Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. Nelson

12 Q. Mr. Sanders back in November of 2013 were you
13 living at the house?

14 A. No, I wasn't living there.

15 Q. So you had a different address that you were
16 living at?

17 A. Yes, I did.

18 Q. You were dating Monique Boyd?

19 A. Yeah.

20 Q. Okay. And so with you not being in -- with
21 you not living at the house, could you testify as to
22 when people regularly shower and things like that in
23 that household?

24 A. No, I couldn't. I mean -- no, I can't.

25 Q. So, to the best of your knowledge, Mr. Lowery

1 Solicitor, you may call your next witness.

2 MS. HALL: The State calls Jennifer Propst.

3 THE COURT: All right. The witnesses aren't
4 in here ladies and gentlemen because of order of
5 Court I have sequestered them. It is not that
6 they are being disrespectful to the State or the
7 defense rather it is the Order of the Court.

8 JENNIFER PROPST, called as a witness, having
9 been duly sworn by the clerk, was examined and
10 testified as follows:

11 THE COURT: All right, solicitor.

12 MS. HALL: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. HALL:

15 Q. Miss Propst, if you would state your full name
16 for the record?

17 A. Jennifer Propst.

18 Q. Miss Propst where are you employed?

19 A. At Piedmont Medica Center.

20 Q. And what is your occupation?

21 A. I am a registered nurse.

22 Q. And could you tell us a little bit about your
23 training to become a register nurse?

24 A. Yes. I attended York Technical College and
25 graduated in 2010. I my associates degree in nursing.

1 THE COURT: Where did you go to college?

2 THE WITNESS: York Technical College.

3 Q. And have you received any additional training
4 after you received your RN?

5 A. Yes, ma'am. I received sexual assault nurse
6 examiner training in September 2013.

7 Q. Okay. Tell us about what is entailed to
8 become a sexual assault nurse examiner?

9 A. Yes, ma'am. I completed 40 didactic hours in
10 a classroom setting.

11 Q. What does didactic mean?

12 A. You are in classroom for 40 hours Monday
13 through Friday. During that time we become familiar
14 with the sexual assault kit. We become familiar with
15 how to properly collect and avoid contamination of our
16 evidence. We learn how to collect history from the
17 patient by staying objective. We learn chain of
18 custody. We learn detail genital exams as well.

19 Q. And is there any additional training that goes
20 along with that after you finish the didactic hours?

21 A. Yes, ma'am. After you finish the didactic
22 hours you have a year to complete your clinical portion.
23 For that clinical portion you complete 20 normal pelvic
24 exams and genital exams. I have five monitored sexual
25 assault cases have I to do. There is a police ride

1 along, court observation and a visit with safe passage
2 which our victim's advocate program we have in our
3 county.

4 Q. And when did you complete the entire part of
5 the training?

6 A. I completed the entire clinical portion in
7 January of 2014.

8 Q. All right and have you since then received any
9 additional training with regard to the sexual assault
10 nurse examiner?

11 A. Yes, ma'am. I also took a SANE course
12 particularly to pediatrics in March of 2014.

13 Q. And when you say "SANE" that is SEXUAL assault
14 nurse examiner?

15 A. That's correct.

16 MS. HALL: Your Honor, at this time I
17 would just offer this witness as an expert;
18 sexual assault nurse examiner.

19 MR. NELSON: May we approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, there was an off the record
22 discussion.)

23 THE COURT: All right. Mr. Nelson.

24 MR. NELSON: Your Honor, based on 702
25 objection we would object to this witness being

1 qualified as an expert.

2 THE COURT: Thank you. Thank you, very
3 much. Ladies and gentlemen of the jury panel,
4 normally a witness can not testify and give
5 opinion testimony. Normally when a witness
6 testifies they must testify as to either what
7 they saw, heard, sensed by smell, touched
8 something, of that nature. One of our senses.

9 However, there is an exception. When a
10 witness is qualified by the Court based on
11 training, experience, or education in a
12 particular field, art, profession, they may
13 testify in that area if the Court qualifies them
14 that way. This witness, Miss Jennifer Propst,
15 will be qualified as an expert in the field of
16 sexual assault nurse examinations and will be
17 allowed to give opinions in that regard.

18 Ladies and gentleman, she may also be
19 allowed to give the basis for her opinions.
20 Expert witness's testimony is no greater than
21 that of a non-expert witness's testimony. You
22 are the judges of the facts. You give the
23 testimony the weight, the value that you the
24 judges of the fact think it deserves; both the
25 opinion testimony and the basis of the opinions.

1 Thank you. Thank you, very much, Mr.

2 Nelson. You may continue solicitor.

3 MS. HALL: Thank you.

4 DIRECT EXAMINATION CONT'D:

5 Q. Okay. Ms. Propst, let me ask you this --

6 MR. NELSON: Your Honor, I just want to make
7 sure the ruling was made on the objection.

8 THE COURT: Your objection is overruled.

9 MR. NELSON: Thank you, Your Honor.

10 THE COURT: I apologize if I didn't put that
11 on the record.

12 MR. NELSON: I don't think it was on the
13 record.

14 THE COURT: Thank you for bringing that to
15 my attention.

16 Q. Miss Propst, you said that you had a year to
17 do these 20 pelvic exams and the five sexual assault
18 nurse exams; is that correct?

19 A. That's correct.

20 Q. And how many -- you said you completed and
21 again this happened in November of 2013 and you
22 completed all of the clinical -- although you had a year
23 to do it you completed it in about three months starting
24 in January of 2014; is that right?

25 A. That's correct.

1 Q. Okay. How many -- at the time you did this
2 was this portion a -- was this one of the sexual assault
3 nurse examinations that you did as part of your
4 training?

5 A. Yes.

6 Q. Okay. And approximately what number was it if
7 you know exactly?

8 A. She was one of my first five. I believe she
9 was number five.

10 Q. Okay. And would you explain to the jury what
11 is involved with the sexual assault nurse exam and if
12 anybody was watching you do it as part of the clinical
13 training if you can also include that as part of the
14 description?

15 A. Sure. Since we are nurses we start with a
16 medical exam. So I did a complete physical exam on the
17 patient. We also have the kit available. I was in the
18 room alone with this patient, however there is an
19 emergency room physician that is supervising me, so I
20 was able to contact him if I had any questions or
21 concerns. After I completed my exam and I did my
22 genital exam on the patient I consulted with him and
23 made sure he agreed with everything I had done. Make
24 sure there was nothing he felt I needed to add to my
25 exam and we also reviewed treatment options, if there

1 were any, and any medications that would be appropriate
2 for her.

3 Q. I am going to show you what has been marked
4 State's exhibit eight and if you would could you just
5 tell us what this is?

6 A. Yes. This is the documentation within the
7 sexual assault kit. So this is where I would document
8 the history of the patient. I would document what swabs
9 were used. Any questions that I asked her. Lets see --
10 and this is also the documentation where I would
11 document any injury found.

12 Q. And if we could go through this and if you can
13 describe to the jury how you go about getting this
14 information and what you do kind of in sequence. And I
15 will get to the part what is a sexual assault kit and
16 the steps that you have to go through to take that
17 evidence.

18 A. Sure. I met with the patient in the room. I
19 bring the sexual assault kit in with me. We open the
20 kit. I do begin with a history of the assault. This
21 helps me understand how to assess the patient. It helps
22 me to understand where to assess for injuries or
23 forensic evidence.

24 After I get a detailed history we --

25 Q. And I am going to stop you there, and I

1 apologize. Who was the patient that you examined on
2 this date with regard to the State's Exhibit Number
3 eight?

4 A. Sure. Minor 1

5 Q. And on what date did you do the examination?

6 A. November 3rd, 2013.

7 Q. Okay. And you talk about taking a medical
8 history from the patient?

9 A. Yes.

10 Q. Okay. And did she make any statements to you
11 about -- for purposes of medical treatment -- about what
12 had happened to her?

13 A. She did.

14 Q. Okay. And without saying who she said did
15 anything to her because of evidence rules, if you could
16 just tell for medical purposes what statements she made
17 to you that you were able to use in your examination?

18 A. Yes. She told me she was assaulted. She was
19 assaulted both digitally, meaning fingers placed in her
20 vagina. She also had a penis placed against her vagina
21 in a forceable nature.

22 Q. Okay. And how did you proceed with your
23 examination based on the statement that she gave you?
24 How did you proceed?

25 A. Based on the statements she gave me I went

1 ahead and had the patient remove her clothing, I
2 collected her underwear.

3 Q. Let me stop you right there.

4 A. Sure.

5 Q. I am going to show you what has been marked --
6 let me show you what has been marked State's Exhibit Two
7 for identification purposes and if you could just tell
8 me what that is?

9 A. Okay. Yes, this is one of the bags that are
10 within the kit and this is specifically a bag that you
11 place the patient's underwear in, if applicable, and I
12 did do this.

13 Q. Okay. And I will back up just a little bit.
14 Where did the sexual assault kits come from?

15 A. Some times the officers bring the kit with
16 them, however at the hospital we have them stored.

17 Q. Okay. And you stated that you did place the
18 patient's underwear in that kit; is that correct?

19 A. That is correct, yes.

20 Q. I am going to ask you to open that.

21 A. Sure.

22 Q. Is it in the same form that when you wrapped
23 it up? Can you explain the process that you go through
24 when you seal it up and wrap it up?

25 A. Yes. This is the same bag. After I place the

1 underwear in the bag I immediately add some red evidence
2 tape so the only difference here is obviously the
3 evidence tape is torn.

4 Q. What do you do with it after you wrap it and
5 put it in that bag with the red evidence tape?

6 A. After I wrap it and I put it in I put my
7 initials on the evidence tape and I document the time
8 that it was placed in the bag.

9 Q. And do you date as well or just the time?

10 A. I do the date as well.

11 Q. All right. Was that also November 3rd?

12 A. November 3rd, yes, ma'am, at 1500 which is
13 three o'clock.

14 Q. And if you can if you could open that all the
15 way.

16 Q. Open this as well?

17 Q. Yes. And is that -- I will let you open it
18 first. Does that appear to be the underwear you
19 had taken from the child that night?

20 A. Yes, ma'am.

21 Q. Okay. All right. And once you had put the
22 red evidence tape on it, go ahead and tell me what you
23 do with it after that?

24 A. Once the evidence tape is on it, there is a
25 larger kit and I place it within the kit. I do not seal

1 the official kit at this time because there is still
2 more evidence to collect, however it is always within my
3 position and eyes view.

4 Q. Okay. And at some point in time did you turn
5 that piece of evidence over to someone else?

6 A. Yes, ma'am, I did.

7 Q. And who did you turn it over?

8 A. I believe it was Tammy Levister.

9 Q. And do you document that somewhere?

10 A. I do. On the very back of the kit it should
11 have both our names and the time that we exchanged.

12 Q. And if you don't mind sticking it back in that
13 bag.

14 A. Yes, ma'am.

15 Q. And I will take take back. (Handed)

16 All right. Let's get back to State's 8 and if you
17 could continue to describe for the jury the way that you
18 go through -- through the protocol and the rest of the
19 exam the way you do that.

20 A. Sure. If I feel there is any applicable
21 clothing to take I would go ahead and collect the rest
22 of the clothing. I believe with this patient I did
23 collect a few more things of hers. After all clothing
24 is collected she is placed in a hospital gown and I
25 begin my physical exam, as well as any swabs that are

1 needed. She was placed in a supine position which is on
2 her back. I first did a quick visual view of the
3 genital area to assess for any injury. I did collect
4 some swabs on this patient. I collected a vagina smear
5 from her.

6 Q. And why did you collect a vagina smear?

7 A. Because of her history since she said there
8 was a penis pushing against the vaginal area. There was
9 a chance there could be some forensic evidence there so
10 I went ahead and took that.

11 Q. I am going to show you now what has been
12 marked as State's Exhibit Seven. Can you tell me if you
13 know what this is?

14 (Handed to the witness)

15 A. Thanks. So this is the full container, the
16 box where all the evidence goes in.

17 Q. So would the underwear have been placed in
18 that at some point in time?

19 A. Yes, the underwear would go in this kit.

20 Q. And is there anything else that goes in the
21 kit?

22 A. Yes. Any swabs that are collected goes within
23 the kit as well.

24 Q. And you can open it up. Were there any swabs
25 collected in this -- you said there was a vagina swab?

1 A. There was a vagina swab collected, yes. We
2 always do what we do a buccal swab which is a known DNA
3 within the patient cheek so, that would have been placed
4 in here as well.

5 Q. Is there any document?

6 A. A copy of my report also goes within the kit,
7 yes.

8 Q. Now, from that are you able to tell -- when
9 you did the vagina and the oral -- lets just talk about
10 the vagina swab. When you took the vagina swab what did
11 you do with it?

12 A. Okay. After I swabbed her vagina there's a
13 slide that I swab the q-tip on and then you also have a
14 q-tip in which you place inside an envelope. So I took
15 the q-tip. I placed it in the envelope.. I sealed it
16 and I initialed the envelope.

17 Q. And what did you do with it after that? Who
18 did you give it to?

19 A. After that I placed it in the kit, sealed the
20 kit and when everything was done I handed this off to
21 Tammy Levister.

22 Q. Okay. Before you sealed the kit you said you
23 took a buccal swab from the victim. Could you describe
24 that process for the jury?

25 A. Yes. You simply take a Q-tip. You have the

1 patient open their mouth and you rub the Q-tip on either
2 side of their cheek and this just to collect known DNA
3 from the patient so you can differentiate.

4 Q. And did you do that in this case?

5 A. I did, yes.

6 Q. Okay. And did you put that in this kit?

7 A. Yes. I first placed it in an individual
8 envelope and then it also went into the kit.

9 Q. Okay, and did you take any other swabs?

10 A. I believe I also did an oral swab on this
11 patient. Its just a second swab that goes in the mouth
12 to make sure there was no other DNA other then her own
13 in her mouth.

14 Q. Okay, and if you refer back to your
15 documentation inside the box, notes you made or the
16 documentation that was on State's Exhibit 8. Did you
17 take any other swabs?

18 A. From what I have here it appears I took the
19 buccal swab, the vaginal swab.

20 Q. I will show you what has been marked State's 3
21 too. I will ask you to open that.

22 A. Surely. Okay. Yes, this is very helpful.

23 Q. As you open those things, if you will describe
24 for the jury and to me what you are opening?

25 A. Sure. We just do a lot of packaging here.

1 This is within the kit. A second envelope and within
2 this envelope are several small envelopes. And this is
3 very helpful. Thank you. I can see here that I also
4 did a pubic hair combing. So I collected that and placed
5 it within the envelope. Here is an oral swab. So that
6 would be beside the buccal the second swab that goes in
7 the mouth. Her buccal swab. The vaginal swab.
8 There are -- you place every possibility within the kit
9 even if you did not collect it and I did place on here I
10 didn't collect anything. For instance all these are no.
11 This is suspected body fluids, fingernail scrapings,
12 miscellaneous material, suspected saliva, rectal swabs.
13 All those I did not collect.

14 Q. Okay, and then you put all -- again, you put
15 all that stuff in the box?

16 A. Put it all in the envelope and then within the
17 kit, yes.

18 MS. HALL: I beg the Court's indulgence
19 one moment.

20 THE COURT: Yes, ma'am.

21 Q. I will hand this back to you again, this is
22 State's -- State's 3, and I want you to is there a 1.6
23 in there that you marked on a swab?

24 A. Number 1.6.

25 Q. Okay, and tell me what that is?

1 A. Okay. Yes, this is suspected body fluid. So,
2 on this one it appears I did swab her thigh and this may
3 have been if I believed that I saw some fluids that I
4 didn't recognize within the thigh area that I went ahead
5 and took a swab. And again, it is called suspected body
6 fluid. You're not sure exactly what you are seeing.

7 Q. Okay. Thank you.

8 A. And I apologize.

9 Q. And again, you took all of those things, put
10 them back in the box and gave them to Lieutenant
11 Levister; is that correct?

12 A. That is correct.

13 Q. All right. Now back to State's 8, which is
14 the form you were completing while you did this. Did
15 the patient report any type of oral sex or anything like
16 that?

17 A. From the questions I asked her she did not.

18 Q. And you did ask her?

19 A. Yes, ma'am.

20 Q. Okay. And you stated the whole time that she
21 is in the supine position and you are doing all this
22 examination. Approximately how long does this
23 examination last?

24 A. Collecting the evidence and the actual
25 physical exam may last 30 to 45 minutes. In some cases

1 it could be longer. I believe that is become adequate
2 for this case. Okay.

3 Q. Okay. And did you do an actual examination of
4 genitalia?

5 A. I did.

6 Q. And could you describe that examination and
7 the way you go about doing it for the Court?

8 A. Yes, ma'am. While the patient is in the
9 supine position I have a light source just to see
10 better. For this patient I only did external exam. So
11 I stretched out the labia so I could get a good
12 visualization. I looked for signs of bleeding and
13 obvious trauma.

14 Q. Okay. Let me ask you this. Why did you only
15 do an external exam?

16 A. Patient's age is a major factor. She was 12
17 at the time and the history that she gave me it did not
18 sound like the penis had penetrated enough to touch the
19 cervix so I felt that with a speculum exam inserting
20 something all the way into vagina to the cervix would
21 actually cause more trauma and harm then it would be
22 beneficial.

23 Q. And so pursuant to this external exam, you
24 opened up her labia so you could get a good look at her
25 vaginal area; is that correct

1 A. Yes, that's correct.

2 Q. And you did that in this case and what did you
3 observe?

4 A. On retracting the labia I noticed an area, it
5 is referred to as the fossa navicularis.

6 Q. I will stop you real quick to show you State's
7 1. I will show you what has been marked State's 1 for
8 identification.

9 What is that?

10 A. This is a diagram of the female genitalia.
11 This is a diagram of vagina basically.

12 Q. And is that included on your report in State's
13 8?

14 A. It is.

15 Q. And is that just an enlarged picture?

16 A. Exactly. I just made a larger copy.

17 Q. And if you could now, using that diagram as a
18 visual source, if you could explain to us what you
19 noticed as part of your physical exam?

20 A. Sure. So if you retract the labia majora,
21 which is the outer part of the vagina and then next the
22 labia minora, which is the inner, you will be able to
23 see the opening of the vaginal canal. And at the base
24 there you have an area that is call fossa navicularis.
25 In this area I noticed the tissue was red in comparison

1 to the other tissue. The patient seemed to be much more
2 tender at this point and I also noticed -- by documented
3 -- a microtear. So a very small tear in this area.

4 Q. All right. In your opinion is the history
5 that she gave you and the injuries you observed is that
6 consistent with someone sticking a finger inside her
7 vagina?

8 A. Yes, that could be consistent with, yes.

9 Q. And is it consistent with somebody attempting
10 to put a penis inside of the vagina that it won't fit in
11 to?

12 A. Yes, with force that's consistent.

13 Q. Okay, and after you did the physical exam and
14 -- if you are not finished go ahead and describe
15 anything else, or is that pretty much what you found?

16 A. That sums it up, yes, ma'am.

17 Q. Okay. And did you -- go ahead and tell us
18 what else you did as part of the examination of this
19 child?

20 A. Sure. Initially used a regular strong light
21 source just to get a good visualization. We also have
22 something we call a woodslamp. This is sort of like a
23 black light and this helps you look for any kind of
24 secretions or fluids. This would be when I had noticed
25 this on the thigh and collected that evidence.

1 Q. So that was during all the swabbing process?

2 A. Yeah. It's actually prior to the swabbing.

3 You do that first and then wherever you see anything you
4 swab.

5 Q. And were any medications prescribed for this
6 child?

7 A. Yes. I offered her STD prevention. She
8 received rocephin, which is an injection. She also
9 received zithromax which oral pill to prevent STD's. I
10 believe we also offered her plan B, which is pregnancy
11 prevention.

12 Q. And was she at that point discharged?

13 A. After her medications were given, yes, she was
14 discharged.

15 MS. HALL: At this time the State would
16 move State's Exhibit 8 into evidence along
17 with 1.

18 MR. NELSON: No objection.

19 THE COURT: May I see it please.

20 MS. HALL: I'm sorry. This is what she
21 testified to. That documentation is included on
22 page -- I believe it is five, if I am correct --
23 of State's 8.

24 MR. NELSON: Your Honor, I do have an
25 objection.

1 THE COURT: All right. Come up.

2 (WHEREUPON, there was an off the record
3 discussion.)

4 THE COURT: Subject to your objection and
5 redaction, State's 8 will be in evidence. Not
6 published yet to the jury until that part is
7 redacted. Plaintiff's one is the same diagram.
8 It's only a smaller scale of State's 8. So
9 State's 8 will be in evidence subject to
10 redaction. State's 1 is not in evidence. That
11 will be cumulative. All right.

12 MS. HALL: Beg the Court's indulgence.

13 THE COURT: Yes, ma'am.

14 MS. HALL: I do not have any further
15 questions for this witness. Please answer any
16 questions Mr. Nelson may have.

17 THE COURT: Thank you solicitor. Mr.
18 Nelson.

19 CROSS EXAMINATION

20 BY MR. NELSON:

21 Q. Going back to your training as a SANE nurse.
22 What was left to do before you were certified in
23 January; between November 3rd of 2013 and January of
24 2014 when you actually became certified?

25 A. Yes. So your classroom time of the 40

1 didactic, after you complete that then you get the
2 certification for completing the classroom hours and you
3 may begin doing cases at this time. My hospital further
4 requested that we do a clinical portion. So between the
5 time that I did the exam and my certification I still
6 had a few normal pelvic exams to complete. I had to do
7 a total of 20. She was my last of the five so that was
8 finished. I still had to complete a court room
9 observation. I believe I already finished the police
10 ride along and I had already visited the safe passage.
11 So had I to finish some pelvic exams.

12 Q. Do you remember how many you had left to do?

13 A. I am sorry I can't remember.

14 Q. Okay. Thank you. And just for my knowledge
15 and to make sure that we are perfectly clear a buccal
16 swab as you call it are the buccal swab and oral swab
17 are they both swabs of the mouth?

18 A. Yes, sir, that is correct.

19 Q. What is the difference between those two
20 swabs?

21 A. The buccal swab is a the patient's cheek and
22 this is where I am collecting her known DNA.

23 Q. Okay.

24 A. The second swab is anywhere within the oral
25 cavity just to see if there is any other DNA.

1 Q. Is it possible for other DNA to be in the same
2 place as the buccal swabs?

3 A. It is possible if someone had put saliva in
4 her mouth or any other.

5 Q. Okay. All right. And when you say you took
6 suspected bodily fluid from her thigh where on her thigh
7 did you take that suspected bodily fluid?

8 A. If my memory serves me correctly this would be
9 on her inner thigh.

10 Q. Okay. Was it lower on her thigh closer to the
11 knee? Higher on the thigh closer to the pelvis?

12 A. Higher. More in the groin area closer to the
13 pelvis.

14 Q. Okay. All right. Now, you testified that
15 there was redness and a slight amount of tearing when
16 you examined her, correct?

17 A. That's correct.

18 Q. And you testified that could be from finger
19 penetration or penis force, correct?

20 A. Yes.

21 Q. What else could cause that?

22 A. A tear is a break in tissue integrity so any
23 sort of force of any object could cause that.

24 Q. Okay. So touching with any type of force
25 could cause any kind of tear?

1 A. That is correct.

2 Q. Could redness be caused by touching with
3 anything at all?

4 A. Redness would be -- would be from irritation.
5 So hypothetically, yes, anything can cause redness.

6 Q. You could conceivably get redness, get a tear
7 from do gymnastics, from riding a bike, from doing a lot
8 of things, correct?

9 A. It is possible, yes.

10 Q. Okay, so you can't testify exactly that the
11 slight tear or the redness came from being touched by
12 another human being, correct?

13 A. I can not say without a doubt that is how it
14 occurred, no.

15 Q. Okay. So there is possibilities that happened
16 in a number of other ways?

17 THE COURT: Possibilities, not the
18 standard. That's speculative. You got to ask
19 a question that is more direct, more specific,
20 Mr. Nelson.

21 Q. So, you can't testify that the redness was
22 caused by either finger or a penis touching that area,
23 correct?

24 A. That is correct. May I elaborate. I can not
25 say since I was not physically a witness to the assault

1 that that is how the injury occurred, but I can say
2 according to the history the patient gave me it is very
3 consistent.

4 Q. But you can say with one hundred percent
5 certainty that other things can cause it, correct?

6 A. It is possible that something else could cause
7 an injury like hers, yes.

8 Q. Okay, thank you.

9 MR. NELSON: Beg the Court's indulgence.

10 THE COURT: Yes.

11 MR. NELSON: No further questions.

12 THE COURT: Redirect solicitor?

13 MS. HALL: Nothing further. We ask that
14 this witness be excused.

15 MR. NELSON: Without objection.

16 THE COURT: All right. Thank you. Thank
17 you, very much for being with us today, Miss
18 Propst you may step down and you may be excused.

19 THE WITNESS: Thank you.

20 THE COURT: All right, solicitor, you may
21 call your next witness.

22 MS. HALL: The State calls Tammy Levister.

23 TAMMY LEVISTER, called as a witness, having
24 been duly sworn by the clerk, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MS. HALL:

3 Q. Lieutenant Levister, if you would state your
4 full name for the record?

5 A. Tammy Levister.

6 Q. And where are you employed?

7 A. Chester Police Department.

8 Q. How long have you worked there?

9 A. Going on 15 years.

10 Q. And were you working there back this November,
11 November 3rd, specifically, 2013?

12 A. Yes.

13 Q. In what capacity were you employed at that
14 time?

15 A. Lieutenant over investigations.

16 Q. And did you receive a call from Jaemil Hardin
17 on November the 3rd or from Fatima Head or someone [REDACTED]
18 Sterling Street?

19 A. I received a call from the officers working
20 the road that day.

21 Q. Tell me how just -- so what did you do in
22 response to that call?

23 A. I was on call the day this occurred. They
24 contacted me stating that they needed an investigator
25 for a sexual assault that apparently happened with a

1 minor. They told me they had gone to the Chester
2 Hospital. Chester Hospital was not able to treat the
3 child. I called to make sure it was okay if I sent the
4 child to Piedmont. Got the word to go ahead and send
5 the child. Called the officer back. Told him to tell
6 the mother to go ahead and take the child to Piedmont
7 and I would meet them at the hospital.

8 Q. And did you indeed do that, you went to the
9 hospital

10 A. I did.

11 Q. And when you got there did you meet with the
12 mother of the child?

13 A. When I arrived there they had just taken the
14 mother and the child back. I spoke with the Aunt Fatima
15 and Monica.

16 Q. Monica or Monique?

17 A. Monique. I'm sorry. Monique. Then the nurse
18 escorted me back to the room where the victim and the
19 mother were.

20 Q. And without saying what they said or anything
21 you said did you interview? Actually do a police
22 interview with Miss head or Fatima Head or Monique Boyd
23 at that time?

24 A. They had told me that they were aware of what
25 happened. I told them them that I needed statements

1 from them and they provided me with statements.

2 Q. And when you went back into the room where the
3 child and the mother were, was there anybody else in the
4 room with them?

5 A. At that time, no.

6 Q. To your knowledge had the sexual assault exam
7 had that been completed at that time?

8 A. No, it was on the completed at that time.

9 Q. And what did you do when you got back there?

10 A. I spoke with the juvenile and the mother, then
11 the nurses came back and they started the sexual assault
12 kit.

13 Q. Okay. And did you take statements at that
14 time from the mother or the child?

15 A. I just jotted down notes from what the child
16 told me. The mother couldn't really speak since she was
17 not there.

18 Q. And again because of our rules of evidence
19 without saying what she said happened to her and without
20 saying who she said did it, did she tell you where it
21 had happened?

22 A. Yes.

23 Q. And what did she say?

24 A. In the living room on the couch cushions
25 laying on the floor at her aunt's house, Fatima.

1 Q. And did you determine what Fatima's address
2 was?

3 A. Yes.

4 Q. What is it?

5 A. [REDACTED] Sterling Street.

6 Q. And is that in Chester County?

7 A. Yes.

8 Q. And is it in the City of Chester?

9 A. Yes.

10 Q. All right. And did she say when it had
11 happened?

12 A. Yes.

13 Q. What did she tell you?

14 A. She told me it happened, it was Sunday. That
15 I had gone to Piedmont it happened early hour -- early
16 morning hour.

17 Q. Okay. All right. I am going to show you --
18 what did you do while the sexual assault examination was
19 going on? Did you stay in the room? Did you leave the
20 room?

21 A. I stayed in the room to observe, plus to make
22 sure that, you know, nothing gets messed up.

23 Q. So did you get from the nurse -- I am going to
24 show you what has been marked as State's 3 and State's
25 7, and can you tell me what this is is and tell me if

1 you have seen it before?

2 A. Yes. That is the sexual assault collection
3 kit that the hospital has. Any time somebody reports
4 that they have been sexually assaulted you go to a
5 hospital and they perform one of these collection kits
6 on you.

7 Q. And do you -- did you -- can you tell from
8 looking at that kit that that was kit that you obtained
9 from the nurse that day?

10 A. Yes.

11 Q. Okay. And how can you tell that?

12 A. Because it has my signature on it where the
13 nurse gave it to me. And then my signature when I give
14 it to the -- our evidence tech at the police department.

15 Q. And who did you give that? Who was the
16 evidence tech at the police department at that time?

17 THE COURT: Excuse me just a moment.

18 Sheriff, wake him up. He has got to stay a
19 wake or exit the courtroom. Thank you.

20 Go right ahead.

21 Q. So who was your evidence technician at the
22 time?

23 A. At the time of this collection it was Amanda
24 Huey.

25 Q. And can you tell from looking at that you

1 actually did turn that in to Amanda Huey at the police
2 department?

3 A. Yes -- well, not at the police department.

4 Q. Where did you give it to her?

5 A. She -- since I was coming from Rock Hill
6 instead of me driving all the way to the police
7 department she met me in Richburg. She was on her way
8 back to Chester. She has to refrigerate this. I don't
9 have access to the evidence refrigerator. So she met me
10 and I transferred it over to her in Richburg.

11 Q. I am going to show you what has been marked as
12 State's 6. Without having to open it, it is on the
13 record that is the underwear that the nurse collected
14 from the child and she gave to you. What did you do
15 with that piece of evidence once you got it?

16 A. All that evidence is turned in to the evidence
17 tech, Amanda Huey.

18 Q. Okay, and was that turned over to Amanda Huey
19 as well?

20 A. Correct.

21 Q. Now, what did -- after you left the hospital
22 and took all this evidence and gave it to the evidence
23 tech, Miss Huey, what did you do?

24 A. Once I gave it to her I was through for that
25 day. I went back home.

1 Q. All right. In terms of the investigation of
2 this case did you do anything else?

3 A. At that time, no. Within the next several
4 days of working, yes.

5 Q. What did you do?

6 A. I scheduled a forensic interview for the
7 victim with Margo in Lancaster at PCASA. Went to --
8 well, I didn't go to the interview, but she was
9 scheduled for the interview. I got the results,
10 findings, from the forensic interview. Once I got those
11 and was able to obtain an arrest warrant I obtained an
12 arrest warrant and we started searching for the subject.

13 Q. When did you obtain the arrest warrant?

14 A. November the 6th.

15 Q. Okay. And you said you started searching for
16 the subject. Who did you obtain an arrest warrants for?

17 A. John Henry Lowery II.

18 Q. And you said you started the search for Mr.
19 Lowery. Why were you searching for him?

20 A. Because we had an arrest warrant for his
21 arrest for criminal sexual conduct, 1st.

22 Q. Okay. And when you say you searched for him,
23 tell me about that?

24 A. We started looking for him at the [REDACTED] Sterling
25 Street. Was unable to locate him there. We had

1 received information that he was staying either at his
2 mother's house which is located on Pickney Street, but
3 it's in the county and his sister's residence and I'm
4 not familiar with that address. Made it aware to the
5 officers with the city and the county that we were
6 searching for him. That we had an arrest warrant on had
7 him. If he was located to please place him under arrest
8 for that warrant and notify me.

9 Q. About how long did it take for you to find him
10 and serve the warrant on him?

11 A. A couple of weeks.

12 Q. When was the warrant actually served?

13 A. I believe it was November the 14th.

14 Q. Okay. And during that time did you continue
15 to look for him?

16 A. Yes.

17 Q. Where was he ultimately found?

18 A. He was found in his mother's residence located
19 -- I am not sure the numeric part -- just outside the
20 city limits in the county hiding in the attic.

21 MR. NELSON: Objection. The nature of where
22 he was arrested and how he was arrested and
23 where he was found in the house I believe has
24 far more prejudicial affect then it has
25 probative value.

1 I don't think we need to get into the nature
2 of how he was arrested.

3 THE COURT: I will deny that. Thank you.

4 You may continue.

5 Q. So you said you guys found him hiding in the
6 attic?

7 A. Yes.

8 Q. And how did you come to have information that
9 he was there?

10 A. Within that day Fatima, which at the time was
11 his girlfriend, had been arrested on some type of
12 charge. I am not familiar with her charge.

13 Q. Was it related to this case at all?

14 A. No.

15 Q. Okay.

16 A. We -- I have access to listen to inmate phone
17 calls. I listened in on some of her phone calls through
18 the system. She had kept making contact with him at his
19 mother's residence. She was to call him back at a
20 certain time.

21 Q. All right. Was she instructed by the police
22 to call him back at a certain time?

23 A. No.

24 Q. Who she was instructed by?

25 A. She just told him I'll call you back.

1 Q. Okay. I understand now. Please continue.

2 A. Once I heard that, I informed my superiors and
3 we ended up getting a bunch of officers together and
4 went over there to search the residence.

5 Q. So when you are listening to these phone calls
6 through the jail phone call system, can you tell where
7 they are coming from?

8 A. Yes. It gives -- well, where they're coming
9 from is the going to be the jail, but it does give the
10 number where they are calling too.

11 Q. Okay. And did you guys determine that she was
12 calling to his mother's house?

13 A. Yes. I ran that number through our dispatch
14 system and it came back located at his mother's address.

15 Q. Okay. And tell me what she did after that, if
16 you haven't already stated it?

17 A. Once I informed everybody that he was going to
18 be at his mother's house at this time, we got everybody
19 together. We went over there and checked the residence
20 and was finally able to locate him.

21 Q. Did his mom come to the door?

22 A. She did come to the door. Let us in. She
23 kept stating that he was not there.

24 Q. And did you guys have to go in and really
25 search the house?

1 A. Yes, we did.

2 Q. Okay. And at that time was he placed under
3 arrest for criminal sexual conduct with a minor first
4 degree pursuant to that warrant?

5 A. Correct.

6 Q. Were you present during the course of the
7 arrest?

8 A. Yes.

9 Q. And is the person that you arrested pursuant
10 to this warrant seated in the courtroom today?

11 A. Yes.

12 Q. And could you point him out to the jury and
13 tell us what he is wearing?

14 A. He is sitting right over there at that table
15 wearing like a peach-colored shirt.

16 MS. HALL: Your Honor, if the record
17 would please reflect that Lieutenant Levister
18 has identified the defendant in this case,
19 John Lowery, as the person she arrested.

20 THE COURT: So reflected.

21 MS. HALL: Thank you. Nothing further.

22 THE COURT: Thank you, solicitor. Mr.
23 Nelson.

24 MR. NELSON: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MR. NELSON:

2 Q. You say that after you went to the hospital
3 you were there for the entire SANE examination?

4 A. Correct.

5 Q. And so you saw the SANE nurse put the
6 materials inside the evidence case?

7 A. Correct.

8 Q. Once the evidence kit was sealed and closed by
9 her did you ever see the contents inside again after
10 that?

11 A. No.

12 Q. And then you say you took that kit and handed
13 it off to your evidence clerk, correct?

14 A. Correct.

15 Q. Where did that happen at?

16 A. Richburg.

17 Q. Where in Richburg?

18 A. Dollar General.

19 Q. Inside the store or in the parking lot?

20 A. Packing lot.

21 Q. And were you -- and I may have missed this you
22 may have already testified this -- were you there for
23 the PCASA interview?

24 A. No, I was not there at her PCASA interview.

25 Q. Okay. But based on the information that came

1 out of that you got arrest warrants after the PCASA
2 interview, correct?

3 A. Correct.

4 Q. And eventually -- eventually you testified
5 this all -- this all -- this alleged assault took place
6 on the late night of the 2nd, early morning of the 3rd
7 of 2013, correct?

8 A. Correct.

9 Q. And you testified it took place at [REDACTED]
10 Sterling Place, correct?

11 A. Correct.

12 Q. And Mr. Lowery was not arrested until the 14th
13 of November, correct?

14 A. Correct.

15 Q. And he -- the warrant was issued on the 6th of
16 November, is that correct?

17 A. Correct.

18 Q. And you were looking for him through that
19 entire time?

20 A. Not until I obtained the arrest warrant.

21 Q. Okay. From the 6th to the 14th you were
22 looking for him that entire time, correct?

23 A. Correct.

24 Q. And tell me one more time because I think I
25 might have misunderstood you, but how did you eventually

1 learn that he was at his mother's house?

2 A. Through the phone calls from his former
3 girlfriend, Fatima Head.

4 Q. Where was Fatima Head at?

5 A. She was incarcerated at the jail.

6 Q. Okay, but his former girlfriend -- when did
7 she call him? When did you learn of that information?

8 A. When I found out that she was incarcerated I
9 said, well, she may be still having contact with him. I
10 logged in, checked her phone calls, listened to a few of
11 them and observed or heard that she was going to contact
12 him back at his mother's residence.

13 Q. Do you know what date it was that she made
14 that call?

15 A. It's the date that we arrested him.

16 Q. So the 14th?

17 A. Correct.

18 Q. Okay. And so as far as your knowledge Fatima
19 Head was still talking to him as of the 14th because you
20 have jail records that showed she initiated contact with
21 him at that point, correct?

22 A. They had phone conversations. I don't know if
23 they were still a couple, but they had phone
24 conversations.

25 Q. But for her to talk to him from the jail she

1 would have had to contact him, correct?

2 A. Yes.

3 Q. He couldn't call in and talk to her?

4 A. No.

5 Q. When Mr. Lowery was arrested at his mother's
6 house who was living at his mother's house at that time?

7 A. I am not sure who was all suppose to be
8 residing there.

9 Q. Who was there when you arrested him?

10 A. It was the mother. I know she has other
11 family members that live next door to her in the
12 apartment next door, but in the mother's house at the
13 time it was just the mother and him.

14 Q. Okay. So as far your knowledge you don't know
15 of anyone else who was staying at that house at that
16 time?

17 A. No.

18 Q. After Mr. Lowery was arrested did you attempt
19 to interview him?

20 A. No. He had made some comments. No, I did
21 not. He had made some comments that he wasn't saying
22 anything.

23 Q. And as part of your investigation did you ever
24 go to [REDACTED] Sterling Street?

25 A. I did not.

1 Q. You never went to [REDACTED] Sterling Street?

2 A. No.

3 Q. Which officers did go to [REDACTED] Sterling Street?

4 A. The officers that took the initial report.

5 Q. Okay. As the lead detective on the case is it
6 normal for you not to go to the scene of a crime
7 happening?

8 A. It depends on the type of crime. This type of
9 crime they had stated that they had already cleaned up
10 so there was no need for me to go to the residence.

11 Q. What do you mean they already cleaned up?

12 A. They said they done moved the couch cushions.
13 Stuff like that, so ---

14 Q. Okay. But you didn't even attempt to collect
15 any evidence as far as attempting to collect the couch
16 cushions, attempting to collect whatever materials,
17 blankets, other things that may have been around at that
18 time?

19 A. No.

20 Q. Okay. Because you never went to the house?

21 A. Correct.

22 Q. To the best of your knowledge, as the lead
23 detective, did the other officers who were there collect
24 any of those materials?

25 A. No.

1 Q. Did they collect anything from the house
2 itself?

3 A. No.

4 Q. So no evidence was collected out of the house?

5 A. No.

6 MR. NELSON: Beg the Court's indulgence for
7 one moment.

8 THE COURT: Yes.

9 MR. NELSON: No more questions, Your Honor.

10 THE COURT: Redirect.

11 MS. HALL: Just briefly.

12 REDIRECT EXAMINATION

13 BY MS. HALL:

14 Q. Was Miss Head arrested immediately after this
15 crime occurred?

16 A. Who?

17 Q. Miss Head, Miss Fatima Head?

18 A. I am not sure of her arrest date.

19 Q. And I want to show you --

20 MS. HALL: I need to have this marked
21 real quick.

22 (State's Exhibit 13, marked for
23 identification as of this date.)

24 Q. I am going to show you what has been marked as
25 State's Exhibit 13. What is that?

1 A. This is an arrest warrant that was obtained
2 for Mr. Lowery.

3 Q. What date was he -- will it tell you on that
4 warrant what day it was actually served on him? Meaning
5 what date he was arrested?

6 A. Yes.

7 Q. What date was he arrested?

8 A. It's got this warrant was served on him
9 November the 15th.

10 Q. Okay.

11 MS. HALL: I don't have anything further.

12 Thank you.

13 THE COURT: Anything on recross Mr. Nelson?

14 MR. NELSON: No, Your Honor.

15 THE COURT: Thank you. Thank you, very
16 much.

17 MS. HALL: We ask that this witness be
18 allowed to step down.

19 THE COURT: Thank you. You may step down.

20 MS. HALL: Lolita Fourney.

21 LOLITA FOURNEY, called as a witness, having
22 been duly sworn by the clerk, was examined and
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MS. HALL:

1 Q. Sergeant Fourney, please state your name.

2 A. Lolita Carter Fourney.

3 Q. And where do you work?

4 A. In the city, Chester Police Department.

5 Q. How long have you worked there?

6 A. A little over two years.

7 Q. So were you working back on December of 2013?

8 A. Yes, ma'am.

9 Q. All right. I am going to show you what has
10 been marked as State's 5. And tell me if know what that
11 is? You might have to open it and I can get you some
12 gloves ou need them.

13 A. These are the DNA swabs.

14 Q. From whom?

15 A. John H Lowery the third -- second. I am a
16 sorry.

17 Q. Did you take those buccal swabs from Nelson
18 Lowery?

19 A. Yes, ma'am.

20 Q. What date?

21 A. On November the 25th, 2013.

22 Q. And what did you do with them once you did
23 take them?

24 A. I took them back to -- I gathered them and
25 took them back. Let my lieutenant know that I had

1 collected the swabs.

2 Q. Did you turn them over to Amanda Huey in the
3 evidence?

4 A. Yes, ma'am.

5 Q. And did you ever see them again after you
6 turned them over?

7 A. No, ma'am.

8 Q. All right. And tell me the process, if you
9 would, of taking a buccal swab? What's the process you
10 used when you took the buccal swab from Mr. Lowery?

11 A. I went to the detention center and I asked Mr.
12 Lowery would he consider letting me swab him. He said
13 that, yeah, he would. And so then what I did, I read to
14 him a waiver of court order for non-testimonial
15 identification procedure and I advised him what it meant
16 and I also read him his rights. Again, telling him that
17 at no time did he have to take, to let me, you know,
18 swab him.

19 I read him his rights which was required. Let me
20 go back. At three o'clock p.m. on November 25th, 2013
21 at the Chester County Detention Center without requiring
22 or waiting for a Court Order and agreeing to undergo
23 such non-testimonial identification procedures. At this
24 time I advised Mr. Lowery that under South Carolina Code
25 of Law that he has certain rights. Then I read him his

1 rights. His right to require the solicitor to request
2 and obtain a Court Order for such non-testimonial
3 identification procedures and if he did not consent --
4 if he did not consent and that such Order shall -- that
5 such Order shall issue on upon a showing of reasonable
6 grounds for conducting the procedure and he had that
7 right that during such Court Order --

8 MR. NELSON: Objection, Your Honor. What is
9 she reading from?

10 THE WITNESS: I'm sorry the --

11 THE COURT: Give him a copy of it.

12 THE WITNESS: He has one.

13 THE COURT: Do you withdraw your objection?

14 MR. NELSON: We withdraw it, Your Honor.

15 THE COURT: All right, thank you
16 Slow down a little bit.

17 THE WITNESS: Okay, I will try. Yes, sir.

18 THE COURT: If it is too to fast for me to
19 hear it might be too fast for the court
20 reporter. Although she can probably get it
21 down faster than I can hear. Go right ahead.

22 DIRECT CONT'D:

23 A. And that during such Court Order procedures
24 that I have the right to have an attorney present and
25 including an attorney paid for by the State if I can not

1 afford one.

2 These are the rights that I read to Mr. Lowery
3 before getting him to sign the consent form for swabbing
4 him.

5 Q. Okay. And did he sign the consent form giving
6 you consent to swab him?

7 A. Yes, ma'am. He printed his name and he also
8 signed it and he agreed to let me swab him.

9 Q. All right. And tell me the process that you
10 use when you actually swab someone and the process that
11 you used that day to swab Mr. Lowery after he consented?

12 A. Well, first of all you have to put on gloves.
13 We take -- the swabs are in a little packet. You tear
14 them open. I did his right cheek. I did his right
15 cheek and under his tongue and I put that into a tub and
16 I shut it up. Then I did -- I did a second swab also on
17 the left side inside his mouth and under his tongue.

18 Q. And holding up that what has been marked as
19 State's Exhibit 5. What are these?

20 A. This is -- after I gathered the swabs I had to
21 seal them and put my initials and the date on here
22 showing that it is evidence.

23 Q. Okay. And so you sealed it in that packet and
24 what did you do with it at that point?

25 A. Turned it over to the evidence clerk.

1 Q. To Amanda Huey?

2 A. Yes.

3 (State's Exhibit 14, Waiver, marked for
4 identification as of this date and shown to
5 defense counsel)

6 Q. I had this document marked. This is State's
7 Exhibit Number 14. Is this the document you just read
8 from regarding Mr. Lowery's consent to have his mouth
9 buccal swabbed?

10 A. Yes, ma'am.

11 Q. And this is kept in the normal course of
12 business record and this is a record that you kept
13 yourself; is that correct?

14 A. Yes, ma'am.

15 MS. HALL: I am going to ask that this be
16 entered in as State's exhibit 14.

17 THE COURT: All right. You are offering
18 this solicitor?

19 MS. HALL: Yes.

20 THE COURT: Any objection Mr. Nelson?

21 MR. NELSON: No, Your Honor.

22 THE COURT: State's 14 is in evidence
23 without objection.

24 (State's Exhibit 14, Waiver,
25 received in evidence as of this date.)

1 MS. HALL: I don't have anything else.

2 Please answer any questions.

3 THE COURT: Thank you, solicitor. Mr.

4 Nelson.

5 MR. NELSON: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. NELSON:

8 Q. Miss Fourney, so Mr. Lowery after you read him
9 this form that you just read to us, he agreed to allow
10 you to do these swabs, correct?

11 A. Yes, sir.

12 Q. Otherwise you wouldn't have done the swabs
13 that day?

14 A. Correct.

15 Q. So do you know the date upon which this
16 incident allegedly happened?

17 A. I think that it was November the 25th this --

18 Q. Was when you took the swabs, right?

19 A. Yes, sir.

20 Q. No, do you know the date that the incident
21 that lead you to you taking the swabs happened?

22 A. I don't really remember, no sir.

23 Q. Okay, but it was some time before that?

24 A. Yes, sir.

25 Q. Okay, and do you know when he was arrested?

1 A. I think it's close to maybe almost a week
2 before the swabs were taken.

3 Q. So it was about a week before the swabs were
4 taken?

5 A. Yes, sir.

6 Q. Okay. And yet about a week after the swabs
7 (sic) were taken he voluntarily allowed you to take the
8 swabs, correct

9 A. Yes, sir.

10 MR. NELSON: Okay, thank you.

11 THE COURT: Redirect solicitor?

12 MS. HALL: I don't have anything else.

13 THE COURT: Thank you. Thank you, very much
14 lieutenant. You may step down.

15 MS. HALL: We ask she be excused as well.

16 THE COURT: Any objection?

17 MR. NELSON: No objection.

18 THE COURT: You may step down. You are
19 excused. Perhaps now would be a good time to
20 take our morning recess.

21 MS. HALL: That would be great.

22 THE COURT: All right. Juror number 16.
23 Juror number 16, Miss Boyd. Do I have a Miss
24 Boyd on the jury.

25 MS. HALL: She was struck by the defense, I

1 believe.

2 THE COURT: All right. The lady in the
3 pink, Miss Brown, number 20.

4 All right. Ladies and gentlemen we will
5 take our morning recess. During this recess
6 please do not discuss this case with your fellow
7 jurors. We will take about 15 minutes. Thank
8 you. Thank you, very much. You may go with
9 your bailiff.

10 (WHEREUPON, the jury left the courtroom.)

11 THE COURT: All right, as far as your
12 observation Mr. Nelson concerning the location
13 in which Mr. Lowery was arrested; the 403
14 objection, I find that it is not unfairly
15 prejudicial or misleading to the jury. Further,
16 South Carolina says flight from prosecution is
17 admissible as guilt. Evidence of flight is
18 admissible to show guilty knowledge, intent that
19 the defendant's sought to avoid apprehension.
20 The critical factor to the admissibility of
21 evidence of flight is whether the totality of
22 the evidence creates an inference that the
23 defendant had knowledge that he was being sought
24 by the authorities which is cited in State
25 versus Beckham, 513 S.E. 2d 606 (1999) case.

1 It is sufficient that circumstances justify
2 inference that the defendant's actions were
3 motivated as result of his belief that police
4 officers were aware of his wrongdoing and were
5 seeking him for that purpose. Flight or evasion
6 of arrest is a circumstance to go to the jury.
7 The evidence is that morning of the third there
8 was a -- there was Miss -- Miss Head, after --
9 according to her testimony, discovery of the
10 event during the early morning hours to Miss
11 Hardin, Minor 1 that her and Mr. Lowery
12 argued and she took Mr. Lowery and dropped him
13 off somewhere in the location of Pickney Street,
14 in that area where his mom was staying, his
15 mother and/or his sister.
16 To my knowledge there has been no testimony that
17 he ever went back to [REDACTED] Sterling Street,
18 although he and Miss Head had a relationship for
19 a year. Then he knew the allegation had been
20 made. Then, I say the morning of third, he knew
21 there had been an allegation made. He gave
22 several conflicting statements according to Miss
23 Head of denial and then -- well, for lack of a
24 better description -- the conversation she said
25 she had with him whereby he alleged that Miss

1 Hardin had offered him oral sex. So he knew
2 there were allegations out there against him.
3 He never contacted -- never went back to
4 Sterling Street or at least there is no
5 testimony. There is no evidence that he was
6 being sought by the police for any other crime,
7 although they had been searching for him.
8 Searching for him since the sixth of October.
9 Meaning one place they had searched for him was
10 the mother's residence and then where he was
11 located in the house. He is not sitting in the
12 La-Z-Boy watching the ball game. He is in the
13 attic. So he is clearly concealing himself.
14 That is evidence of flight. For whatever weight
15 and value the jury may give it.

16 I think based on the case law and the
17 circumstances of this case it is not unfairly
18 prejudicial.

19 All right. Thank you. Anything further?

20 MR. NELSON: No, Your Honor thank you.

21 MS. HALL: Your Honor, we can talk about the
22 redaction portion.

23 THE COURT: Why don't you all talk about it
24 first and see what you all can work out.

25 MS. HALL: Okay.

1 THE COURT: And if you can't I'll look at
2 it. Thank you. The Court will be in recess 15
3 minutes.

4 (WHEREUPON, court was in recess.)

5 THE COURT: Thank you, very much. Please be
6 seated. Bring in the jury.

7 (WHEREUPON, the jury enters the courtroom.)

8 THE COURT: All right. Welcome back ladies
9 and gentlemen. We will continue with the trial
10 of the case with the presentation of evidence
11 and testimony by the State in it's case in
12 chief. Solicitor, yo may call your next
13 witness.

14 MS. HALL: Margo Dickson.

15 THE COURT: All right. Come around and be
16 sworn please.

17 MARGO DIXON, called as a witness, having
18 been duly sworn by the clerk, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MS. DIXON:

22 Q. Miss Dixon, will you state your name for the
23 record, please.

24 A. March B. Dixon.

25 Q. And Miss Dixon, where are you employed?

1 A. Palmetto Citizens Against Sexual Assault,
2 Children's Advocacy Center.

3 Q. And where is that located?

4 A. The home office is located in Lancaster, South
5 Carolina.

6 Q. And do you work primary in Lancaster?

7 A. I do, but I serve two other counties as well
8 as Lancaster.

9 Q. And where are those other two counties?

10 A. Chester County as well as Fairfield County.

11 Q. And do you have offices in Chester County and
12 Fairfield County?

13 A. We do.

14 Q. Would you just go back and tell us a little
15 bit about your education and how that applies with what
16 you do on daily basis?

17 A. I originally went to school and majored in
18 English and psychiatry where I received a degree. I
19 returned back to school and I received another degree in
20 criminal justice, as well as majoring in behavior
21 analysis for my masters and I also attended Hunter
22 Alabama for child forensic interviewing as well as other
23 courses.

24 Q. Okay. So, you said you went to Hunter Alabama
25 and I missed the rest of that.

MS. HALL: And I understand that. If you

1 want me to respond?

2 THE COURT: Yes, ma'am.

3 MS. HALL: And I understand that under State
4 V Douglas that is not necessarily permissible
5 and I don't intend to have her offer anything
6 that would cumulative or an opinion about any of
7 the victim's testimony or anything as part of
8 her -- I just wanted her to be able to explain
9 the interview process and what she did in this
10 case.

11 MR. NELSON: She can do that without being
12 considered an expert, Your Honor.

13 THE COURT: Well, I don't know that a
14 pathologist could explain pathology without
15 being declared an expert. The jury weighs the
16 testimony of an expert. I've instructed, I
17 already have once, that they give no greater
18 weight to an individual's testimony just because
19 they are qualified as an expert. I think the
20 case that you are referring to, the one case,
21 Mack, that's Judge Hayes' case out of Abbeville.
22 I think that goes more to opinion testimony.

23 MR. NELSON: Yes, Your Honor. From my
24 understanding the expert witness would be able
25 to render opinion testimony.

1 THE COURT: Correct. From what the
2 solicitor indicated to my she is not going to
3 offer her -- not going to question her to any of
4 her opinions she may hold concerning the
5 interview which she had with Minor¹ the
6 named victim. Be that as it may, I deny your
7 motion. I declare her as expert in the field of
8 forensic interviewing of children.

9 MS. HALL: Thank you.

10 THE COURT: All right. Thank you, very
11 much. You may continue solicitor.

12 MS. HALL: Thank you.

13 Q. Okay. Could you explain the process that you
14 use in conducting forensic interviews of children?

15 A. The forensic interview process is a child
16 friendly interview that is solicited from a child who
17 may have made allegations of some type of abuse or have
18 knowledge of some type of abuse that may have happened
19 to them or someone that they know or may have witnessed
20 a violent act.

21 Within than interview setting we structure it to
22 put it in a non-leading manner. Basically we're asking
23 that child what took place as far as what happened,
24 where did it happen, who did it happen to and any other
25 knowledge that they may have concerning that particular

1 incident. It can't be a leading situation where I
2 suggest things to them, but rather they tell me what
3 they have of their own knowledge, in their own terms and
4 their own language.

5 Q. Are any of these interviews done in -- are
6 they done in all types of situations, where all types of
7 allegations are made or are they only done in sexual
8 assault situations?

9 A. They are done in various situations. It could
10 be anything from sexual assault to physical abuse, to
11 some type of form of neglect as well as witnessing some
12 type of violent act.

13 Q. And as you go through the interview is there
14 like a protocol or pattern that evolves or that you
15 follow when doing the interview?

16 A. It is. In this interview we -- at that time
17 we are using the RATAC protocol and in the RACTAC
18 protocol basically we develop a rapport with the child.
19 We also get an understanding of what the child
20 recognizes between the truth and a lie, as well as their
21 ability to tell an event and then an anatomy recognition
22 to understand what they call their body parts. At that
23 point the child educates me, so if the child is
24 referring to their vagina, for instance, and they call
25 it the pocketbook. I know they are referring to their

1 vagina and not the purse or pocketbook that I or
2 yourself may carry. Once we develop the understanding
3 of the anatomy and they are educating me then we go
4 forth and begin to talk about different things in their
5 life as far as the events that they are there to see me
6 in reference to. At that time we notify that as the
7 disclose act. Within that disclosure things are taking
8 place and at that time we talk about what happened and
9 then we have a closure setting.

10 Q. And so the middle part is where they are
11 telling if anything happened to them or happened to
12 somebody that they know or something like that. Then
13 you said the end is a closure setting. What is a
14 closure setting?

15 A. Closure setting, at that time the child is
16 thanked for coming to share that information with me as
17 well as the other people involved in this case that are
18 in an adjoining room witnessing the interview, and to
19 ask the child if they have any questions or anything
20 they would like to tell me that may have been left out
21 within the interview session itself.

22 Q. And is that -- did you have occasion back in
23 October to interview Minor 1 and Minor 2

24 A. I did.

25 Q. And did you use the RATAC interview process

1 when you interviewed them or do you remember?

2 A. I used the RACTAC process.

3 Q. Are there other people who work in your
4 office?

5 A. There are.

6 Q. Okay. Could you tell me about the structure
7 of your office and what other people work there?

8 A. Of course. Our office is a rape crisis center
9 and under the rape crisis center is the umbrella of the
10 children's advocacy center. Sharlene McGriffin is the
11 executive director over the entire agency. Myself is
12 the CAC director. Then we have a followup service
13 coordinator which is Marilyn Stover. We also have an
14 office manager who is Fayette Roger. We also have a
15 coordinator that goes out and educates the children.
16 But within the CAC we have a medical director who is
17 Shaunese Singleton. We have also have clinical
18 therapist who is David Killian and then we have other
19 office members -- staff.

20 Q. What does CAC stand for?

21 A. Children's Advocacy Center where we are
22 nationally accredited through the National Children's
23 Alliance.

24 Q. And after your interview with Minor and
25 Minor 2 did you make any recommendations for them, for

1 any people to see or anything for them to do?

2 A. I recommended that Minor be seen by our Doctor,
3 Doctor Singleton for follow-up.

4 MS. HALL: Thank you. I don't have
5 anything further.

6 THE COURT: Thank you. Thank you,
7 solicitor. Mr. Nelson.

8 MR. NELSON: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. NELSON:

11 Q. Miss Dixon, you say you use the RATAC protocol
12 to interview children?

13 A. Yes.

14 Q. As part of that protocol you first go through
15 the true and lie, correct?

16 A. We do, yes.

17 Q. What does that entail?

18 A. True and lie is make sure they understand the
19 difference between a truth and lie. If I suggest
20 something to them or if I say something to them and it's
21 wrong in repeating back what they say to me they are not
22 afraid to correct me in doing so.

23 Q. Does this insure that all children always tell
24 you the truth?

25 A. Not necessarily so.

1 Q. Okay. And then you go through the ability to
2 tell -- to tell stories you say, correct.

3 A. We go through to the setting where they
4 disclose to me the knowledge they have of the
5 information that they have.

6 Q. But do you go through -- before you go through
7 the disclosure of what knowledge they have of the event
8 that you are talking to them about, because whenever you
9 talk to a child you are talking to a child because there
10 is an event that allegedly took place, correct?

11 A. Yes, correct.

12 Q. If there wasn't an allegation you would never
13 be talking to this child, correct?

14 A. This is correct.

15 Q. So you are looking for information about a
16 specific allegation as part of this protocol, correct?

17 A. In your formula I would say yes.

18 Q. Okay, and so before you get to your part of
19 the interview with the child where you elicit that
20 information, do you go through any other part of the
21 protocol to get them to begin to feel comfortable
22 telling stories to you and talking to you?

23 A. I solicit information as far as their family
24 settings, things that they have knowledge of be it
25 school, birthday events, to tell me information that

1 they have. I think I don't use the word "story", but
2 yes, I do solicit questions from them to get
3 information, correct.

4 Q. But you use questions like tell me about
5 everything that happened last Friday?

6 A. Correct.

7 Q. As an example to get them to start telling
8 events, correct?

9 A. Yes, that's correct.

10 Q. So you get them telling innocuous events
11 before you go into the event that you are actually there
12 to talk to them about, correct?

13 A. To allow them to relax, yes.

14 Q. Okay. So to allow them to relax you get them
15 talking about other events?

16 A. Correct.

17 Q. Other stories from their life whether it be
18 true or untrue, but other stories from their life?

19 A. Correct.

20 Q. So you go through that and get them talking
21 and telling stories before you go into the event that
22 you are there to talk with them about?

23 A. This is correct.

24 MR. NELSON: All right. Thank you, no
25 further questions.

1 THE COURT: Redirect solicitor.

2 MS. HALL: I don't have anything else. We
3 ask she be excused as well.

4 THE COURT: Thank you. Thank you for being
5 with us, Miss Dixon. You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Give me just a minute,
8 solicitor.

9 Madame forelady, ladies and gentlemen, as
10 jurors it is your duty to determine the effect,
11 the value, the weight and the truth of the
12 evidence presented. You should consider any
13 expert testimony received into evidence in this
14 case like any other evidence give it the weight
15 you think that it deserves. If you decide that
16 the testimony of an expert witness is not based
17 on sufficient education or experience, or if you
18 conclude that the underlying basis is not
19 supported and not sound. That the testimony of
20 the expert is outweighed by other evidence you may
21 disregard the testimony of an expert witness in
22 its entirety. Again, an expert witness's
23 testimony is to be given no greater weight than
24 that of any other witness simply because the
25 witness is an expert. Further, you are not

1 required to accept an expert's opinion or
2 testimony even though it is not contradicted.
3 Madame forelady, ladies and gentlemen step out to
4 your jury room for just a moment. Do not
5 discuss the case during this brief recess.

6 (WHEREUPON, the jurors leave the courtroom.)

7 THE COURT: All right, Mr. Nelson, after
8 your objection do you have any position as to
9 any testimony presented by Miss Dixon prejudiced
10 the defendant?

11 MR. NELSON: If you let me confer for one
12 second, Your Honor.

13 THE COURT: Certainly.

14 MR. NELSON: No, Your Honor. And I don't
15 think the testimony she gave was necessarily
16 prejudicial to my client, but I do believe that
17 qualifying someone as a expert is prejudicial.
18 I believe the case -- I'm not one hundred
19 percent certain.

20 THE COURT: Well, Douglas and Baker, I was
21 just looking at. In Baker which cites Douglas,
22 the trial Court qualified an officer with the I
23 believe it was the Sumpter County Sheriff's
24 Department, a Herod, as expert in forensic
25 interview. After being qualified as an expert,

1 Officer Herod testified the older niece
2 disclosed the abuse while the younger niece
3 denied the abuse and the officer opined as a
4 result of the interview she believed the older
5 niece should somebody referred to a medical
6 exam. The trial courts determination regarding
7 a witness's qualification to testify as an
8 expert will not be disturbed on appeal absent
9 showing abuse of discretion, citing State versus
10 Henry. The Court goes on to say the facts of
11 Baker are similar to the South Carolina case,
12 State v Douglas which you properly cited.
13 In that case Douglas was convicted of committing
14 a lewd act on a minor. During his trial he
15 objected to the trial court's classification,
16 again of Officer Herod, as an expert in forensic
17 interviews and inserted Herod's testimony
18 improperly bolstered the victim's testimony.
19 The trial court qualified Herod as an expert and
20 found her testimony relevant and admissible.
21 Herod testified she received information leading
22 her to conclude the victim needed to be referred
23 for a medical exam. Douglas appealed. We
24 concluded that the trial court did not abuse its
25 discretion in finding Herod as an expert.

1 Douglas appealed to our Supreme Court which
2 reversed our conclusion and stated it was
3 unnecessary for Herod to be qualified as an
4 expert, however the Supreme Court affirmed
5 Douglas's conviction and concluded Douglas
6 suffered no prejudice either as a result of
7 Herod's testimony or her qualifications as an
8 expert. And again, I gave the instruction to
9 the jury that is straight out of Baker at the
10 end so they would know they had the choice to
11 believe or disbelieve Miss Dixon's testimony
12 because she gave no opinions.

13 MR. NELSON: I agree.

14 THE COURT: And that's obviously why I was
15 asking the question. All right, anything
16 further?

17 MR. NELSON: No, Your Honor.

18 THE COURT: Thank you, very much. If you
19 bring our jury out please.

20 (WHEREUPON, the jury enters the courtroom).

21 THE COURT: Thank you. Thank you, very much
22 for your patience. I learned patience takes a
23 lot of time.

24 MS. HALL: Your Honor, just for planning
25 purposes and so everybody knows what we are

1 doing. I am calling Doctor Singleton as a
2 witness and I will have a very short witness
3 after her and then we can break for lunch.

4 THE COURT: All right. Thank you,
5 solicitor.

6 SHAUNESE SINGLETON, called as a witness,
7 having been duly sworn by the clerk, was
8 examined and testified as follows:

9 THE COURT: All right, solicitor.

10 MS. HALL: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. HALL:

13 Q. Doctor Singleton, if you would tell the Court
14 your full name?

15 A. Doctor Shaunese Duray Singleton.

16 Q. And what is your occupation?

17 A. I am a pediatrician.

18 Q. And could you tell me a little bit about your
19 education history and your medical training?

20 A. Yes. I completed my under graduate degree at
21 Washington University in Saint Louis. Thereafter I went
22 to New York Medical College to get my doctorate of
23 medicine and I completed that in the year 1998. After
24 that I went to the University of Houston where I started
25 my pediatric internship and residency training and I

1 completed that training in 2001 and while I was there I
2 did take electives and classes in forensic pediatric
3 doing both physical and child abuse and sexual abuse.

4 Q. And when did you complete that program?

5 A. In 2001.

6 Q. And what have you done since 2001?

7 A. I have practiced general pediatrics, actually
8 in North Carolina for a year and then in 2002 I he move
9 down to Lancaster, South Carolina and I practiced
10 general pediatrics in a private office, and in addition
11 to that I worked with Palmetto Citizens Against Sexual
12 Assault doing there forensic medical examination since
13 2002 until present.

14 Q. And during the course of your private practice
15 as well as your practice with PCASA, can you estimate
16 possibly how many child sexual assaults you've done?

17 A. Typically we see anywhere from 75 to 100 per
18 year. So I would say at least 75 times ten would be
19 about 700 or more.

20 MS. HALL: Your Honor at this time we
21 would offer soctor Singleton as expert in
22 sexual assault examination.

23 THE COURT: Mr. Nelson.

24 MR. NELSON: No objection as long as she
25 doesn't give opinion testimony as to what

1 happened on the incident alleged here.

2 THE COURT: All right. Again, ladies and
3 gentlemen, normally a witness can not give
4 opinion testimony. Normally a witness must
5 testify as to what they either saw, sensed by
6 smell, touch, hearing or something of that
7 nature. However there is an exception for
8 witnesses that are qualified by the Court as
9 expert. With this witness Doctor Shaunese
10 Singleton will be qualified as an expert
11 pediatrician, forensic pediatrician and an
12 expert in sexual assault exams to give opinion
13 testimony in that regard and the basis for those
14 opinions.

15 Ladies and gentlemen, whatever weight and
16 value you give to the testimony as an expert is
17 up to you the jury as the finders of fact. You
18 may believe all, part or none of an expert
19 witness's testimony even though it may be
20 uncontradicted. I'm sure you may all be able to
21 repeat this back to me. You heard this several
22 times already. But again, Doctor Singleton is
23 qualified as an expert in those fields of
24 expertise.

25 Thank you. Thank you, very much solicitor.

1 You may proceed.

2 DIRECT EXAMINATION

3 CONT'D BY MS. HALL:

4 Q. Doctor Singleton, as part of Your work at
5 PCASA did you have occasion to see a child by the name
6 of Minor 1

7 A. Yes, I did.

8 Q. I am going to show you what has been marked as
9 State's Exhibit 2. Can you tell me if you recognize
10 that document?

11 A. Yes, this is the sexual assault medical
12 protocol that I complete during my physical examinations
13 of children who visit at the office.

14 Q. Who does the sexual assault protocol apply to,
15 what patient?

16 A. Client's name is Minor 1

17 Q. And what date did you see Miss Hardin?

18 A. November 19th of 2013.

19 Q. All right. And could you please explain using
20 -- going through this protocol and explaining to the
21 jury exactly what this examination entails and what your
22 findings were during the course of that exam?

23 A. Sure. Typically when a patient comes to see
24 me I do speak with the guardian -- whoever the guardian
25 comes to see me with the child to get some background

1 history as to why the child was there. What was the
2 incident. That is done privately. The child is not in
3 the room when that occurs and then I will send that
4 caregiver to another room and then I will interview the
5 child privately so she or he are alone. And then I will
6 ask them to give just the nature of why they are here
7 and tell me what happened on that particular date.

8 Q. And because of the rules of evidence that we
9 have in our state, without saying who Minor said did
10 something to her and without saying -- well, without
11 saying who she said did it, can you tell me for purposes
12 of medical diagnosis what statements she made to you?

13 A. Okay. When I spoke with Miss Minor initially I
14 build rapport so I speak with them just about their
15 daily activities, there schooling, just so they become
16 comfortable and then I asked her if she understood why
17 she was here to be examined. For her because she was a
18 little bit older I asked her just to tell me what
19 happened and then she stated at some point someone
20 touched her in her private part with that other's
21 persons private part. And then I proceeded to ask her
22 when she made that statement did it feel like she was
23 touched on the inside of her private parts. In order
24 for her to give me that history I will usually ask the
25 child if she understood what that meant and if I am not

1 clear then I will try to demonstrate what I mean on top
2 of genitals. For her what I did was put my two fingers
3 together and I used the surface of my hand to indicate
4 on top and then for her I said what would be in between
5 or inside I separated my fingers to indicate that these
6 are her labia or outside and then I put my finger --
7 kind of laid it between. This is inside or between.
8 Which one did it feel like? Was it on top or did it
9 feel like in between. And she stated that she felt like
10 it went in between the folds.
11 In addition to that, I will ask the patient what did
12 that feel like to them and she said that it hurt. I
13 then asked her if it hurt when she used the bathroom and
14 she said yes, it did hurt to pee and then I asked her
15 for how long did she hurt and she said for the rest of
16 the morning. I also asked her if the person used a
17 condom or lotion or creams and if there was any other
18 substances used or was given to her and then I also
19 asked her if she remembered whether or not there was any
20 he ejaculation and she said she did not remember at that
21 time.

22 Q. Okay. All right. And based on the statements
23 that she made to you does that sort of dictate the way
24 you conduct your exam?

25 A. It does. Typically when I do the exam the

1 child is in the room. Usually the caregiver is in the
2 room. I conduct a general physical examination so I
3 usually start from the top looking at the ears and eyes.
4 Again, do a general medical examination. At the end I
5 do the genital exam. If the patient says that there was
6 discomfort or pain then I am looking at the several
7 areas in between, which is part of the normal
8 examination. I will separate the labia. I usually will
9 look at the urethra. I take a look at hymenal opening,
10 in between the folds, the vestibule area which is in
11 between the folds to see if there is any signs of injury
12 or trauma at that time.

13 Q. And did you do so in this case?

14 A. I did.

15 Q. Okay, and what were your findings?

16 A. So for Miss Hardin I noted that she was in
17 stage three of puberty. So she has gone through
18 puberty. That her hymen is estrogenized meaning that
19 there is sign of estrogen hormonal effect on the
20 genital, but at the time there was no redness or
21 erythema, which is just another word for redness, cleft
22 or transection which is an another word for tears, that
23 are either healing or part of her normal exam.

24 Q. How long does it typically take a tear to
25 heal. Obviously it depends on the severity?

1 A. Exactly. Usually genital injuries can heal
2 anywhere between three days or within 72 hours and that
3 is something as mild as redness or some mild bruising.
4 Even something as significant as a lot of bruising and
5 tears can heal within five to seven days.

6 Q. Okay. And can you tell me what you observed
7 with regard to her hymen. I know you said it was
8 estrogenized and it appeared she was going through
9 puberty. Was it intact?

10 A. Typically we actually try not to use the word
11 "intact" because that some times gives a different
12 connotation. What we usually note is there redness,
13 which means is there any irritation and there was not.
14 Were there any tears -- well, can I explain?

15 Q. Please. Yes.

16 A. Typically with the hymen -- I will use this as
17 a demonstration. Typically your hymen especially once a
18 girl has gone through puberty it's not as thin and its
19 not -- it's not as thin or it's a little bit thicker
20 once they have gone through puberty and it is a little
21 bit more folded. So if I use this glove as example,
22 once a girl goes through puberty and she's started to
23 get estrogen and she is starting to have a vaginal
24 discharge, a woman or young girl's hymen can look kind
25 of like this glove that's folded. So when we say

1 intact, what I am trying to explain is as I make a line
2 along the hymenal edge, so I am trying to take a look at
3 the edge like unfolding the glove or unfolding the edge
4 of the hymen, is there any tears, anything that starts
5 from the edge and goes down to the base of the vaginal
6 wall. So in that sense it was intact, meaning I did not
7 see a tear on the edges of the hymen that goes to the
8 vaginal wall, but the hymen was open so you can see into
9 the vaginal wall, but that is normal finding for most
10 woman.

11 Q. Okay. And can you explain that when you say
12 that is normal finding for most woman. Can you explain
13 about hymens what go through as people, or woman, go
14 through life?

15 A. Yes. I would say the most common myth is that
16 before a young female has sexual intercourse that the
17 hymen is completely closed. As it's a sheet of an
18 curtain and there is no continuation between the
19 external part of her body and the inside of the vaginal
20 canal. The majority of females, over ninety percent are
21 going to have a hymen that is open. Meaning when you
22 separate the lips of the baby you will see the hymen and
23 then you can actually see into the vaginal canal. Once
24 a young lady goes through puberty that hymen becomes a
25 lot thicker. It becomes a little bit more redundant so

1 it folds on itself. But if you separate then that hymen
2 actually will open. The other common myth is that there
3 is a distinction in size as to how large that hymen
4 should open versus not. And there is no distinctive
5 size that the hymen should be or that opening should be.
6 That all varies depending on the person.

7 Q. Okay. When you look at a person's hymen can
8 you tell if something has been inserted into them simply
9 by the state of the hymen?

10 A. No, you can not.

11 Q. Could you explain that please?

12 A. Okay. Again I am going to use the glove as an
13 example or you could use the inside of your cheek. The
14 tissue of your genitals of the hymen area is just as
15 elastic as the inside of your cheek. So just as if you
16 would put your finger in your mouth and then extend your
17 finger into your cheek and you can see your finger
18 poking through if you release that you are not going to
19 see any injury or damage to the inside of your cheek
20 depending of course on how hard you do that or if you
21 cause injury.

22 The hymen tissue is just as elastic. So something
23 can actually go through the hymen and into the vaginal
24 canal, distend that tissue because it is designed to
25 stretch on purpose and it then it can recoil. There has

1 been in the literature studies where they have young
2 girls, adolescents, who have voluntarily provided
3 history that they were sexually active or there have
4 been girls who actually were woman who have been
5 pregnant and their hymen looks as intact or without
6 tears just as those who claim they had been sexually
7 abused.

8 Q. And you obviously know if someone is pregnant
9 that something happened?

10 A. Right. Especially if that's their given
11 history.

12 Q. And did -- what else did you observe as a
13 result of your examination of Minor 1 if anything?

14 A. And just to clarify you mean her physical
15 exam?

16 Q. Right.

17 A. That was my conclusion of her physical exam.
18 She did not have any finding on physical exam.

19 Q. As you do these forensic exams of these
20 children are you familiar with ejaculation,
21 pre-ejaculation and DNA that's involved in these
22 situations, or somewhat familiar?

23 A. I'm somewhat.

24 Q. Can you explain to us about DNA and where you
25 find it in the body?

1 A. Typically when I'm doing my physical exam that
2 might come in to play if I have to do a 72 hour type of
3 examination and so I do ask, I did in this case, ask
4 whether the patient did ejaculate or did they not
5 ejaculate. If it is going to be within 72 hours whether
6 or not evidence has to be collected and the second part
7 has to do with looking for any type of sexually
8 transmitted diseases. So that's why I typically ask the
9 patient when I come to see them. If the person has not
10 -- what she can remember ejaculate, but the male does
11 have pre-ejaculate. Typically there is some semen or
12 sperm in that pre-ejaculate. Not necessarily as much as
13 a full ejaculation, but typically from what I understand
14 there is still DNA or there is still sperm in that
15 pre-ejaculate.

16 Q. Okay, and if you can tell the jury where is
17 DNA found in a person's body?

18 A. Can you clarify that?

19 Q. Yeah, I mean do you find it in your saliva?
20 Do you find it in your blood? Do you find it in your
21 pre-ejaculation? Do you find it in your ejaculation?

22 A. All of the above, yes.

23 Q. And in your opinion is the symptoms that Minor
24 Hardin presented -- I mean with regards to all of your
25 observations with regard to the statement that she made

1 about her urination being painful, is that consistent
2 with the things that she told you happened to her?

3 A. Yes, it is. Typically, again, the reason why
4 I do ask those questions, how does that feel to them.
5 Whether it hurt, whether it did not hurt. Some also can
6 lead me when I am doing my exam to take a look at those
7 specific areas. The fact that Minor 1 said that it
8 felt even with the demonstration that something went in
9 between her labia folds and that is separating her
10 labia, demonstrating with my hand. The fact that she
11 also said that it hurt with urination was consistent
12 with the fact that someone -- something did go between
13 the labia and touch her, either her urethra or that
14 hymen area and then cause irritation at that moment.
15 And that was consistent with what the history that she
16 told me.

17 MS. HALL: Your Honor, at this time the
18 State would offer State's Exhibit 2 into
19 evidence with modifications.

20 THE COURT: Say that again.

21 MS. HALL: We are offering State's 2 into
22 evidence with the understanding that there might
23 be some things we need to discuss about that
24 later.

25 MR. NELSON: Without objection as long as it

1 is not published to the jury until after we go
2 through those modifications.

3 THE COURT: All right. States 2, ID only at
4 this time, subject to redaction and would not be
5 published until such time as properly redacted
6 and approved by the Court.

7 MR. NELSON: Thank you, Your Honor.

8 Q. Doctor Singleton, in your report you said you
9 saw her on November the 19th, is that correct?

10 A. Yes.

11 Q. Okay. What date did she report having the
12 incident? The date where she reports having these
13 things happened to her? What date did she report that
14 happen, if you know?

15 Let me ask you this way. Based on the way that you
16 conducted your exam was it outside of the 72-hour
17 window?

18 A. Just reviewing my paperwork here.

19 Q. Take your time.

20 A. I will say in my protocol the referral came to
21 me, came to the office on November 12th and I examined
22 her on November 19th.

23 Q. Okay.

24 THE COURT: I handed her the report. I
25 handed the report to the court reporter. I

1 don't know if it is on there or not.

2 MS. HALL: All right.

3 Q. But you saw her on the 19th?

4 A. Right.

5 Q. So the injury if this had happened -- you say
6 that some times these injuries, if there are injuries,
7 that they heal within a reasonable -- like five, ten
8 days, depending on the type of injury that it is; is
9 that correct? Is that what you said?

10 A. Yes, I did.

11 Q. All right. So the fact that she didn't have
12 any injuries at the time you saw her if this incident
13 had happened 16 days prior to you actually seeing her
14 then her not having any injuries at the time you saw her
15 is still consistent with what she said happened to her?

16 A. Very much so, yes.

17 MS. HALL: Thank you. Please answer any
18 questions Mr. Nelson may have.

19 THE COURT: Thank you, solicitor. Mr.
20 Nelson.

21 MR. NELSON: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. NELSON:

24 Q. You went through a great deal of symptoms that
25 if an injury had happened, if an assault had taken place

1 that Minor would have been feeling at that time, correct?

2 A. No, I believe what I stated was the symptoms
3 that Minor had stated to me of what she was feeling.

4 Q. Okay. And those were -- those were the same
5 as a normal person would feel if they had gone through
6 sexual assault, correct? That's what you testified to.
7 That would be normal for someone who has gone through a
8 sexual assault?

9 A. No. That is what Minor had stated had happened
10 to her. I can not speak on what other patients have
11 might have felt. I can only speak on what my patient
12 had told me.

13 Q. And when -- and you saw Minor on the 19th of
14 November correct, 2013?

15 A. Yes.

16 Q. And at that time from your testimony she
17 wasn't exhibiting any of these symptoms, correct?

18 A. Correct.

19 Q. And she -- and from your testimony I want to
20 make sure that I heard it correctly. You testified that
21 at that time there were no tears, no redness, nothing
22 like that, correct?

23 A. Correct.

24 Q. From your experience as a doctor and
25 especially your experience as a doctor examining

1 sexually abused children, what else can cause injury to
2 that area? Is there anything besides sexual assault
3 that can cause injuries to those areas?

4 A. There can be other injuries that could cause
5 other mechanisms of injury. As a sexual assault
6 physician my responsibility is to take all of those
7 possibilities, but also depending on what's the history.
8 Just as if I was in my general office. If an injury
9 comes in I still take the medical history from both the
10 patient and the child and then apply that history to the
11 injuries that I am seeing and then is to say, is that
12 consistent with what I am seeing or is it not consistent
13 with what I am saying.

14 Q. Okay.

15 A. So are there other mechanisms to a lot of
16 injuries, yes, but I can only take the history that the
17 child and the parent gives to me and apply that to what
18 she is saying and seeing whether that is consistent or
19 not.

20 Q. If Minor had an injury, would the symptoms that
21 you talked about that she reported to you, things like
22 hurting when she pee and pain in her vaginal area, would
23 that be consistent with other types of injuries as well,
24 not of an assault nature?

25 A. It's possible.

1 Q. Okay. Thank you.

2 MR. NELSON: No further questions, Your
3 Honor..

4 THE COURT: Any redirect?

5 MS. HALL: Just one real quick thing.

6 REDIRECT EXAMINATION

7 BY MS. HALL:

8 Q. To clarify that. Minor reported things to you
9 like it hurts to pee and when he put his penis inside of
10 her what she called his private area that it hurt?

11 A. Yes.

12 Q. And based on those statements and the symptoms
13 that she said she felt afterwards is that consistent; of
14 hurting to pee, is that consistent with having --

15 MR. NELSON: Your Honor, objection. Asked
16 and answered on direct and I didn't go into it
17 on redirect.

18 THE COURT: Overruled.

19 A. The history that she gave me that you stated
20 was consistent with her history and also then also I
21 applied to the examination that I performed. But her
22 statements were consistent with her symptomatology. The
23 symptoms that is she reported, yes.

24 Q. And her statements were also consistent with
25 your findings?

1 A. Exactly.

2 MS. HALL: Thank you.

3 THE COURT: Mr. Nelson?

4 MR. NELSON: No further questions.

5 THE COURT: Thank you. Thank you, very
6 much. Thank you for being with us today.

7 MS. HALL: We ask that this witness be
8 excused.

9 THE COURT: Any objection?

10 MR. NELSON: No objection.

11 THE COURT: You may step down. You may be
12 excuse.

13 MS. HALL: The State calls Amanda Huey.

14 AMANDA HUEY, called as a witness, having
15 been duly sworn by the clerk, was examined and
16 testified as follows:

17 THE COURT: All right, solicitor.

18 MS. HALL: Thank you.

19 DIRECT EXAMINATION

20 BY MS. HALL:

21 Q. You stated your name is Amanda Huey?

22 A. Yes, ma'am.

23 Q. Where were you employed back on November the
24 3rd of 2013?

25 A. City of Chester Police Department.

1 might be helpful in deciding the case.
2 Remember you decide the case based on the
3 evidence and the testimony presented before you
4 in the courtroom and the law as I tell you the
5 law is.

6 With that you are excused for your luncheon
7 recess. As I say be back promptly at two
8 o'clock, 1400 hours. Hope you all have a
9 pleasant lunch. Thank you. Thank you, very
10 much. You may now be excused. Go with the
11 bailiff. Thank you.

12 (WHEREUPON, jurors leave the courtroom.)

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

15 MS. HALL: No, sir, Your Honor.

16 THE COURT: Defense?

17 MR. NELSON: No, sir, Your Honor.

18 THE COURT: Thank you, very much. The
19 Court will be in recess until two o'clock.

20 (WHEREUPON, the court recessed for lunch.)

21 THE COURT: All right, have you redacted --

22 MS. HALL: We have.

23 THE COURT: And do you agree to it?

24 MS. HALL: We do.

25 MR. NELSON: Your Honor, of course I am

1 still objecting to them coming in completely
2 801(D)(1) -- 801 (1)(D)(1) and Smith v South
3 Carolina.

4 THE COURT: I thought these were medical
5 records.

6 MR. NELSON: And I am saying that Smith v
7 South Carolina and 801(D)(1)(D) makes it so they
8 shouldn't come in all together. But if we are
9 going to bring them in I understand the redacted
10 version is better then the non-redacted version.

11 THE COURT: I thought you objected to my
12 ruling under the 801 D (1) or whatever.

13 MR. NELSON: Yes, Your Honor.

14 THE COURT: That had to do with verbal
15 statements that were testified to by Miss Head.
16 You didn't object on that ground. These are
17 statements. If I understand what I am ruling
18 on, these were not statements by the party
19 opponent. That was Miss Head's testimony about
20 conversations she had with Mr. Lowery. I
21 sustained your objection as far as his denial
22 because that was a statement against his
23 interest.

24 MR. HALL: Yes, Your Honor.

25 THE COURT: But I let the others in where

1 he, again, I characterize it as oral statement
2 what he told Miss Head, I think it's is
3 admission against his interest, against the
4 party opponent. If you are saying the documents
5 presented, the State presented through nurse
6 Propst and through nurse -- through Doctor
7 Singleton, I'm not allowing them under 801. I
8 would agree they are hearsay, but the exception
9 of the hearsay rule is 803 (4); statement made
10 for the purposes of medical diagnosis or
11 treatment describing medical history or past or
12 present symptoms. That's what I thought you all
13 were redacting.

14 MR. NELSON: And I understand you are
15 letting them in under that hearsay exception,
16 Your Honor. I am just saying that I think that
17 they still should be kept out 801(D)(1)(D). I
18 just want that objection on the record, Your
19 Honor. I'm not saying that you are going to
20 change your ruling by any stretch of the
21 imagination. I'm just saying that -- I'm not
22 saying that I agree that these should come in.
23 These are coming in over my objection due to
24 your ruling on the 803 hearsay exception.

25 THE COURT: 803 (D)(1)(D. Well, that may be

1 an additional sustaining ground since they are
2 consistent with the declarant's testimony in a
3 criminal sexual conduct case or attempted
4 criminal sexual conduct case where the declarant
5 is the alleged victim and the statement is
6 limited to the time and place of the incident.

7 All right. Thank you. As I said I wasn't
8 really tracking that.

9 MR. NELSON: And I apologize if I didn't
10 pontificate that correctly, Your Honor.

11 THE COURT: All right. But what we now have
12 before us -- we still have your objection.

13 MR. NELSON: Yes, Your Honor.

14 THE COURT: Tell me about the redaction.
15 Initially -- initially, from the nurse's
16 testimony you had no objection. You didn't
17 object.

18 MR. NELSON: No, that's where I did object.
19 I did not object with the doctor's testimony.

20 THE COURT: No, sir. On the nurse's
21 testimony you did not object. Before I ruled I
22 asked to see it and I started looking at it and
23 then you all came up here and you said, well, on
24 second thought I do object because there were
25 issues I had with it. As I recall. The record

1 will bear that out.

2 I am trying to get where we are at in the
3 objections. I have overruled the objections
4 except to the extent that the evidence that is
5 not admissible would be redacted. In other
6 words who did it.

7 MR. NELSON: Yes.

8 THE COURT: Whoever did it is not for
9 purposes of diagnosis. It doesn't matter who
10 did it.

11 MR. NELSON: I believe, Your Honor, we have
12 redacted a little bit more than that. We
13 redacted everything other than what is
14 completely necessary for medical diagnosis.
15 Under your ruling you are letting them in under
16 that reason.

17 THE COURT: If you all have agreed to the
18 redaction that is fine.

19 MR. NELSON: My point is I am just -- they
20 are coming in over my 801 objection that we have
21 already been over.

22 THE COURT: All right. Thank you. Thank
23 you, very much.

24 MS. HALL: Your Honor, I do need to move --
25 we did enter subject to the redaction that we

1 have agreed to -- we entered number eight, but I
2 still need to move number two in because that we
3 didn't enter and we will wait to redact that.

4 THE COURT: You need to do that front of the
5 jury.

6 MS. HALL: Do you want to see them though?

7 THE COURT: No, ma'am. If you all agreed to
8 it I am not going to stir that soup any more.
9 Solicitor, anything further before we bring in
10 the jury?

11 MS. HALL: No, sir.

12 THE COURT: Mr. Nelson?

13 MR. NELSON: No, Your Honor.

14 THE COURT: Please bring the jury in.

15 (WHEREUPON, the jury enters the courtroom.)

16 THE COURT: Welcome back ladies and
17 gentlemen. I hope you all had a pleasant lunch.
18 I have appointed Miss Brown as the foreperson of
19 our jury. Thank you, very much Miss Brown for
20 volunteering to serve in that very important
21 position. You will be the juror's spokesperson
22 herein the courtroom, and are also responsible
23 for signing, dating and writing out the verdict
24 on the verdict form. I will explain that to you
25 before prior to submission of the case for the

1 your deliberation.

2 Solicitor you have two documents you wish to
3 introduce into evidence?

4 MS. HALL: Yes, sir. I believe State's
5 Exhibit Number 8 is already entered in. The
6 State would move State's Exhibit Number 2 which
7 is the report from Doctor Singleton into
8 evidence at this time.

9 THE COURT: And those are subject to
10 objections Mr. Nelson?

11 MR. NELSON: Yes, Your Honor.

12 THE COURT: And in addition to the
13 objections I directed the attorneys to redact
14 certain portions of them.

15 MR. NELSON: Yes, Your Honor.

16 THE COURT: And without waiving any of your
17 client's rights under the objection, you all
18 agreed to the redacted portions, if I am
19 allowing them in subject to your objection?

20 MR. NELSON: Yes, subject to our objection
21 we are agreeing to the redactions that are in
22 that document.

23 THE COURT: All right. Then ladies and
24 gentlemen, State's 8 and State's 2 are now in
25 evidence subject to objection. There are

1 portions of those documents that are redacted.
2 In other words I don't know if you just took a
3 black writing pen and blacked them out or whited
4 them out.

5 (State's Exhibits 2 and 8 received in
6 evidence as of this date.)

7 MS. HALL: Yes, Your Honor, we took a black
8 marker and then we blacked them out and then we
9 copied them so you wouldn't see through and they
10 are attached to those documents.

11 THE COURT: I will direct you, Madame
12 forelady, ladies and gentlemen of the jury, do
13 not give any weight or any value to the fact
14 that those documents have been redacted. They
15 have been redacted by Order of the Court, by
16 operation of our rules of evidence. Evidence as
17 it come in doesn't come in on one pencil point.
18 It comes in from different witnesses, different
19 directions and I ruled that those parts of those
20 documents were not admissible. Don't hold it
21 for or against the State. Don't hold it for or
22 against Mr. Lowery, the fact that the documents
23 have been redacted.

24 All right. Thank you. Thank you, very
25 much. Solicitor you may call your next witness.

1 MS. HALL: Thank you, Your Honor. The State
2 call Verona Gibson.

3 VERONA GIBSON, called as a witness, having
4 been duly sworn by the clerk, was examined and
5 testified as follows:

6 THE COURT: All right, solicitor.

7 MS. HALL: Thank you.

8 DIRECT EXAMINATION

9 BY MS. HALL:

10 Q. Miss Gibson, state your name for the record
11 again please.

12 A. Verona Gibson.

13 Q. And where are you employed?

14 A. South Carolina Law Enforcement Division which
15 is also referred to as SLED.

16 Q. And how long have you been employed there?

17 A. Approximately six and a half years.

18 Q. And what are your duties in the course of your
19 employment at SLED, or what were they back in November
20 -- well, from November until now are they the same?

21 A. Yes, they are the same.

22 Q. Okay, good. If you could explain to us what
23 those duties are?

24 A. I am the evidence processing technician in the
25 DNA department. We get larger pieces of items of

1 evidence of such as clothing, bed linen, car parts,
2 guns. We process those for biological fluids such as
3 semen, saliva, blood and we also do what is called touch
4 DNA or ownership DNA and collect hairs.

5 Q. And I am going to show you what has been
6 marked as State's-- let me ask you this first.

7 Are you familiar with chain of custody reports?

8 A. Yes, ma'am.

9 Q. And what are they? What are they intended to
10 do?

11 A. They are a record of every item that came in
12 to SLED for a specific case. Every person that touched
13 that item or every location that item resided, and it
14 records the person, the location, the date, the time
15 that it went in to that place or person's custody and
16 when it was moved to the next person. It follows those
17 items of evidence all the way through from the time they
18 are logged in until they are sent back to the agency
19 that submitted them.

20 Q. Okay. I am going show you what has been
21 marked as State's Exhibit 10 for identification
22 purposes. Can you tell me what that is?

23 A. This is the verified chain of custody for our
24 case number L-13-1264.

25 Q. All right. And is that document kept in the

1 normal course of business at the law enforcement
2 division?

3 A. Yes, ma'am. Every case -- we generate one of
4 these for every case that comes in the door when it
5 leaves.

6 Q. And when you were explaining the process
7 before of logging things in and tracking each person who
8 has them and where they go. Were all of those things
9 shown on that document? Are they noted on that
10 document?

11 A. Yes, ma'am, they are on that record.

12 Q. And that's the purpose of that document?

13 A. That's correct.

14 MS. HALL: The State would move Exhibit
15 10 into evidence under the business record.

16 MR. NELSON: No objection, Your Honor.

17 THE COURT: State's 10 is in evidence
18 without objection.

19 (State's Exhibit 10, received in evidence
20 as of this date.)

21 Q. And on L-13-14624 you talked about that being
22 the subject of that verified chain of custody. Is that
23 also -- were you assigned to do anything, any work on
24 that case?

25 A. Yes, ma'am.

1 Q. Okay. And tell me what that would have
2 entailed or what you did as a result of that assignment?

3 A. There was a pair of underwear submitted as
4 part of this case. The request for the underwear was
5 for semen. I would look at that item of evidence under
6 what we call and alternate light source. It's basically
7 just a different wavelength of light that allows body
8 fluids to florescence. Then those areas are circled and
9 test those with presumptive chemicals. It's just a
10 quick color change test. If it changes to a purple'ish
11 color there's a possibility that stain may be semen.
12 And then those areas would be cut and forwarded for
13 further testing.

14 Q. I am going show you what has been marked as
15 State's Exhibit 2 for identification purposes also. Did
16 you -- did you -- what is that?

17 A. Item two is the pair of underwear that I
18 received to process, and from the packaging I can tell
19 my initials and the date that I sealed it are here. On
20 the inside here, our item number, my initials, the lab
21 number and the date that I wrapped it back up in the
22 paper is there as well.

23 Q. Okay. And when you receive this item in
24 particular how could you tell -- what condition was it
25 in when you got it?

1 A. It would have been sealed or I would have made
2 a notation on my paperwork and stop processing and
3 contacted the agency and my supervisor.

4 Q. Okay, but you didn't do that?

5 A. I did not, no, ma'am.

6 A. So that indicates to you that it was sealed.

7 A. Yes, ma'am.

8 Q. Okay. And could you explain the login process
9 at SLED to me and tell us where you got this item?

10 A. Sure. Our login or evidence control
11 department, agencies bring in evidence to SLED. They
12 record that evidence under a unique lab number for each
13 case as it is brought through the door. Each item of
14 evidence is given a specific item number within that
15 case. Then they either hold the evidence for the
16 different departments until they are ready for the
17 analyst to work it or they send it to the department
18 that needs the evidence.

19 Then that evidence is returned to them and they
20 return it to the submitting agency when they bring in
21 other evidence. So they're basically our evidence
22 control. They store all of our evidence and distribute
23 it as it need to be.

24 Q. Okay. And with regard to item number two, you
25 say that was received from the agency. Which agency was

1 this item received?

2 A. That would have been from Chester Police
3 Department.

4 Q. Okay. And then like you said you got it in a
5 sealed fashion and you opened it and you said this is
6 for item number two that was the underwear. You had
7 stated again, a moment ago, that you had taken a cutting
8 from the underwear; is that correct?

9 A. That is correct.

10 Q. And was that pursuant to light, when you
11 shined the light you had some indicia that there was
12 something on it that needed further analysis?

13 A. That's correct. The light -- the alternate
14 light source that we use indicates the areas that could
15 possibly be body fluids. Then those are tested with a
16 presumptive test which means it's possible -- if it is a
17 positive result it's possible that substance could be
18 semen. There was an area that tested positive so that
19 area was cut and forwarded for further testing.

20 Q. And when you cut it, when you opened item
21 number two, which is State's Number 6 and you said you
22 did the cutting on it. I've just handed you State's
23 Exhibit 4 and can you tell us what that is?

24 A. This is the coin envelope I sealed that
25 cutting in. So it's an actual cutting of fabric. It's

1 sealed in this coin envelope. My initials and the date
2 are here. The front is filed out with the lab number
3 and what the item is. Then it is sealed in this heat
4 sealed pouch where you can see my initials and the date
5 here and then it is forwarded for further testing.

6 Q. And in this instance where did you forward
7 that for further testing?

8 A. This went to our serology department. I gave
9 it to the serology technician, Jessica Herron.

10 Q. All right, I am going to show you what is
11 marked as State's Exhibit 9. What is that?

12 A. This is a copy of the report based on the work
13 I did in this case.

14 Q. And what does it indicate on your report?

15 A. That I received a pair of underwear. I took a
16 cutting from the exterior rear left side and that
17 testing for acid phosphatase was positive. The presence
18 of acid phosphatase is indicative of semen, however this
19 chemical may also be present in other body fluids. Item
20 was forwarded to the DNA section to determine the
21 presence or absence of semen.

22 Q. And you made that report, is that correct?

23 A. I did not make that report. I tested the
24 evidence and used an alternate light source and
25 forwarded all the the cuttings and stuff. It's our

1 policy that DNA analyst or serologist write evidence
2 processing report. That way there's an extra level of
3 scrutiny to our work.

4 Q. Okay. And that fact is noted on page two of
5 this report is it not?

6 A. That is, yes, ma'am.

7 Q. But these are -- this documents what you did
8 and what you reported that you had done, is that
9 correct?

10 A. Yes, ma'am.

11 MS. HALL: All right, the State would
12 move Exhibit 9 into evidence.

13 THE COURT: Mr. Nelson.

14 MR. NELSON: Without objection.

15 THE COURT: State's 9 is in evidence without
16 objection.

17 (State's Exhibit 9, Report, receive in
18 evidence as of this date.)

19 MS. HALL: I don't have anything further
20 for you. Please answer any questions Mr.
21 Nelson may have.

22 THE COURT: Yes, sir.

23 MR. NELSON: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. NELSON:

1 Q. Miss Gibson, when you were testing -- you
2 tested the underwear in this case, correct?

3 A. Correct.

4 Q. You already testified to all of that. And you
5 made the cutting. You made a cutting of the underwear,
6 correct?

7 A. From the underwear.

8 Q. From the underwear. And where did you say the
9 cutting came from on the underwear itself?

10 A. It is from the exterior rear left side.

11 Q. From the exterior rear left side of the
12 underwear?

13 A. Yes, sir.

14 Q. Did the stain go all way through the
15 underwear? Let me re-ask that question.

16 When you take a cutting of a piece of cloth like
17 underwear, does the stain normally go all the way
18 through so it is visible on both the front and outside
19 of the underwear?

20 A. It is quite common, yes.

21 Q. Was that the case in this case?

22 A. I have no idea.

23 Q. Okay. And did you take a cutting of anything
24 else in this case?

25 A. No, sir.

1 Q. To send on to serology?

2 A. No, sir.

3 MR. NELSON: Beg the Court's indulgence,
4 Your Honor.

5 No further questions, Your Honor.

6 THE COURT: Redirect solicitor?

7 MS. HALL: Just a couple of questions.

8 REDIRECT EXAMINATION

9 BY MS. HALL:

10 Q. You said this was SLED lab number L-13-14624.
11 Who is the subject identified in the report?

12 A. John Lowery.

13 Q. And who is the victim?

14 A. Minor 1

15 Q. Thank you.

16 MS. HALL: I don't have anything further.

17 MR. NELSON: No further questions, Your
18 Honor.

19 THE COURT: Thank you. Thank you, very
20 much. Any objection to her stepping down and
21 being excused?

22 MS. HALL: None from the State.

23 MR. NELSON: No, Your Honor.

24 THE COURT: Thank you, you may be excused.

25 MS. HALL: Miss Gibson, the State is going

1 to call Jessica Herron next if you wouldn't mind
2 asking her to step in.

3 JESSICA LEANN HERRON, called as a witness,
4 having been duly sworn by the clerk, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. HALL:

8 Q. You stated your full name is Jessica Lee
9 Herron; is that correct?

10 A. Yes.

11 Q. And Miss Herron, where are you employed?

12 A. South Carolina Law Enforcement Division.

13 Q. And what department are you employed?

14 A. I am in DNA case work department.

15 Q. And what are your duties there?

16 A. I am a forensic serologist so I do body fluid
17 identification.

18 Q. And can you tell me about your education and
19 training in this field, please?

20 A. Yes. I have a Bachelors of Science from the
21 University of South Carolina in biological and
22 Chemistry. While at SLED I also took a graduate level
23 course from the University of Florida in biological
24 evidence and serology, as well as many other courses
25 through universities such as West Virginia University,

1 also the National Institute of Justice in courses such
2 as laboratory safety, evidence handling, biological
3 evidence and courtroom testimony.

4 I also completed SLED's inhouse training program
5 under a court qualified DNA analysis and evidence
6 processing technician. Initially I observed many cases
7 before completing a series of tests and tests and
8 supervised case work. At the end I was deemed competent
9 after taking a five-part competency exam.

10 Q. How long have you been employed at SLED?

11 A. Approximately two and a half years.

12 Q. Okay. And how many --if you could estimate
13 during the course of your employment for that two and a
14 half years is it possible for you to estimate how many
15 cases you been involved in?

16 A. Cases -- hundreds. Probably a couple hundred.

17 Q. All right. And I am going to show you what
18 has been marked as State's 11. Tell me what this is?

19 A. This appears to be my serology report.

20 Q. And what case number is that serology report?

21 A. L-13-14624.

22 Q. And who is the subject indicated in that
23 report?

24 A. John Lowery.

25 Q. And who is victim in the case?

1 A. Minor 1

2 Q. And can you explain to us the process of what
3 you do with items of evidence and as you do that if you
4 could go through your report and tell us what's
5 documented as a result of what you did in this case?

6 A. Okay. So initially I got the sexual assault
7 collection kit from Minor 1 I received the
8 evidence. Made sure that it was the correct item
9 number, SLED lab number. Open the evidence and then
10 inventoried the sexual assault kit and then I created
11 lab numbers. So at that point the chain of custody
12 begins with me for those items.

13 Q. Let me ask you this. Where did you received
14 these items?

15 A. I received item one, the CSC kit from Patrica
16 Crooks in the evidence control, our login, the area that
17 stores our evidence. And then item 2.1 I received from
18 Verona Gibson.

19 Q. And let me just skip forward real quick. When
20 you finish with these items -- these two items when you
21 finished your testing analysis on these items what did
22 you do with the items?

23 A. I then returned them to the the evidence
24 control area, the login where they store the evidence.

25 Q. I am going to show you what has been marked

1 State's Exhibit 4. Can you explain the condition these
2 items are in when you get them, in terms of the sealing
3 in the bags.

4 A. Yes, whenever I get an item of evidence I make
5 sure that the heat-sealed pouch, this clear plastic
6 right here is sealed and initialed and make sure that it
7 hasn't been tampered with as well as making sure it is
8 the correct lab number and item number.

9 Q. Okay. And with regard to that item number you
10 received all the item numbers contained in your report
11 in that condition, is that correct?

12 A. Yes, I did.

13 Q. And how do you know they are sealed and not
14 tampered with?

15 A. They all are heat sealed with initials and
16 date, and make sure that the seal is intact and hasn't
17 been broken.

18 Q. If the seal is not intact or is broken what do
19 you do?

20 A. I document it and I inform my supervisor and
21 the submitting agency as well as take photos.

22 Q. And in this instance when you received these
23 pieces of evidence; again, you said it was item number
24 one, which was the rape kit; item two, which was the
25 cutting from the victim's underwear, and item three

1 which is the buccal swab from John Lowery.

2 Were all of those items in a sealed condition?

3 A. Yes.

4 Q. Can you tell us -- did you perform an
5 examination of these items?

6 A. I did. Their request for this evidence was
7 for me to look for semen and that's what I did.

8 Q. Okay. And tell me what you do regard to that?

9 A. As far as examination how I test it or --

10 Q. Yeah, how you -- basically how you test it
11 and what you do and what your findings were for each
12 individual item?

13 A. Okay. So, when I get the kit, like I said a
14 while ago, I inventoried the kit. Everything comes in a
15 dried state, so in this case I had vaginal swabs and
16 oral swabs. I take a small cutting and those swabs
17 contain biological fluid and what I do is I'll do a
18 couple of steps. Mainly I will add water to pull that
19 biological material out and at that point after a couple
20 more steps at this point it's a solution. Now, I will
21 take that solution and I will drop it on a card test
22 just to give you a visual. The card test looks like a
23 pregnancy test. In no way is the chemistry the same,
24 but it's just to give you a visual and depending on how
25 many lines are present that determines if it is positive

1 or negative.

2 Do you want me to read my results?

3 Q. Yes, please, if you would.

4 A. Okay. 1.1 smears, the vaginal and oral, no
5 analysis performed.

6 Q. And why did you not perform analysis on that?

7 A. Because I got a positive test for the vaginal
8 swabs. And what I mean by positive test is this card
9 test looks for a protein call P-30 that is found in high
10 concentrations in seminal fluid. So because that test
11 was positive it's our protocol that we don't have to
12 look at the smears at that time.

13 Q. All right. So you would have tested 1.2 first
14 and found it had you indicated semen in that and it
15 becomes unnecessary to test for vaginal swabs and oral
16 swab is that true?

17 A. It became unnecessary to look at the smears.
18 I did test the oral swabs, yes.

19 Q. Okay.

20 A. And do you want me to keep going.

21 Q. Yes, please.

22 A. Oral swabs no semen identified. Pubic hair
23 combings, no hair found. Victim's buccal swab I
24 forwarded to the DNA section. Suspected body fluid
25 swab, semen indicated. Item forwarded it to DNA

1 section. The debris selection, no analysis was
2 performed. The cutting from the underwear, semen
3 indicated. Item forwarded to DNA section. Buccal swabs
4 from John Lowery, items forwarded to the DNA section.

5 Q. Okay. So basically -- and let me just go
6 back. This report that you are holding, State's Exhibit
7 11, is that a report that you generated in the normal
8 course of your job?

9 A. Yes.

10 Q. And it does indicate your findings like you
11 stated before, correct?

12 A. Yes.

13 Ms. Hall: State would move 11 into
14 evidence at this time.

15 MR. NELSON: No objection, Your Honor.

16 THE COURT: State's 11 is in evidence
17 without objection.

18 (State's Exhibit 11, Analysis, received in
19 evidence as of this date.)

20 Q. So if we boil it all down, basically the
21 vaginal swabs you sent to the DNA section?

22 A. Yes.

23 Q. Because you had semen indicated?

24 A. Right.

25 Q. The suspected bodily fluids you sent to the

1 DNA section because their was semen indicated?

2 A. That's correct.

3 Q. And the cutting that you got from the
4 underwear there was semen indicated on that so you also
5 sent that to DNA, right?

6 A. That's correct.

7 Q. Along with the standard buccal swabs that were
8 from the victim as well as from the defendant?

9 A. Yes, that's correct.

10 Q. So those I guess those five items went to the
11 DNA section?

12 A. Yes.

13 Q. And you stated before that ones that you
14 either didn't test or that there was no semen indicated
15 that those were returned to evidence control, is that
16 right?

17 A. Well, items 1.1 through 1.7 whether they
18 reported or not they are all inside item one so they all
19 did get forwarded to DNA department.

20 Q. So basically you forwarded everything to the
21 DNA?

22 A. Yes, basically.

23 MS. HALL: Thank you. I have no further
24 questions.

25 THE COURT: Mr. Nelson.

1 MR. NELSON: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. NELSON:

4 Q. So in this case the only three things that
5 were forwarded to DNA were the vaginal swabs, the
6 cutting from the underwear and --

7 MR. NELSON: Excuse me, Your Honor for one second.

8 Q. -- and suspected bodily fluids, correct?

9 A. As well as the buccal swabs. So that would be
10 five.

11 Q. As well the two buccal swabs. One from the
12 the defendant and one from the alleged victim, correct?

13 A. That is correct.

14 Q. And you went through the process of how you
15 test, how you test the cuttings and the bodily fluids
16 and all of those things. Before you stick on what you
17 said is kind of like but completely dissimilar to a
18 pregnancy test, do you know if it is even DNA?

19 A. I wouldn't know it is DNA. That is not my
20 job. I'm not DNA analyst.

21 Q. Would you know if it was even bodily fluids
22 before you put it on that strip?

23 A. I would not.

24 Q. Okay. All right.

25 MR. NELSON: Beg the Court's indulgence.

1 No further questions.

2 THE COURT: Redirect, solicitor?

3 MS. HALL: Just briefly.

4 REDIRECT EXAMINATION

5 BY MS. HALL:

6 Q. With regard to 1.2 the vaginal swabs, did you
7 determine that was bodily fluid?

8 A. Semen was indicated.

9 Q. Okay, and with regard to 1.6 which is
10 suspected bodily fluid swab, did you again find on that
11 swab that semen was indicated?

12 A. I did.

13 Q. And also on 2.1, the cutting from the
14 underwear, you also found semen was indicated on that?

15 A. I did.

16 Q. And all that is shown from the little
17 pregnancy test on the card?

18 A. Yes, it is.

19 MS. HALL: Thank you.

20 THE COURT: Redirect -- recross?

21 MR. NELSON: No, Your Honor.

22 THE COURT: Thank you, thank you very much.

23 MS. HALL: We ask that she be excused at
24 this point.

25 THE COURT: Any objections to this agent

1 being dismissed.

2 MR. NELSON: No, Your Honor.

3 THE COURT: Thank you. Thank you, very much
4 for being with. You may step down.

5 MS. HALL: Ms. Herron, would you ask Sam
6 Stewart to come in.

7 MS. HERRON: I will.

8 THE COURT: Miss Stephens?

9 MS. HALL: Sam Stewart.

10 THE COURT: Mr. Stewart?

11 MS. HALL: Yes, sir.

12 SAMUEL ALLAN STEWART, called as a witness,
13 having been duly sworn by the clerk, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. HALL:

17 Q. You stated your name is Samuel Allan Stewart,
18 that is correct?

19 A. That is correct.

20 Q. And where are you employed?

21 A. I work for South Carolina Law Enforcement
22 Division commonly known as SLED.

23 Q. How long have you worked there?

24 A. Approximately three years.

25 Q. And what is your background and education and

1 how did you start to work at SLED?

2 A. I received my bachelors of Science and biology
3 from Francis Marion University. I also received
4 in-house SLED training for over a year and a half where
5 I had to successfully complete written exam, an oral
6 exam, a competency and a mock court in order for me to
7 be deemed competent as a forensic scientist in a DNA
8 case work department.

9 Q. And do you indeed work in the DNA case work
10 department?

11 A. Yes, I do.

12 Q. How many cases or DNA analysis have you been
13 asked to perform and have performed?

14 A. Hundreds.

15 MS. HALL: The State would offer Mr.
16 Stewart as an expert in DNA analysis.

17 THE COURT: All right, Mr. Nelson?

18 MR. NELSON: No objection, Your Honor.

19 THE COURT: All right. Again, madame
20 forelady, ladies and gentlemen of the jury, you
21 heard this several times before. Normally a
22 witness can not testify or give opinion
23 testimony unless it is something they either
24 saw, heard or sense by smell or something of
25 that nature. However, there is an exception for

1 witness who have training, education experience
2 in a particular field, art, science, profession.
3 They are allowed to give their opinions and the
4 basis for those opinions if the Court qualifies
5 them that way. This witness or agent, Samuel
6 Stewart will be qualified in the area of
7 forensic DNA testing and analysis to give both
8 opinion testimony and the basis for those
9 opinions in that field. That does not mean that
10 you must accept the opinions, but it is evidence
11 for you the jury to use in any way you see fit.

12 Thank you. Thank you, very much solicitor,
13 you may continue.

14 MS. HALL: Thank you.

15 CONT'D DIRECT:

16 Q. Could you explain DNA in layman's term and how
17 it works?

18 A. Yes, I can. DNA stands for deoxyribonucleic
19 acid. It is a genetic material that is in every cell
20 excluding red blood cells, that we receive from other
21 parents which determine our eye and hair color. DNA is
22 contained in dense packets known as chromosomes, which
23 are found in every cell in the human body except red
24 blood cells, like I said earlier. We receive half of
25 our chromosomes from our mother and the other half from

1 our father. And we target certain locations on those
2 chromosomes known as STR, which stands for short tandem
3 repeat and we look at 16 different locations on those
4 various chromosomes to develop what is know as DNA
5 profile which we used to identify a person from another
6 person, excluding identical twins.

7 Q. I am going to show you what has been marked as
8 State's Exhibit 12. Can you tell me what this is?

9 A. This is a report that I developed for our lab
10 case number L-13-14624.

11 Q. And who is the listed subject in that report?

12 A. John Lowery, II.

13 Q. And who is the listed victim in that report?

14 A. Minor 1

15 Q. Okay. And you said you generated this report
16 as part of your work?

17 A. That is correct.

18 Q. Okay. Could you explain to the jury what you
19 did -- what you did in course of this case?

20 A. No problem. I received in this case buccal
21 swabs on Minor 1 buccal swabs from John Lowery, II,
22 and I also received vaginal swabs, suspected bodily
23 fluid swabs and cutting from underwear which I proceeded
24 to do DNA analysis on these items.

25 Q. And when you received these items -- let's

1 just take State's Number 5, which is the buccal swabs
2 from John Lowery. Would you explain to the jury the
3 condition that you received this in and how it is
4 packaged and everything?

5 A. No problem. This buccal swab was received to
6 me in this heat-sealed pouch. This is to insure it was
7 not tampered with, and I have my -- I recognize it
8 because it has my initial and date. When I opened into
9 this heat-sealed pouch and when I also sealed it back up
10 with my initials and date.

11 Q. Okay. And you know it was received in a
12 heat-sealed pouch that had not been tampered with. How
13 do you know that?

14 A. Because that is our SLED policy. Evidence
15 comes in a heat-sealed pouch to make sure whoever goes
16 in and goes out is recorded.

17 Q. Okay. So, if you say you received a piece of
18 evidence and it was not properly sealed what would you
19 do with it?

20 A. I would not do any analysis on it.

21 Q. But since you did analysis on these items
22 listed in your report it's safe to assume that they were
23 properly sealed; is that correct?

24 A. That is correct.

25 Q. Okay. What type of analysis did you do? What

1 was the goal of your analysis?

2 A. Well, we usually ask for standards preferably
3 so we can compare to the evidence with the people who
4 are involved in that case. So we have the standards
5 from Miss Hardin and Mr. John Lowery to compare to the
6 evidence that I received which was a vaginal swabs, the
7 suspected bodily fluid swabs and the cutting from the
8 underwear.

9 Q. And when you did the analysis on -- I am going
10 to ask you speak loudly I don't know if everybody can
11 hear. I'm having a little bit of trouble.

12 A. I'm sorry.

13 Q. It's the crackling microphone. It's sort of
14 an impediment. On 1.2 on the vaginal swabs can you
15 explain the process that you used and the results take
16 came as a result of your analysis on 1.2, again which is
17 the vaginal swabs?

18 A. No problem. These items that I tested, items
19 1.2, 1.6 and 2.1 they tested positive for the
20 presumptive presence of semen. So when we have item
21 like that what we do is we perform a differential
22 extraction. What we are trying to do is extract out the
23 male DNA and separate it from female DNA.

24 Q. And I am going to ask you if you can just slow
25 down a tiny bit. I talk a little fast, but if you

1 could slow down a little tiny bit that would be great.

2 A. No problem.

3 Q. All right. You said you tried to separated
4 female DNA from the male DNA, is that what you were
5 talking about?

6 A. That is correct. Because the swabs came from
7 her we expect her to be on there. So with the
8 overwhelming amount of her being there we want to try to
9 make sure we try and separate it out so we get a clear
10 cut of the female portion of the DNA and the potential
11 male DNA that may be there as well.

12 Q. And did you -- what were your findings with
13 regard to the vaginal swabs?

14 A. Okay. No DNA profile foreign to Minor 1
15 was developed from item 1.2.

16 Q. So is it safe to say in layman's terms that of
17 all the DNA on the vaginal swabs was Minor 1

18 A. That is correct.

19 Q. All right, and moving on to 1.6 with is
20 suspected bodily fluid swab. Did you perform analysis
21 on that piece of evidence?

22 A. Yes, I did.

23 Q. Would you tell us about that please?

24 A. Okay. The partial DNA profile developed from
25 the sperm fraction of item 1.6 is insufficient for

1 reliable interpretation. The DNA profile developed from
2 the non-sperm fraction of item 1.6 is a mixture of at
3 least two individuals. The DNA profile from the major
4 contributor is attributable to Minor 1 The DNA
5 profile of the minor contributor to this mixture is
6 insufficient for reliable interpretation.

7 Q. What does that mean?

8 A. What that means is that when I spoke earlier
9 about separating out the male from the female, in this
10 one the non-sperm is the female portion and the sperm
11 fraction is the male portion. So the sperm portion of
12 item 1.6 I just did not have enough genetic material to
13 make any kind of determination, so that's why I say
14 insufficient for reliable interpretation. For item
15 1.6 it was a mixture which means that I have possible of
16 two people contributing to that item, but the major
17 contributor I was able to identify as Miss Minor 1
18 but the minor contributor once again I just did not have
19 enough genetic information to make any kind of
20 interpretation so for that one that's why I put
21 insufficient for reliable interpretation.

22 Q. So you would say that 1.6 was just
23 inconclusive?

24 A. That is correct.

25 Q. Now, moving on to item 2.1 which is the

1 cutting from the underwear you received. Did you
2 perform analysis on that piece of evidence?

3 A. Yes, I did.

4 Q. Could you tell us about that please?

5 A. No problem. Semen was identified on item 2.1.
6 The DNA profile developed from the semen on item 2.1
7 matches the DNA profile of John Lowery II. The
8 probability of randomly selecting an unrelated
9 individual having a DNA profile matching the semen on
10 this item is approximately one in 720 trillion.

11 Q. All right. If could you just explain to us in
12 layman's terms what the significance of that finding is,
13 one in 720 trillion?

14 A. No problem. What that means that if I took a
15 random person's DNA profile and I compared it to the DNA
16 profile I developed from item 2.1(s) there would be a
17 one in 720 trillion chance of that random person's DNA
18 profile would match that DNA profile developed from 2.1
19 (s).

20 Q. So one in 720 trillion is a pretty significant
21 finding, is that correct?

22 A. That is correct.

23 Q. All right. And how many people are in the
24 world?

25 A. Approximately seven billion.

1 Q. And billion is less or more than a trillion?

2 A. It's less.

3 Q. So if you -- what would be the chance of
4 finding -- the findings that you had in this case, what
5 would be the chance of finding somebody else that
6 matched the semen or the DNA that was on this underwear?

7 A. Within a degree of scientific certainty it
8 would be slim to none.

9 Q. Thank you.

10 MS. HALL: I don't have anything further.

11 Please answer any questions Mr. Nelson has.

12 Sorry, I would ask to move State's Exhibit
13 Number 12 into evidence if I haven't. I can't
14 remember if had done it or not.

15 MR. NELSON: No objection.

16 THE COURT: State's 12 is in evidence
17 without objection.

18 (State's Exhibit 12, lab report, received
19 in evidence as of this date.)

20 THE COURT: Mr. Nelson.

21 CROSS EXAMINATION

22 BY MR. NELSON:

23 Q. Mr. Stewart, I just want to clarify a couple
24 of things on your report if that's okay with you.

25 A. That's fine.

1 Q. Are you still looking at the report?

2 A. I have a copy.

3 Q. Okay. On the front of the report --

4 THE COURT: May I see it please.

5 (Report handed to the Judge.)

6 THE COURT: Thank you, Mr. Nelson.

7 Q. On the front of the report where it says 2.1
8 cutting from underwear under items analyzed. Is that
9 the same as 2.1(s) under results?

10 A. Yes, it is. Once again I split that up into a
11 non-sperm and sperm fraction, and so the non-sperm was a
12 mixture and the sperm side was the one that had the
13 single source male profile, so that's the one I
14 reported.

15 Q. So 2.1 (s) result is only talking about the
16 sperm portion of 2.1?

17 A. That is correct.

18 Q. And going to item 1.6, based on your analysis
19 you know there were two different subjects in that
20 suspected bodily fluids, correct?

21 A. For the non-sperm fraction?

22 Q. Well, you know there were at least two? You
23 developed at least two individuals, correct, out of 1.6?

24 A. Yes, for the non-sperm fraction, that is
25 correct.

1 THE COURT: Say that again. Ask that again.

2 Q. There were at least two individuals developed
3 out of 1.6, correct?

4 A. That is correct, the non-sperm fraction.

5 Q. Okay. Does that mean that both of those were
6 female if they were both non-sperm -- part of the
7 non-sperm fraction?

8 A. Some times we do get overlap age. It could be
9 male, it could be female. But like I said because I
10 don't have enough genetic material I just could not make
11 a determination.

12 Q. So, as far as that second one that you can't
13 make a reliable interpretation, that could be anybody?
14 That could be male, female, anybody,

15 A. Yes, that is correct.

16 Q. Okay. Thank you.

17 MR. NELSON: Beg the Court's indulgence. No
18 further questions Your Honor.

19 THE COURT: Solicitor.

20 MS. HALL: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MS. HALL:

23 Q. Is there any indication anywhere in any of
24 this that anybody else -- that there is any other DNA
25 mixed up in there? It's very possibly, is it not, that

1 the mixture that you found could have belonged to this
2 defendant?

3 A. That is also correct.

4 Q. You just didn't have enough information to
5 make an analysis, right?

6 A. A determination, that is correct.

7 Q. And there is no indication from analysis that
8 you made that it belonged to anybody else besides Minor
9 Hardin and this man over here, John Lowery?

10 A. That is correct.

11 MS. HALL: Thank you. Nothing further.

12 THE COURT: Recross?

13 MR. NELSON: Just a couple of questions,
14 Your Honor.

15 RECROSS EXAMINATION

16 BY MR. NELSON:

17 Q. But that 1.6 mixture could be anyone else?

18 MS. HALL: Objection.

19 Q. It's not necessarily tied to Mr. Lowery,
20 correct?

21 MS. HALL: I said objection.

22 A. Like I said, I don't have enough genetic
23 information to make a determination, but it is possible.

24 MR. NELSON: Okay. Thank you.

25 THE COURT: Will you all step up here a

1 minute, please.

2 (WHEREUPON, an off the record discussion
3 was held.)

4 THE COURT: Madame forelady, ladies
5 gentlemen of the jury. Step back momentarily.
6 Do not discuss this case. Thank you. Very
7 much.

8 (WHEREUPON, the jury leaves the
9 courtroom.)

10 THE COURT: Mr. Nelson, I was just trying to
11 make sure I was tracking you. Explain to me
12 your understanding of this 1.6.

13 MR. NELSON: My understanding of 1.6 is that
14 there is two individuals. That the non-sperm
15 fraction by 1.6 is a mixture of at least two
16 individuals. One of individuals is Minor 1
17 based on result of the test. The other
18 individual could be anybody. That's what I
19 asked on cross examination. Could that be any
20 other person in the world. I am not bringing up
21 a third party. I'm not bringing up any specific
22 individual it could be. I am just saying that
23 could be anybody.

24 On redirect the solicitor brought my client
25 into it and said could it be Mr. Lowery and the

1 SLED analyst said, yes, it could be. My
2 question on recross was simply, but could it
3 also be any other individual in society, whether
4 it be my client or somebody else and the answer
5 to that was yes.

6 I just want it on the record that 1.6 is not
7 necessarily my client. When she brought my
8 client into it on redirect that's where I had to
9 ask that further question on recross. When she,
10 the solicitor, attached my client to it.

11 THE COURT: Solicitor.

12 MS. HALL: I'm sorry. My understanding when
13 he crossed Mr. Stewart he is bringing
14 third-party guilt into this and that's what I
15 understood that he was doing. He said it could
16 be anybody else. Couldn't it be anybody else.
17 That's third-party guilt. So the only way that
18 I need to rehabilitate that and I did object,
19 but nobody heard me -- was to say, well, yeah
20 you said it could be anybody else, but it could
21 also be this individual couldn't it. And that's
22 the only recourse I had to cure that.

23 THE COURT: 1.6 which there is a non-sperm
24 fraction and -- and a sperm fraction.

25 MR. NELSON: Not according to the results on

1 this report. It doesn't talk anything in 1.6
2 about a sperm fraction.

3 MS. HALL: Your Honor, it does talk about a
4 sperm fraction and Mr. Stewart himself talked
5 about the sperm fraction.

6 The second sentence in that -- or the second
7 paragraph that says the partial DNA profile
8 developed from sperm fraction of item 1.6 is
9 insufficient for reliable interpretation.
10 That's the sperm fraction. That's the male
11 part. Then he said that the DNA profile
12 developed from the non-sperm fraction which Mr.
13 Stewart classified as female part that that was
14 a mixture of at least two people. And I believe
15 what Mr. Nelson asked him on cross was can male
16 DNA get in there and I think what Mr. Stewart
17 said and obviously I would love for him to
18 correct me if I am wrong -- is that sometimes
19 these things cloud over when you are getting the
20 samples from someplace where two people have
21 been sometimes these thing mesh around. But he
22 did say -- what he said was the evidence was
23 inconclusive.

24 MR. NELSON: And the question that I asked
25 on cross and on recross had nothing to do with

1 the sperm fraction. I was not talking about
2 that. I did not ask a single question about the
3 sperm fraction from the second paragraph of the
4 results. Every question I asked dealt with 1.6,
5 the non-sperm fraction having a mixture of at
6 least two individuals. One of which was Minor¹

7 one of which was unreliable to say who
8 it was. And I said that mixture, that second
9 non-sperm fraction could be anybody.

10 THE COURT: Non-sperm fraction.

11 MR. NELSON: Yes. Because there is two
12 individuals in the non-sperm fraction that is
13 written about in these results.

14 THE COURT: There is a mixture of at least
15 two individuals. The main contributor -- the
16 major contributor to the mixture is
17 contributable to Minor 1 The DNA profile
18 of the minor contributor to this mixture is
19 insufficient for reliable interpretation.

20 MR. NELSON: Yes, Your Honor, and I just
21 asked -- and my question to him was that could
22 be anybody, that second non-DNA -- non-sperm
23 fraction of 1.6.

24 THE COURT: Could be anyone, male or female.

25 MR. NELSON: That's what I asked.

1 THE COURT: That's not what you asked. May
2 be you did.

3 MR. NELSON: I said anyone.

4 THE COURT: Anyone. It could be anyone,
5 male or female?

6 MR. NELSON: Yes.

7 THE COURT: It could be some other bodily
8 fluid of a male but not sperm.

9 MR. NELSON: Yes, Your Honor.
10 We already got on direct examination testimony
11 that 1.6 which was the sperm fraction was
12 insufficient for testing, for reliable testing.
13 So we know that was insufficient for reliable
14 testing so I didn't harbor on that.

15 THE COURT: You what?

16 MR. NELSON: I didn't go into that. He's
17 already testified to that.

18 THE COURT: Solicitor.

19 MS. HALL: I just don't what him to -- it
20 seemed to me he was going to a third-party guilt
21 sort of place and I wanted to make sure that we
22 are clean and that we did not do that. And that
23 is when I stood up to object that is what the
24 objection was going to be, but I didn't get that
25 through, and so that is when I redirected and

when Mr. -- and that's the only way I knew to
fix it.

Mr. Nelson was eluding to the fact that it could be anybody else in the whole wide world, but it also could be him.

THE COURT: Mr. Nelson.

MR. NELSON: I have no problem with that.
That's what the evidence says that it could be
anybody.

THE COURT: Third-party guilt, the initial foundation of third-party guilt is that it has to be inconsistent, inconsistent with the guilt of the defendant. You could have -- you could have sperm from another male individual that would not necessarily be third-party guilt, but this report, State's 12, is in evidence.

MR. NELSON: Yes, Your Honor.

THE COURT: I will leave it at that. I just wanted to make sure I was tracking it. It's insufficient. . Insufficient.

MR. NELSON: I don't know where we are at with questioning, but I am through questioning with this witness myself, Your Honor.

THE COURT: Sorry.

MR. NELSON: I don't know where we are at.

1 with questioning, but I am through with
2 questions for this witness.

3 MS. HALL: I believe before Your Honor
4 called us up there we said we were both finish
5 questioning.

6 THE COURT: All right.

7 MS. HALL: So we would ask that Mr. Stewart
8 be excused.

9 THE COURT: I will do that in front of the
10 jury.

11 MS. HALL: All right.

12 THE COURT: Thank you. I will release him
13 in front of the jury.

14 Thank you Mr. Nelson, solicitor, for helping
15 me track it. Bring the jury in please.

16 (WHEREUPON, the jury enters the courtroom.)

17 THE COURT: Welcome back ladies and
18 gentlemen. Thank you, for your patience with
19 the Court.

20 Anything further from this witness from the
21 State?

22 MS. HALL: No, sir.

23 THE COURT: From defense?

24 MR. NELSON: No, Your Honor.

25 THE COURT: Thank you, very much. Thank you

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MS. HALL:

4 Q. You said your full name is Joy Smith?

5 A. Yes, ma'am.

6 THE COURT: Pull that microphone a little
7 bit closer to you.

8 THE WITNESS: Okay.

9 Q. And you said your full name is Joy Smith?

10 A. Yes, ma'am.

11 Q. Where are you employed?

12 A. Chester County Sheriff's Office.

13 Q. And how long have you been working there?

14 A. Since October the 8th of 2013.

15 Q. All right. During the course of your
16 employment have you come to be in charge -- I guess for
17 lack of a better term -- of the sex offender registry
18 for Chester County?

19 A. Yes, I am over the sex offender registry.

20 Q. And what are the responsibilities that you
21 have to take care of as part of that job?

22 A. I have to make sure that everyone that's on
23 the registry comes in to register based on their
24 offense, either biannually or quarterly.

25 Q. And during the course of those

1 responsibilities have you become familiar with sex
2 offender registry with Mr. Lowery, the defendant in this
3 case, John Lowery?

4 A. Yes, I have.

5 Q. All right. Do you what Mr. Lowery's date of
6 birth is?

7 A. 8-30-71.

8 Q. And without saying anything about the
9 underlying nature of the situation, is he required to
10 come in -- is he required to register on the sex
11 offender registry under South Carolina Law?

12 A. Yes, he is.

13 Q. And have you taken information from him with
14 regard to his registration?

15 A. Yes, I have.

16 Q. And is he currently current with that
17 registration?

18 A. Yes, he is.

19 Q. And how often is he required to register?

20 A. Quarterly, every three months.

21 MS. HALL: Thank you. I don't have
22 anything further. Please answer any
23 questions Mr. Nelson may have.

24 THE COURT: Thank you, solicitor. Mr.
25 Nelson.

1 MR. NELSON: I have no questions, Your
2 Honor.

3 THE COURT: Thank you. Thank you, very much
4 Miss Smith. You may step down. May she be
5 excused?

6 MS. HALL: Yes, sir.

7 THE COURT: Any objection?

8 MR. NELSON: No objection, Your Honor.

9 THE COURT: You may be excused. Thank you.
10 All right, solicitor.

11 MS. HALL: The State rests.

12 THE COURT: All right. Thank you. Thank
13 you, very much.

14 Ladies and gentlemen, as you heard the State
15 has rested. You heard all the evidence, all the
16 testimony you are going to hear from the State
17 in its case in chief.

18 The law requires that at this point of the
19 trial I must take up certain matters outside of
20 your presence. So I would ask you to please
21 return to your jury room. Do not discuss the
22 case during this brief recess. Thank you, very
23 much, you may go with the bailiff.

24 (WHEREUPON, the jury leaves the courtroom.)

25 THE COURT: All right. Any motions Mr.

1 Nelson?

2 MR. NELSON: Taking the evidence in the
3 light most favorable for the State we move for a
4 directed verdict in this case, Your Honor.

5 THE COURT: All right. Thank you. Thank
6 you, very much. Solicitor.

7 MS. HALL: Your Honor, with regard to that
8 motion the State would submit we have put up
9 evidence with regard to every element of the
10 crime. There has been evidence of sexual
11 battery. There has been evidence of the child's
12 age. There has been evidence pertaining to the
13 fact that the defendant is on the sex offender
14 registry. The jurisdiction has been covered. I
15 don't understand Mr. Nelson's basis for motion
16 is. I understand that he needs to make it, but
17 the State would respectfully ask the Court to
18 deny it.

19 THE COURT: All right. Taking the evidence
20 in a light most favorable to the non-moving
21 party without regard to determination of the
22 credibility of the witnesses -- that's not my
23 responsibility at this point -- I do find that
24 the State has presented sufficient direct and
25 substantial circumstantial evidence whereby I

1 will respectfully deny the defendant's motion
2 for a directed verdict.

3 The State has met its burden as to each and
4 every element of the offense charged; criminal
5 sexual conduct with a minor in the first degree.

6 Any other motions?

7 MR. NELSON: We just renew our motion in
8 limine to have the solicitor disclose to the
9 defense any offenses on Mr. Lowery's criminal
10 history that they intend to use to discredit him
11 upon -- on cross examination of his testimony,
12 Your Honor, should he decide to take the stand.

13 THE COURT: All right. Thank you. Thank
14 you, very much.

15 Will you have Mr. Lowery please come around
16 to the bar.

17 Madame clerk, will you place Mr. Lowery
18 under oath for me please.

19 JOHN HENRY LOWERY, III, called as a witness,
20 having been duly sworn by the clerk, was
21 examined and testified as follows:

22 EXAMINATION BY

23 THE COURT:

24 Q. Mr. Lowery, I have certain questions I need to
25 ask you concerning your rights. I need to explain to

1 you and ask if you have any questions of me about those
2 rights. How old are you Mr. Lowery?

3 A. Forty-three years old, sir.

4 Q. How much education do you have?

5 A. I have a GED, sir.

6 Q. What type of work do you do?

7 A. I work with my father. We do carpentry work,
8 brick mason, anything that has to do with a house.

9 Q. We are at the stage of the trial where the
10 State has rested. The State has presented all the
11 evidence and the testimony that the State is the going
12 to present in its case in chief.

13 At this point you may through your attorney you may
14 certainly present witnesses, evidence, testimony in your
15 own behalf and you, yourself, may testify before the
16 jury?

17 Do you understand where we are at in the trial of
18 this case?

19 A. Yes, sir.

20 Q. And do you understand the right to present
21 evidence and testimony through witnesses or to testify
22 on your own behalf?

23 A. Yes, sir.

24 Q. If your side, the defense, offers no evidence,
25 no testimony then your lawyer will get to make the final

1 argument to the jury; the final closing argument to the
2 jury. If your side, the defense, either through you or
3 other individuals present any evidence or testimony the
4 solicitor, the prosecutor, will get to make the last
5 closing argument to the jury.

6 Do you understand?

7 A. Yes, sir.

8 Q. In that regard you have the right to testify
9 or not testify.

10 Do you understand?

11 A. Yes, sir.

12 Q. If you were to choose not to testify I would
13 tell this jury that they could not hold the fact that
14 you did not testify against you in any manner.

15 Further, I would tell them they would not even be
16 allowed to discuss that in the jury room at the time of
17 their deliberation. Do you understand?

18 A. Yes, sir.

19 Q. All right.

20 THE COURT: Solicitor, what is his prior
21 record that would subject him to impeachment
22 under Rule 609?

23 MS. HALL: Let me take another quick look at
24 it. I just did but I want to make sure.

25 Your Honor, the only conviction that

1 qualifies would be his prior. He has got a
2 sexual criminal conduct in the third degree out
3 of West Virginia. He was convicted of that in
4 2006.

5 THE COURT: In '06?

6 MS. HALL: Yes, sir.

7 THE COURT: Do you agree with that Mr.
8 Nelson?

9 MR. NELSON: I agree that is the only one
10 that qualifies, yes.

11 EXAMINATION BY THE COURT:

12 Q. If you were to take the stand the solicitor
13 could ask you if you have a prior conviction for
14 criminal sexual conduct in the third degree in 2006, if
15 you were convicted of that offense. Could not ask you
16 any details of that offense whatsoever.

17 If you took the stand and you were asked that
18 question I would advise the jury they can use that, if
19 they use it at all, only on the issue of your
20 credibility. Only on the issue of your believability
21 and for no other reason. No other purpose whatsoever.

22 Do you understand?

23 A. Yes, sir.

24 Q. And do you agree that you have that conviction
25 from 2006?

1 A. Yes, sir.

2 Q. Has anyone promised you anything or held out
3 any hope of reward to get you to testify or not to
4 testify?

5 A. No, sir.

6 Q. Has anyone threatened you or coerced you in
7 any manner to get you to testify or not to testify?

8 A. No, sir.

9 Q. Today are you under the influence of any
10 medication, drugs or alcohol?

11 A. No, sir.

12 Q. Are you aware of any physical, emotional or
13 nervous problem that keeps you from understanding what
14 you are doing today?

15 A. No, sir.

16 Q. I assume that you have discussed your right to
17 testify or not to testify with your lawyer or your
18 lawyers, and perhaps with others whose opinion you value
19 on very important matters concerning your rights. Is
20 that correct?

21 A. Yes, I have, sir.

22 Q. Do you need any more time to talk to your
23 lawyer about your right to testify or not to testify?

24 A. No, sir.

25 Q. Have you understood your talks with your

1 lawyer about your right to testify or not to testify?

2 A. Yes, I have sir.

3 Q. Do you understand your right to testify or not
4 to testify?

5 A. Yes, I do sir.

6 Q. Do you understand that it's your call, it's
7 your decision to make?

8 A. Yes, sir.

9 Q. And yours alone?

10 A. Yes, sir.

11 Q. Do you have any questions of me concerning
12 your right to testify or not to testify?

13 A. No, sir.

14 Q. Do you need any more time to talk with your
15 lawyer about your right to testify or not to testify?

16 A. No, I do not, sir.

17 THE COURT: All right. I find that Mr.
18 Lowery understands his right to testify or not
19 to testify. He understands that knowingly,
20 voluntarily and intelligently.

21 Q. Have you made your decision at this time about
22 whether to testify or not to testify?

23 A. I have sir.

24 Q. And what is your decision?

25 A. My decision is to testify, sir.

1 Q. All right, sir, you intend to testify?

2 A. Yes, sir.

3 Q. And that's your decision?

4 A. My decision.

5 Q. Made of your own free will and accord?

6 A. My own free will.

7 Q. All right. Thank you. Thank you, very much.

8 You may return to the seat.

9 THE COURT: Mr. Nelson.

10 MR. NELSON: Thank you, Your Honor.

11 THE COURT: That takes care of your motion
12 in limine, Mr. Nelson.

13 MR. NELSON: I am sorry, Your Honor.

14 THE COURT: That takes care of of your
15 motion in limine concerning impeachment under
16 609.

17 MR. NELSON: Yes, Your Honor.

18 THE COURT: All right. Thank you. Anything
19 before we bring in our jury from the State?

20 MS. HALL: No, sir.

21 THE COURT: Defense?

22 MR. NELSON: No, Your Honor.

23 THE COURT: All right. Bring the jury back.

24 (WHEREUPON, the jury enters the courtroom.)

25 THE COURT: Welcome back ladies and gentlemen of

1 the jury panel. As you heard before our break
2 the State had rested. You heard all the
3 evidence and testimony you are going to hear
4 from the State in its case in chief.

5 A criminal defendant in South Carolina is
6 never required to prove himself or herself
7 innocent. The burden of proof is always upon
8 the State to prove the guilt of the defendant
9 beyond a reasonable doubt as to each and every
10 element of the crime charged.

11 However, a criminal defendant in South
12 Carolina may present evidence and testimony if
13 he or she decides to do so. So we now turn our
14 attention to Mr. Nelson and ask does the defense
15 if tend to offer any evidence and testimony, Mr.
16 Nelson.

17 MR. NELSON: Yes, Your Honor we do.

18 THE COURT: Will you call your first witness
19 please.

20 MR. NELSON: The defense calls Travis Gore.

21 THE COURT: Travis Gore?

22 MR. NELSON: Yes, Your Honor.

23 TRAVIS GORE, called as a witness, having been
24 duly sworn by the clerk, was examined and
25 testified as follows:

1 THE COURT: All right, Mr. Nelson.

2 DIRECT EXAMINATION

3 BY MR. NELSON:

4 Q. Please state your full name for the record?

5 A. Travis Daniel Gore.

6 Q. Mr. Gore, do you know Mr. John Lowery?

7 A. Yes, sir.

8 Q. Is he seated in the courtroom today?

9 A. Yes, I see him.

10 Q. Where is he at?

11 A. Right there. (Pointing)

12 Q. Okay, and on November the 2nd of 2013 were
13 you with Mr. Lowery?

14 A. Yes, sir.

15 Q. What was Mr. Lowery doing that day?

16 A. Smoking.

17 Q. Smoking go what?

18 A. Smoking crack.

19 Q. Smoking crack. Okay. Did you see him doing
20 anything else that day?

21 A. Snorting cocaine.

22 Q. Anything else?

23 A. Drinking.

24 Q. Anything else?

25 THE COURT: I can't hear or understand him.

1 MR. NELSON: I am sorry, Your Honor.

2 THE COURT: That's all right.

3 MR. NELSON: We will back track.

4 Q. Did you see Mr. Lowery doing anything that
5 day?

6 A. Yeah.

7 Q. What did you see him doing?

8 A. Smoking crack, sniffing cocaine and drinking.

9 Q. Was he doing anything else?

10 A. No.

11 MR. NELSON: Thank you. No further
12 questions for this witness, Your Honor.

13 MS. HALL: I don't have anything for him.

14 THE COURT: Thank you. Thank you, very much
15 Mr. Gore. You may step down.

16 MR. NELSON: And we ask Mr. Gore be excused.

17 THE COURT: Any objection.

18 MS. HALL: Without objection.

19 MR. NELSON: The defense calls Mr. John
20 Lowery.

21 THE COURT: All right. Mr. Lowery if you
22 come around and be sworn please.

23 JOHN LOWERY, III, called as a witness,
24 having been duly sworn by the clerk, was
25 examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. NELSON:

3 Q. Will you state your full name for the record.

4 A. John Henry Lowery the second.

5 Q. And Mr. Lowery where are you from?

6 A. I am from Chester, South Carolina, sir.

7 Q. Have you lived in Chester your whole life?

8 A. Yes, sir, but I moved away to west Virginia
9 also sir.

10 Q. So you moved to West Virginia how long were
11 you?

12 A. I was in West Virginia for like nine and a
13 half years, ten years.

14 Q. And then you came back to Chester?

15 A. Yes, sir.

16 Q. Have you ever lived anywhere else?

17 A. No, sir.

18 Q. Okay. Thinking back to November 2nd of 2013,
19 do you remember that date?

20 A. Somewhat of it, sir.

21 Q. You have been sitting here throughout this
22 trial listening to everything that has been testified to
23 about what happened that day, correct?

24 A. Yes, sir.

25 Q. The night of September -- of November the 2,

1 2013, what were you doing that night Mr. Lowery?

2 A. I was with friends getting high on crack and
3 cocaine and drinking.

4 Q. Okay.

5 A. Taking pills.

6 Q. When you say were you getting high what do you
7 mean?

8 A. I mean we party here and then we party there
9 and then we party over there and stuff.

10 Q. How many hours would you say you were partying
11 that day?

12 A. Well, we started probably about 11:30 that
13 evening to like two or three in the morning.

14 Q. So your testimony is it was a few hours?

15 A. Yes, sir. I mean I would say like 12 hours.

16 Q. So you mean 11:30 a.m., not 11:30 p.m.?

17 A. 11:30 a.m..

18 Q. Okay. Okay. So it was a quite a long time?

19 A. Yes, sir.

20 Q. And when you were done partying where did you
21 go?

22 A. I went home.

23 Q. Where was home to you on that day at that
24 time?

25 A. [REDACTED] Sterling Street.

1 Q. [REDACTED] Sterling Street?

2 A. Yes, sir.

3 Q. Who lived with you at [REDACTED] Sterling Street?

4 A. Me and my girlfriend, Fatima.

5 Q. Did anyone else live in the household?

6 A. Yeah, Monique she lived there too. She did
7 some times and some times she don't stay there.

8 Q. Okay. Anybody else stay there?

9 A. With her, no.

10 Q. Okay. The night of November the 3rd, was
11 anybody else in the house that night, the night of the
12 2nd on into the morning of the 3rd?

13 A. Yes, sir. When I came home, yes, there was.

14 Q. Who else was was there that night?

15 A. It was Fatima's niece, Minor Head -- I mean
16 Minor 1 and Minor 2

17 Q. And when you walked back in the house that
18 night what is the first thing you remember doing?

19 A. Going to our bedroom.

20 Q. Okay. When you say "our bedroom" whose
21 bedroom do you me?

22 A. Me and Fatima's bedroom.

23 Q. All right. So you lived in the same house,
24 shared the same bedroom, correct?

25 A. Yes, sir.

1 Q. And what happened when you got in the bedroom?

2 A. Fatima started arguing with me because I was
3 high. She said, look at you. You look stupid because
4 your eyes about to pop out of your head.

5 Q. So you got in an argument because you were
6 high?

7 A. Yes, sir.

8 Q. Anything else?

9 A. No, we didn't argue about nothing else. She
10 just told me get out because I look so stupid.

11 Q. So she told me to get out of the room?

12 A. Yes, sir.

13 Q. And then what happened?

14 A. Me and her walked out of the room together.

15 Q. And where did you go from there?

16 A. I went to the restroom and she stopped and she
17 told her niece who was laying on the floor, she said get
18 up and lay beside your sister.

19 Q. Which niece?

20 A. Minor 1

21 Q. So you went to the bathroom and you heard her
22 tell her niece that?

23 A. Yes, sir. We walked out the bedroom --

24 MS. HALL: Objection. He's testifying to
25 hearsay, what he heard Fatima had said.

1 THE COURT: Sustained.

2 Q. Okay. But you went to the bathroom?

3 A. Yes, sir.

4 Q. And then what happened after you went to the
5 bathroom?

6 A. When I went to the bathroom I came back out of
7 the bathroom and went back in the bedroom.

8 Q. Okay. Then what happened?

9 A. We started arguing again so I got a cigarette.
10 I walked out the bedroom and I put the cigarette on the
11 stove, because our stove, we had one of those glass top
12 stoves to light the cigarette. When you turn the stove
13 on you have to let the stove warm up and get real hot,
14 the glass top, because it wouldn't light the cigarette.

15 Q. Okay.

16 A. So then when I was walking back toward the
17 bedroom Minor was sitting up she asked me --

18 MS. HALL: I am going to object. Again,
19 he can't testify as to what someone else said.

20 THE COURT: Step up here a minute.

21 (WHEREUPON, there was an off the record
22 discussion.)

23 THE COURT: All right. That will be
24 hearsay. I will sustain that objection.

25 Q. Okay. Mr. Lowery, without saying what

1 anything that Minor said, did you have a conversation
2 with her at that time?

3 A. Yes, sir.

4 Q. Okay. And where were you at when you had that
5 conversation with her?

6 A. I was standing by the couch.

7 Q. And then what happened?

8 A. I picked a head scarf off the floor.

9 Q. Okay. So you picked the head scarf up off the
10 floor?

11 A. Yes, sir.

12 Q. And then what happened?

13 A. And then Minor asked me --

14 MS. HALL: Objection. Again under the same
15 grounds.

16 THE COURT: Yes, ma'am. That would be
17 hearsay.

18 Q. Without saying anything that Minor said, what
19 happened next?

20 A. Okay. I picked head scarf up off the floor
21 and I asked was it her head scarf.

22 Q. Okay. And then what happened?

23 A. And then --

24 Q. Without saying anything that she said.

25 A. Okay. About what Fatima said about my eyes

1 came out to question.

2 Q. Okay. So you said something to her about your
3 eyes?

4 A. No.

5 Q. Okay. So -- but your eyes came up?

6 A. Yes, sir.

7 Q. Okay. And did you say anything to her?

8 A. No, sir.

9 Q. Okay. Then what happened?

10 A. I laid down on the couch.

11 Q. Okay. Tell me about the couch? Tell me
12 everything you remember about the couch?

13 A. The couch didn't have no pillows on it.

14 Q. It didn't have any pillows on it?

15 A. No.

16 Q. Why didn't it have any pillows on it?

17 A. Because they was laying on the pillows.

18 Q. Who is they?

19 A. Minor 2 and Minor 1

20 Q. So, Minor 2 and Minor 1 were laying on
21 the pillows. So you laid down on the couch that did not
22 have the any pillows or cushions or anything like that
23 on it?

24 A. It didn't have no pillows or cushions.

25 Q. Okay. What is the next thing that you

1 remember?

2 A. I fell asleep and when I woke up Minor was
3 beside me on the floor.

4 Q. Okay. You say Minor was beside you on the
5 floor. How high is the couch? Is it a really high
6 couch or is it just a normal regular couch?

7 A. It's like a normal regular couch.

8 Q. So if Minor was on the floor she would be right
9 next to you?

10 A. Yes, sir.

11 Q. It is not elevated by any means?

12 A. No, sir.

13 Q. And what happened next?

14 A. When I came to she had her hand on my privates
15 and I pushed her off of me.

16 Q. Was her hand on your privates on top of your
17 clothes, under your clothes or something else?

18 A. Under my black shorts.

19 Q. Okay. And when you say, "Under your black
20 shorts" was she reaching up through the leg or was she
21 reaching down through the top?

22 A. Up through my leg part.

23 Q. Okay. And then what happened?

24 A. When I pushed off of her I got up.

25 Q. And tell me everything you remember about what

1 was going on with you at that point?

2 A. I got up. I felt wet. I went in the
3 bathroom. Wiped off. Got my cigarette that I had put
4 on the stove and held it on the stove, lite my cigarette
5 then I went into the bedroom.

6 Q. All right. You said that you felt wet?

7 A. Yes, sir.

8 Q. Would it be weird for you to be wet in that
9 situation?

10 A. Yes, sir, because mostly -- I mean, just me
11 sitting there and she got her hand on me, but I got a
12 little medical problem too.

13 Q. What's your medical problem?

14 A. My medical problem is I got a free flow of
15 sperm.

16 Q. A free flow of sperm?

17 A. Yeah, that mean it overflow. Like all my
18 sperm overflow.

19 Q. What do you mean it overflows?

20 A. If someone touch my penis automatically it's
21 ejaculation.

22 Q. Okay. So you ejaculate much easier then
23 someone else would?

24 A. Yes, sir.

25 Q. Okay. And so at that point -- at that point

1 you were wet, what did you do -- and you went -- what
2 did you do after after that?

3 A. I went in the bathroom and wiped off.

4 Q. Okay. So you went in the bathroom and wiped
5 yourself off?

6 A. Yes, sir.

7 Q. And then you testified you went and got your
8 cigarette, lit it and went into the bedroom, correct.

9 A. Went into the bedroom.

10 Q. What happened after that?

11 A. After that Monique Boyd and her boyfriend and
12 her son came to the house and I opened the door for
13 them.

14 Q. Okay. Why did you open the door for them?
15 Did they knock? Did you hear them? What made you get
16 up and go open the door?

17 A. Because they knocked and ain't nobody there.
18 They didn't have no key to the house so I had to open
19 the door for them.

20 Q. Okay. Because you and Fatima were the only
21 ones that lived there full time so you were the only two
22 with keys?

23 A. Yeah. No one had a key, but Fatima, because
24 that was the only key that was to the door.

25 Q. So you didn't even have a key?

1 A. No, sir, I didn't.

2 Q. Okay. But you got up and you let Mr. Sanders
3 and Miss Boyd and her son in the house?

4 A. Yes, I did, sir.

5 Q. And then what happened?

6 A. And then when I let them in I went back in the
7 room and laid down.

8 Q. Okay. And what happened? What's the next
9 thing you remember after that?

10 A. I see Minor Head look -- Minor 1 look into
11 the room. I got up. I closed the door and I laid in
12 the bed.

13 Q. What time was this at?

14 A. This was like four. Probably about 4:10,
15 something like that.

16 Q. Four, 4:10 you said?

17 A. Yes, sir.

18 Q. And so you see Minor come to the door and look
19 in the door and you close the door and you went back to
20 bed?

21 A. Yes, sir.

22 Q. What's the next thing you remember?

23 A. Fatima waking me up.

24 Q. Okay. And without saying anything that Fatima
25 said, what happened when she woke you up?

1 A. We just got in an argument. She really wanted
2 to argue. She was just asking me questions.

3 Q. What was the argument about in generally?

4 A. About how -- how would I say it, because I
5 don't want to be objected. What her niece had told her.

6 Q. Okay. And what was your response to that?

7 A. I said she's telling a lie.

8 Q. Okay. What else did you say?

9 A. I said she's telling you a lie because I
10 didn't have no sex with that girl and didn't put my
11 hands on her. The only time I put my hand on her when I
12 pushed her off of me. That's what I said.

13 Q. Okay. Did you say anything else?

14 A. No, sir.

15 Q. Did you tell her anything?

16 MS. HALL: Objection. I just don't want him
17 to lead. I felt like he was going there. I
18 apologize if it was premature.

19 Q. Did you tell her anything? Did you give her
20 any direction as to what to do with Minor 1

21 A. Yes, did I.

22 Q. What did you tell her to do?

23 A. I said the girl is lying. You need to take
24 her to the doctor because the hospital will tell you.

25 Q. So you told her to take her to the doctor?

1 A. Yes, I did.

2 Q. Okay. And what happened with you after that?

3 A. Fatima and me got in the truck. She took me
4 to my sister's house. She dropped me off at sister's
5 house.

6 Q. Where is your sister's house?

7 A. My sister's house at [REDACTED] Road Street, sir.

8 Q. So she took you to your sister's house on [REDACTED]
9 Road street and dropped you off?

10 A. Yes, sir.

11 Q. Okay. And what happened -- and then did you
12 see Fatima -- did you see anybody that was at that house
13 for the rest of that day?

14 A. Yes, I did, sir.

15 Q. Who did you see?

16 A. I saw Fatima.

17 Q. When did you see her next?

18 A. I saw Fatima about -- I would say probably
19 about three and a half hours later.

20 Q. What happened there?

21 A. After that?

22 Q. Yeah.

23 A. She came to the house and we just talked and
24 she stayed the night with me.

25 Q. Did you see her pretty consistently after that

1 until you was arrested?

2 A. Yes, I did sir.

3 Q. Okay. And when you were -- when were you
4 actually arrested for this?

5 A. I was arrested the 14th of November.

6 Q. The 14th of November?

7 A. Yes, sir.

8 Q. And on the 14th of November where were you at
9 when you were arrested?

10 A. I was at my mother's house.

11 Q. Did you want to be arrested?

12 A. No, I didn't, sir

13 Q. When the police came to your mother's house
14 where were you found at?

15 A. I was found in the attic.

16 Q. Okay. Why were you in the attic?

17 A. Because I didn't want to go to jail.

18 Q. Okay. So you admit you didn't want to go jail?

19 A. No, I didn't.

20 Q. Okay. Did -- have you ever been convicted of
21 anything before?

22 A. Yes, I have, sir.

23 Q. What have you been convicted?

24 A. I have been convicted of sexual assault.

25 Q. And have you ever tried to hide that from

1 anybody?

2 A. No, I didn't, sir.

3 Q. Are you registered on the sex registry?

4 A. Yes, I am.

5 Q. How often are you required to report to them?

6 A. Every three months, sir.

7 Q. And have you done that?

8 A. Yes, sir.

9 Q. Have you ever been charged with not reporting?

10 A. No, sir.

11 Q. How long have you lived in South Carolina
12 since you were required to report?

13 A. I have been here two years, sir.

14 Q. And you've always reported when were you
15 suppose to?

16 A. When I was suppose to and some times when I
17 wasn't suppose to.

18 Q. Okay. So you always made sure you checked in?

19 A. Yes, sir.

20 MR. NELSON: Beg the Court'S indulgence
21 just for one minute, Your Honor.

22 THE COURT: Yes, sir.

23 Q. Okay. After you got to jail did you talk to
24 anybody associated with this case?

25 A. Did I talk to anybody?

1 Q. Yes.

2 A. As far as like the police officer or anything
3 like that?

4 Q. Yes.

5 A. I talked to the -- I think she was the
6 sergeant.

7 Q. What did you talk to her about?

8 A. She asked me if I'm willing to give a mouth
9 swab for DNA.

10 Q. Did you give a mouth swab for DNA?

11 A. Yes, sir.

12 Q. Did you sign the sheet that said that you were
13 agreeing to do that?

14 A. Yes, sir. She said -- she asked me if I'm
15 doing it on my free will and I said, "Yes, I am".

16 Q. Did you have anything to hide at that point?

17 A. No, sir.

18 Q. Did the police in this case ever ask you any
19 questions about this case?

20 A. No, they didn't sir.

21 Q. Not one time?

22 A. Not one time.

23 Q. They never read you your Miranda and asked if
24 you wanted to speak?

25 A. No, sir, they didn't.

1 Q. Okay. And you say had you had a continuing
2 relationship with Fatima between the time when this
3 allegedly happened and when you were arrested, correct?

4 A. Yes, sir.

5 A. Did you have any conversation with her after
6 you were arrested.

7 A. Me and Fatima, yeah, she come and visit me in
8 the jail and everything. She put money on my books and
9 all.

10 Q. So she put money on your books and she came
11 and visited you?

12 A. Yes, sir.

13 Q. What did you use the money on the books for?

14 A. The commissary and we talked on the phone.
15 She put money on the phone.

16 Q. When you were -- when you were in jail did you
17 have to have someone put money on your books in order to
18 talk on the phone?

19 A. Yes, sir.

20 Q. And did Fatima do that?

21 A. Yes, sir.

22 MR. NELSON: Beg the Court's indulgence
23 one more time, Your Honor.

24 Your Honor, I have no further questions for
25 this witness. Answer any questions the

1 solicitor has.

2 THE COURT: Thank you, Mr. Nelson.

3 Solicitor.

4 CROSS EXAMINATION

5 BY MS. HALL:

6 Q. You say when you came home you went in the
7 bedroom, the one you share with Fatima Head and you got
8 in an argument, is that true?

9 A. Yes, ma'am.

10 Q. And you said you got in an argument with her
11 because she said you were messed up, is that right?

12 A. Yes, I was.

13 Q. But the full truth of that is you got in an
14 argument with her because you were messed up on crack
15 that you stole money from her to buy?

16 A. No, that is not the truth.

17 Q. Where did you get the money to buy the crack?

18 A. Well, me and Fatima Head both had some pills
19 and both of us sold our pills. She sold her pills and I
20 sold my pills. That's how I get the money.

21 Q. All right. I am going to ask you a couple
22 more questions real quick.
23 If you -- you said you don't like to get arrested. You
24 don't like to go to jail, but you do report on the sex
25 offender registry, right?

1 A. Yes, I do.

2 Q. What happens if you don't report on the sex
3 offender registry?

4 A. I'm going to jail.

5 Q. And also -- you gave on direct -- Mr. Nelson
6 asked you a bunch questions about -- asked Travis Gore
7 too -- you were in the courtroom when Travis Gore
8 testified, you heard what he said?

9 A. Yes, ma'am.

10 Q. You stayed out you said 12 hours. More than
11 12 hours by my calculation if you go at 11:30 in the
12 morning and come home at three o'clock or two that is
13 more than 12 hours, right?

14 A. Okay, yes, that's more than 12 hours.

15 Q. The whole time you're smoking crack and you're
16 snorting coke and you're taking pills and you are
17 drinking alcohol for that entire period of time, right?

18 MR. NELSON: Objection, Your Honor. She's
19 asking a question that's not in evidence. I
20 don't believe there was any testimony on direct
21 that he was taking pills.

22 MS. HALL: He said it himself.

23 THE COURT: I don't recall. He said he sold
24 pills I thought.

25 MR. NELSON: Yeah, that's what I heard.

1 MS. HALL: On direct he said he took the
2 pills. He smoked the crack. He snorted the
3 coke and took the pills.

4 THE COURT: Break it down?

5 MS. HALL: I will.

6 Q. You took pills that day, didn't you?

7 A. Yes, I did.

8 Q. Okay. So you smoked crack?

9 A. Yes.

10 Q. Snorted coke?

11 A. Yes.

12 Q. You took pills?

13 A. Yes.

14 Q. And you drank alcohol?

15 A. Yes.

16 Q. And you did it really more than 12 hours,
17 probably about 13?

18 A. Yes.

19 Q. Consistently throughout the course of the day?

20 A. Not consistently. I did not say that. I said
21 we partied here a little bit and we partied there a
22 little bit. That's what I said.

23 Q. So on an off throughout that whole entire 13
24 hour period?

25 A. Yes, ma'am.

1 Q. You've got a pretty good memory, don't you,
2 for that night for somebody who's that is messed up
3 during the course of that entire day?

4 A. I got a pretty good memory. Yeah, I do,
5 because I know I was getting high and I know what I did
6 and I know what I didn't do.

7 Q. I'm sorry. Tell me the last sentence you
8 said? You got a pretty good memory for what you did do
9 and what you didn't do?

10 A. That's right. I said that.

11 Q. And the truth of the matter is what you did do
12 is you stuck your fingers inside a 12-year old, isn't
13 that right?

14 A. That's not the truth.

15 Q. And you tried to put your penis inside her
16 vagina but it wouldn't fit and you rammed it until you
17 caused injury to her vaginal area?

18 A. That is not true.

19 Q. And then you went and took a shower so you
20 could clean yourself off, clean the evidence off of you?

21 A. I did not take a shower. I washed myself off
22 because I was wet because of where she touched me at.

23 MS. HALL: I am finished with this
24 witness.

25 THE COURT: Redirect?

1 MR. NELSON: No questions for this witness,
2 Your Honor.

3 THE COURT: Step down please Mr. Lowery.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you, very much.

6 THE COURT: All right. You may call your
7 next witness.

8 MR. NELSON: At this time Your Honor the
9 defense rests.

10 THE COURT: Thank you.

11 Does the State have any evidence or
12 testimony they intend to present in its case in
13 reply?

14 MS. HALL: Your Honor, we have a matter for
15 the Court I need to discuss outside the presence
16 of the jury.

17 THE COURT: All right. All right, madame
18 forelady, ladies and gentlemen of the jury,
19 please step in to the jury room. Do not discuss
20 the case during your brief recess. We will take
21 at least 15 minutes. Okay, thank you, very
22 much.

23 (WHEREUPON, jurors leave the courtroom.)

24 THE COURT: All right, solicitor.

25 MS. HALL: Your Honor, I potentially have

1 two witnesses in rebuttal. Miss Tammy Levister
2 who would been the person who tried to ask him
3 questions and he made responses to her and then
4 the second person I need to call is pursuant to
5 testimony that Mr. Nelson elicited from the
6 defendant that Fatima Head came to see him at
7 the jail. I will need a little bit of time to
8 get the second one, maybe 10 or 15 minutes, I
9 think.

10 THE COURT: All right so how much time do
11 you need solicitor?

12 MS. HALL: I am going to say about 20
13 minutes, but I need to confirm that with Allen.

14 THE COURT: Is this the major from the jail?

15 MS. HALL: He's the major over at the jail.

16 THE COURT: Detention center.

17 MS. HALL: Yes.

18 THE COURT: And you said one other.

19 MS. HALL: Potentially Lieutenant Levister

20 THE COURT: And she is present?

21 MS. HALL: She is here.

22 THE COURT: All right. Then you want to
23 wait until the other witness is in?

24 MS. HALL: I want to wait to at least I know
25 he is in the car on the way here otherwise we

1 will have to call her and take another break and
2 then come back again.

3 I want to clear something up real quick. Mr.
4 Nelson had made a motion pretrial and I want to
5 make sure we are real clear on this. He made a
6 motion, I believe, that what he was saying was
7 that anything, any person, that's not on my
8 witness list could not -- he was trying -- and I
9 have it in here somewhere, and he might be able
10 to just read it. Is some kind of motion about
11 anything that comes up during trial that if the
12 person is not on the witness list I can't call
13 any witnesses on rebuttal. Something to that
14 effect.

15 MR. NELSON: That's close. That's
16 essentially what I asked for. My major concern
17 with calling Sergeant Allen was that he wasn't
18 voir dire by the jury beforehand. I have more
19 concerns with that than anything else.

20 THE COURT: I will ask him.

21 MR. NELSON: Okay.

22 MS. HALL: We got two alternates.

23 MR. NELSON: And -- beg the Court's
24 indulgence just for one moment.

25 Your Honor, my only issue with both of those

1 witnesses is A, it's cumulative that everything
2 that is being asked for is already in evidence.
3 Detective Levister already testified that she
4 did not talk to Mr. Lowery. I asked her did you
5 try to talk to Mr. Lowery and she said no
6 because of something he said. That's exactly
7 what she testified to beforehand. I don't see
8 the need to put her back on the stand to testify
9 to that again in a cumulative fashion. She's
10 already said that on the stand and unless there
11 is going to be something else different that is
12 going to come out on -- on -- in rebuttal to
13 what my client said, then I don't see the need
14 to put a cumulative witness back on the stand to
15 say something they have already said.

16 THE COURT: Well, I will deny that motion.

17 MR. NELSON: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. NELSON: No, that is it.

20 THE COURT: So we have the lieutenant and --

21 MS. HALL: Major -- Major Allen.

22 THE COURT: Major Allen. Well, let me know
23 when you are ready solicitor.

24 MS. HALL: Thanks.

25 THE COURT: Do you all have any request to

1 charge I can look at now -- we can look at now?

2 MS. HALL: I'm familiar with your request to
3 charge I think from another trial. I'm okay
4 with the ones -- I got them right here. Let me
5 make sure that we are all on the same page.

6 I believe with regard to the CSC with a
7 minor first -- and I'm using the Anderson book.
8 I don't know what the Court uses, but there is
9 first degree criminal sexual conduct with a
10 minor charge, that is section 34 in request to
11 charge book. I can copy it and submit or let
12 the Court look at it, or let Mr. Nelson look at
13 it, or maybe just ask the Court what the
14 standard charge might be.

15 THE COURT: I've already got mine printed
16 out.

17 MS. HALL: Okay.

18 MR. NELSON: We would ask Your Honor for the
19 extra circumstantial charge coming out of State
20 v Logan.

21 THE COURT: That is the Charleston's case?

22 MR. NELSON: What's that?

23 THE COURT: That's the Charleston's case?

24 MR. NELSON: Yes, Your Honor. With this
25 case having both direct and circumstantial

1 evidence we would ask for the extra
2 circumstantial charge that comes out of that
3 case to be charged to the jury, Your Honor.

4 THE COURT: I thought that. I also intended
5 to charge voluntarily intoxication is not a
6 defense during this specific crime.

7 MS. HALL: And I would also ask for a flight
8 charge.

9 THE COURT: You know, solicitor, I don't
10 know there is a charge on that. I think flight
11 can be argued. His consciousness of guilt,
12 but --

13 MS. HALL: Okay.

14 THE COURT: But I have never seen a case
15 where they either A, they charged it. I don't
16 know if they've disallowed it over the years.
17 Some people don't request it, but I've always
18 taken that as you can argue it to the jury. You
19 certainly can argue to the jury he didn't want
20 to go to jail, but I don't think there is a
21 specific charge that's been given that I am
22 aware of.

23 MR. NELSON: And I would be in agreement
24 with that, Your Honor.

25 MS. HALL: That's fine. I just wanted to

1 make sure.

2 THE COURT: All right.

3 MS. HALL: And I would ask the Court for
4 clarification on which reasonable doubt charge
5 you use.

6 THE COURT: I use both.

7 MS. HALL: Okay.

8 THE COURT: I use Manning and Victor versus
9 Nebraska.

10 Anything else, solicitor?

11 MS. HALL: No, Your Honor.

12 MR. NELSON: No, Your Honor.

13 THE COURT: Let me know when you are ready.

14 (WHEREUPON, court was in recess.)

15 THE COURT: All right. Anything for the
16 State before we bring in our jury, solicitor.

17 MS. HALL: No, sir.

18 THE COURT: Defense?

19 MR. NELSON: No, Your Honor.

20 THE COURT: Bring us our jury.

21 (WHEREUPON, the jury enters the courtroom.)

22 THE COURT: All right. Welcome back ladies
23 and gentlemen of the jury panel. The trial in a
24 case such as this, the State being the party
25 that bears the burden of proof presents its case

1 first, in its case this Chief. Followed
2 thereafter by the defense, if the defendant
3 chooses to present evidence and testimony.

4 Under our law the State is then allowed the
5 opportunity to present any evidence or testimony
6 in reply. The State has informed me that they
7 do intend to present evidence and testimony in
8 reply. So, now we will direct our attention to
9 the solicitor and ask the solicitor if you would
10 please call your next witness.

11 MS. HALL: This will be our last witness,
12 Lieutenant Tammy Levister.

13 THE COURT: All right. You are still under
14 oath.

15 THE WITNESS: Okay.

16 DIRECT EXAMINATION

17 BY MS. HALL:

18 Q. Lieutenant Levister, you had had stated
19 earlier -- this was yesterday -- that you were present
20 at the time the defendant was arrested?

21 A. Correct.

22 Q. When he was hiding in the attic and he was
23 brought down?

24 A. Correct.

25 Q. And taken out. During that time did you guys

1 ever try to question him about this case?

2 A. No, normally we would, but in this case we did
3 not.

4 Q. Why?

5 A. Because from the time that he was arrested he
6 kept telling us he was not going to tell us anything.

7 Q. Is that what he said to you?

8 A. That's not his exact words.

9 Q. What words did he say?

10 A. He was not going to tell us shit.

11 MR. NELSON: Objection, hearsay. What my
12 client said.

13 THE COURT: 801(d) -- just give me just a
14 moment. That would be 801(d)(2)(a); statements
15 which are not hearsay. All right, solicitor.

16 MS. HALL: Okay.

17 Q. I don't now if they were able to hear you, but
18 if you could just please tell the jury exactly in the
19 words that he said to you, what did he say to you?

20 A. I'm not telling you all shit.

21 Q. And in what context did he -- how many times
22 did he say it?

23 A. Numerous.

24 Q. And where were you when he was saying it?

25 A. He was being transported out of the house,

1 into the car, at the jail.

2 Q. Was he yelling it or was he saying it calmly?

3 A. He wasn't really yelling it, but it wasn't in
4 a calm manner.

5 MS. HALL: I don't have anything else.

6 THE COURT: Mr. Nelson.

7 MR. NELSON: Yes, Your Honor.

8 CROSS EXAMINATION

9 BY MR. NELSON:

10 Q. Lieutenant Levister, did you ever read him his
11 rights?

12 A. No, I did not.

13 Q. Okay. So in spite of the fact he said I am
14 not telling you shit at a time when he -- a later time
15 when he calmed down from being arrested, you never asked
16 him anything after that?

17 A. No.

18 Q. Okay. The only time to your knowledge that
19 any police officer tried to ask him anything about this
20 case is when Lieutenant Fourney took his DNA, is that
21 correct?

22 A. She went and got his DNA. She did not
23 question him in reference to the case.

24 Q. But -- so no one ever questioned him about the
25 case?

1 A. No.

2 Q. Okay. Do defendants -- in your experience as
3 police officer, do defendants who are getting arrested
4 some times say I am not going to talk?

5 A. Some times, but eventually after we get them
6 to the jail or within the next day they would send us a
7 request from the jail stating they wanted to speak with
8 us.

9 Q. So some times they do talk to you after that?

10 A. Correct.

11 Q. But you never attempted to go and ask him if
12 he wanted to talk?

13 A. When he has said numerous times like that I
14 was not going to badger him.

15 Q. Okay. But you never went back and asked him
16 to talk?

17 A. No.

18 MS. NELSON: Okay, thank you. No further
19 questions.

20 THE COURT: Redirect?

21 MS. HALL: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. HALL:

24 Q. And you said sometimes when in this situation
25 they will a a request -- the people that you locked up

1 will send you a request, a written request form saying,
2 police officer I have things to say to you. I would
3 like to talk to you now?

4 A. Correct.

5 Q. And did he -- this defendant ever attempt to
6 contact you all?

7 A. No.

8 Q. And to your knowledge, were you present when
9 Forney swabbed?

10 A. I was not present, no.

11 MS. HALL: That is all.

12 THE COURT: Recross?

13 MR. NELSON: No recross.

14 THE COURT: Thank you. Thank you very much,
15 lieutenant, you may step down.

16 Any other witness testimony in reply from
17 the State?

18 MS. HALL: That is it, Your Honor.

19 THE COURT: All right. Mr. Nelson any sur
20 reply?

21 MR. NELSON: No, Your Honor.

22 THE COURT: Thank you. Thank you, very
23 much.

24 Madame forelady, ladies and gentlemen of the
25 jury, you now heard all the evidence and all the

1 testimony you are going to hear in the trial of
2 this case from both of the parties. We are now
3 at the point of the closing arguments by the
4 attorneys and the instruction on the law by the
5 Court.

6 Prior to coming in here I know the clerk, I
7 believe, has sent for your lunch and we
8 guesstimate the time it would be here at 11:45.
9 That's 30 minutes. And then rather than set a
10 time for us to start back I was not going
11 anywhere. I will be staying here and when you
12 all finish your lunch just knock on the door and
13 let the sheriff know when you will be ready to
14 start back. So, that gives you about 20
15 something minutes, 25 minutes maybe, before your
16 lunch is here. I don't mind if you want to take
17 a break, want to walk around as long as you be
18 back by quarter to 12 in your jury room, eat
19 your lunch and then let me know when you are
20 ready and I'll be ready.

21 Does that make sense? Get out and get some
22 fresh air, or whatever. Be back by quarter to
23 12. Your lunch will be here at that time. As
24 soon as you finish your lunch knock on the door
25 and let the sheriff know and we will reconvene.

1 Do not discuss the case during your luncheon
2 recess. Remember my instructions to you. Thank
3 you very much and go with the sheriff.

4 (WHEREUPON, the jury leaves the courtroom.)

5 THE COURT: Any motion from the defense, Mr.
6 Nelson?

7 MR. NELSON: Briefly. The defense renews
8 our motion for a directed verdict. Looking at
9 the evidence most favorable to the prosecution
10 we would ask Your Honor to give a directed
11 verdict of not guilty at this time.

12 THE COURT: Thank you. Thank you, Mr.
13 Nelson. I will respectfully deny that motion.

14 THE COURT: Anything additional from the
15 State?

16 MS. HALL: No, sir.

17 THE COURT: Defense?

18 MR. NELSON: No, Your Honor.

19 THE COURT: All right. Well, I would hope
20 we would be closing by 12:30.

21 Solicitor, does the State intend to open on
22 the law?

23 MS. HALL: No, sir, Your Honor.

24 THE COURT: So the procedure we will follow
25 is Mr. Nelson will close first on behalf of Mr.

1 Lowery.

2 MR. NELSON: Yes, Your Honor.

3 THE COURT: Followed by the State.

4 MS. HALL: Yes, sir.

5 THE COURT: Followed by my charge.

6 MS. HALL: Yes, sir.

7 MR. NELSON: Yes, sir, Your Honor.

8 THE COURT: All right. No further request
9 to charge?

10 MR. NELSON: I haven't seen the Logan charge
11 yet, but other than that, no, sir.

12 THE COURT: I have that. Solicitor?

13 MS. HALL: No, sir. We have got voluntarily
14 intoxication.

15 THE COURT: Yes. All right. Then we will
16 stand in recess until we get started when they
17 get back. All right.

18 MR. NELSON: Thank you Your Honor.

19 THE COURT: Thank you, very much.

20 (WHEREUPON, the court was in recess.)

21 THE COURT: All right. Anything from the
22 State before we bring in the jury?

23 MS. HALL: No, sir.

24 THE COURT: Defense?

25 MR. NELSON: Your Honor, I would just ask to

1 change the verdict forth to putting not guilty
2 before guilty on the form itself so that it
3 would not prejudice my client.

4 THE COURT: I always tell them the order in
5 which I list it is not significant.

6 MS. HALL: It doesn't matter to me.

7 MR. NELSON: Thank you, Your Honor.

8 THE COURT: All right. Those of you that
9 are in the courtroom, spectators, I do not allow
10 movement in or out of the courtroom while an
11 attorney is addressing the jury. You may
12 certainly leave after Mr. Nelson's closing and
13 before the solicitor begins. You may leave
14 after the solicitor's closing and before I begin
15 instructing the jury. Please keep that in mind.

16 Thank you. Thank you, very much. Bring us
17 our jury please.

18 (WHEREUPON, jurors enter the courtroom.)

19 THE COURT: All right, our jury is back
20 present in the courtroom. Welcome back, ladies
21 and gentlemen. I hope you all had a pleasant
22 lunch.

23 As you know we are now at the stage of the
24 closing arguments by the attorney. Closing
25 arguments are different from opening statements.

1 They are true argument. The attorneys may
2 comment on the law, the facts and the inferences
3 to be drawn from the facts.

4 The procedure we will follow is Mr. Nelson
5 will close first on behalf of his client, Mr.
6 Lowery. Then it will be followed by the closing
7 of the solicitor, being the party bearing the
8 burden of proof beyond a reasonable doubt.

9 After the closing arguments I will then
10 instruct you on the law that you are to apply to
11 the facts of the case as you find them to be.

12 I would ask you as you have done throughout
13 the trial of this case to please continue to
14 give the parties your complete and undivided
15 attention.

16 All right, Mr. Nelson.

17 MR. NELSON: Thank you, Your Honor.
18 Ladies and gentlemen of the jury, first of all
19 before I say anything about the case itself I
20 want to thank you all for being here this
21 week and for being willing to serve. I told you
22 at the beginning, I told you two days ago, this
23 was not going to be an easy case to hear. I
24 told you that because I didn't think it was
25 going to be. I am sure it wasn't for many of

1 you. I appreciate your service.

2 The way I look at this case there is two
3 ways out of this case for you all to decide.
4 There's an easy way out. You heard testimony
5 that my client, who you heard testimony is a
6 registered sex offender, who we told you in our
7 opening statement was a registered sex offender,
8 committed a very heinous act. That's what you
9 heard, from one side.

10 Now, the easy way out would be to look at it
11 that way and say we have a witness who says it
12 happened. We have someone on the sex registry
13 who may have committed the crime. But I am
14 going to ask you go a different way. I am going
15 to ask you to do what I asked you to do in my
16 opening statement. What I asked you to do is I
17 asked you to analyze the case. I asked you to
18 ask questions. What did I asked you to
19 question, I asked you to question the evidence.
20 We will go through some of the evidence here in
21 a minute. But what was found? What wasn't
22 found? Where was the stuff that was found?
23 Where wasn't the stuff that was found? And I
24 think all of those questions are pertinent to
25 deciding which side of this you all -- which

1 side you all believe initially. But B, in
2 deciding whether there is reasonable doubt
3 because Mr. Lowery as you have been told
4 multiple times by the Judge, as you have been
5 told by myself, is innocent until he is proven
6 guilty. If you find reasonable doubt that he
7 did not commit this crime then that's enough to
8 send him home. You don't have to decide that
9 his story was completely one hundred percent
10 correct. All you need to decide is there was
11 reasonable doubt. We will get to that in a
12 minute as well.

13 Secondly, I asked you to be a group of
14 individuals. To hold on to your individuality
15 as you heard the evidence in this case. As you
16 listened to the evidence in this case, and as
17 you made up your own mind about whether or not
18 there was reasonable doubt.

19 I am going to go through some of the
20 evidence and I will take it witness by witness a
21 little bit because I think that is the best way
22 to separate it out and tell you what I heard
23 over the last three days.

24 First of all, you all heard Minor 1 story.
25 She told you a story with a set of facts that

1 she felt someone touch her. It was a very
2 ambiguous story and it didn't have a whole lot
3 of specifics in it. May be because she didn't
4 know the specifics. May be because it didn't
5 happen the way she told you it happen. You
6 heard her say that his private went inside her
7 private. I think that's the way that she put
8 it. I tried to write it down the way she did so
9 I could say it that way. Yet when we heard the
10 science yesterday there was no semen found in
11 her vagina. None whatsoever. There was no
12 semen found on the underwear that was closest to
13 her vagina. There was semen found on other
14 parts of the underwear but not that which would
15 have been closest. I think that is important
16 fact that we have to point out.

17 Secondly, she was on the cushion with
18 blankets and other such things. As the
19 Detective Levister pointed out to me that stuff
20 was never collected. There was never any
21 cuttings taken of the couch. There was never
22 any cuttings taken of the cushions. If we had
23 may be we know a little bit for sure whether her
24 story was correct if we had that evidence in
25 front of us. That's why I am asking you to look

1 at what's not there. What isn't in front of you
2 today because there are things missing. There
3 are things missing that could lead you to seeing
4 doubt. She testified, as my client testified,
5 that she opened the door for Michael and Monique
6 and yet Michael got on the stand and said when
7 he came in the house John was coming out of the
8 bathroom. He came in the house and John came
9 out of the bathroom in a towel. Both of those
10 things can't be true. There are some
11 inconsistencies in this story that just don't
12 make sense.

13 One of the biggest inconsistency in this
14 story that doesn't make sense is little
15 Minor 2 I want to talk about little Minor 2
16 for a minute. She was sleeping to what she
17 testified was within arms reach of her sister.
18 Her little arm could have reached out and
19 touched her sister and yet didn't hear anything,
20 didn't see anything. Not only that, but she
21 testified that a cup falling off of a table was
22 enough to wake her up. She was sleeping lightly
23 enough that a cup woke her up falling off of a
24 table onto the floor and yet what Minor alleged
25 happen to her didn't wake her up when she was

1 sleeping within arm's reach. That is
2 inconceivable to me.

3 The next person that got on the stand was
4 Fatima, Miss Fatima Head, who testified to you
5 that she cut off all communication with John
6 because she so believed her niece's story.
7 There has been unrefuted testimony from Mr.
8 Lowery that she visited the jail. That she made
9 calls to the jail. The solicitor had the
10 ability to refute that by bringing evidence that
11 she did not do that and yet we have nothing in
12 front of us that shows that she did not continue
13 to visit the jail. The detective on the case
14 told you that the reason they found out where
15 Mr. Lowery was staying, which was at his
16 mother's house. He wasn't in timbukto, he was
17 in his mother house. But the way they found out
18 he was in his mother's house was because Fatima
19 called him from the jail and made contact with
20 him. That was days, if not weeks, after this
21 event. So Fatima, who so believed her niece
22 that she cut off all contact, still contacted
23 the victim and there has been unrefuted
24 testimony that she contacted the victim on
25 multiple occasions both before he went to jail.

1 and after he went to jail. Not only that,
2 Fatima told you that they were fighting about
3 drug use. My client got on the stand and told
4 you he was high. We are not saying you should
5 set him free because he was high. We are saying
6 you should set him free because he didn't do it.
7 But she testified that he was high. His eyes
8 were bugging out, his jaw was clenched to where
9 he could barely even talk.

10 The other thing that Fatima testified to
11 that I found very interesting, Fatima told you
12 that at the time of the incident or shortly
13 thereafter John told her the exact same story he
14 told you today. That story didn't change. He
15 told her that Minor had climbed on top of him and
16 he had pushed her away. The exact same story
17 that you had heard from Mr. Lowery during the
18 course of this trial is the exact same story
19 that he told Fatima a year ago. It hasn't
20 changed.

21 You heard from a nurse who said that Minor
22 had an injury. Did she say that it was certain
23 that injury came from even an assault of any
24 kind, no, she couldn't say that. She admitted
25 on cross examination there is a variety of ways

1 that you can receive an injury. Doctor
2 Singleton who didn't even see her until 16 days
3 after the event, or the alleged event, said that
4 she was fine by the time Doctor Singleton saw
5 her. All she could testify to was her symptoms
6 mirrored that of what somebody who had been
7 assaulted would be. That's not testimony that
8 my client did it. That's symptoms are
9 consistent with.

10 Moving on to one of the most important
11 witnesses I believe we had in this case is
12 Detective Levister. Detective Levister talked
13 to you two times and essentially said the same
14 thing both times. That A, they did not take
15 evidence from the house. For whatever reason
16 they did not take it. They did not take
17 evidence from the house. If they had we may not
18 be here today. B, she told you that they did
19 not interview Mr. Lowery. They didn't even try.
20 Because he at the time when he was emotional and
21 getting arrested said he didn't want to talk
22 they decided they weren't even going to try to
23 let him explain his side of the story. They had
24 the ability to. They could have gone back to
25 him and said, Mr. Lowery, tell us your side of

1 the story and maybe he wouldn't have talked, but
2 they didn't even try. Maybe they wouldn't have
3 found anything on the cushions or the couch, but
4 they didn't even try. Maybe they wouldn't have
5 found anything on the blankets, but they didn't
6 try.

7 She testified that they found John because
8 the victim's aunt called him. That is -- and
9 then she testified that he was hiding in his
10 attic when they came to get him. John told you
11 that. He told you that he was hiding in his
12 attic. He told you he was up there because he
13 didn't want to get arrested. I don't think
14 there is any doubt he didn't want to get
15 arrested. And he didn't want to talk at that
16 time. But he was arrested and outside of that
17 there is no proof that he ran. And which attic
18 was he hiding? Not like he was hiding in an
19 attic four counties away. He was hiding in an
20 attic here in Chester County at his mother's
21 house. He wasn't running. Sure when they came
22 to get him he hid, but he wasn't running. There
23 is no presumption that he was running. He stayed
24 here, local.

25 The next witness that we heard -- we heard

1 from the SLED agents which gave great testimony.
2 Miss Gibson, the first SLED agent that you heard
3 from, she testified this she took a cutting from
4 the underwear that was in question in this case.
5 Where did she take that cutting from, the left
6 rear buttocks of the underwear. It wasn't the
7 area of the underwear that would cover the
8 vagina. It wasn't. It wasn't the area of the
9 underwear that I would expect if I was looking
10 at this case to find semen. It was from an area
11 where it could have -- where semen could have
12 gotten on to from a multitude of different ways
13 which I will leave to your imagination. But
14 that -- but -- but that area of where it came
15 from I think it's significant.

16 Sam Stewart, the SLED agent, and he said the
17 only reliable semen that was found was that
18 cutting from the left buttocks. There was no
19 reliable evidence of semen in her vagina. There
20 was no reliable evidence of semen from the
21 bodily fluids that were left on her leg. There
22 was no reliable evidence of anything on her
23 besides that.

24 Lastly, we got to the defense's case. You
25 heard from Mr. Travis Gore who Mr. Lowery was

1 with that day, who told you that he was partying
2 and he was partying pretty hard. I am not going
3 to try to excuse Mr. Lowery's drug use. Mr.
4 Lowery stood up in front of you today and told
5 your he is an addict and he has some drug
6 problems and he has issues. He told you that.
7 He laid it all out before you because Mr. Lowery
8 wanted to tell you the truth of what happened
9 today. He laid himself on the line. He
10 admitted he went to jail. He admitted he didn't
11 want to go to jail. He admitted he hid in the
12 attic. He admitted to a lot of stuff. But I'm
13 not sure it's outside the course of what he
14 would do in that situation.

15 Let's remember both him and Fatima testified
16 that when this first came up the morning of
17 November the 3rd, the first thing that he told
18 Fatima -- this child's aunt -- was take her to
19 the doctor because I didn't do anything. He
20 told her his story later. The same exact story
21 you all heard in this case. He gave his DNA
22 voluntarily. He didn't make them go through a
23 court hearing to show probable cause to get it
24 or anything else. He gave them his DNA
25 voluntarily. You heard Detective Fourney

1 testify to that. He never turned down an
2 interview with the police. We don't know
3 whether or not he would have been willing to
4 talk because they never asked. Not one time.
5 He cooperated with this investigation as much as
6 he could every step of the way outside of hiding
7 in his grandmother's attic when they came to get
8 him. He cooperated every step of the way.

9 Now, I want to talk a little bit about
10 reasonable doubt and what reasonable doubt means
11 to me, okay. And the judge is going to tell you
12 what reasonable doubt means and if I say
13 anything that differs from what he tells you he
14 gets to instruct you on the law. He gets to
15 tell you what that means. But in the beginning
16 of this case both the solicitor and I defined
17 reasonable doubt as a hesitation to act. I want
18 to illustrate that for you.

19 When I was 12 years old I grew up on a farm.
20 Me and my brothers had a large pasture out
21 behind our house where we use to go throw
22 baseballs and hit them over the fence in the
23 pasture. Loved doing that during the
24 summertime. The heat coming down. I was raised
25 in the desert. I wasn't raised in South

1 Carolina. I was raised in the desert where it
2 gets to be a hundred degrees but no humidity, so
3 you feel the heat on you don't have that soaking
4 wetness. You hear that clang of the ball hitting
5 that metal bat as it soars out across the
6 pasture and as it soars over the fence. Loved
7 doing that as a kid. One day me and my brother
8 were out hitting balls over the fence. My other
9 brother was throwing baseballs to me. I was
10 about 12 years old. The summer I turned 12. So
11 I don't know if I was 11 or 12, but summer I
12 turned 12 and I was hitting balls over the
13 pasture. My seven-year old brother came
14 wandering through the gate out into the pasture
15 and I didn't see him. And I remember I swung
16 the bat and I followed through and the follow
17 through of the bat hit my seven-year old brother
18 in the head and it knocked him down and left a
19 mark on his head. He went running into the
20 house, momma, momma, Devon hit me with a bat.
21 Of course as any good mother would do my mother
22 was furious. She came running outside screaming
23 and hollering ready to whoop me, running
24 outside, and she grabbed me by the shirt collar
25 and right before she was about ready to give me

1 the walloping she thought I deserved I said,
2 momma, momma let me explain and she stopped.
3 She hesitated to dole out the punishment that I
4 may have justly deserved and listened to my side
5 of the story. After I told her what had
6 actually happened I didn't get the walloping I
7 deserved because there were some reasons for it.
8 I'm not telling you that nothing happened on the
9 morning of November the third. What I am
10 telling you is when you take what the police
11 failed to do, my client's attitude in being
12 willing to help with the investigation, wanting
13 the girl to go to the hospital, wanting the girl
14 to see a doctor, wanting her to get taken care
15 of, where the semen was found, it wasn't where
16 you expect it. When you look at all of those
17 factors I'm not telling you that you should know
18 right now exactly what happened in that living
19 room, but what I'm telling you is I don't think
20 there is any way you can't hesitate in saying
21 that my client is guilty. When you hear all of
22 that, when that is all laid in front of you, I
23 would hope and plead to you that that would be a
24 hesitation. That you heard enough. That there
25 is enough inconsistencies and enough problems

1 with this case that you can't find zero
2 hesitation in finding Mr. Lowery did this. And
3 if that's the case the only verdict you have the
4 option of bringing back into this courtroom is
5 not guilty. If you have that hesitation.

6 I thank you for your service and ask you to
7 bring back that verdict. Thank you.

8 THE COURT: Thank you, Mr. Nelson.

9 Solicitor.

10 MS. HALL: Thank you, Your Honor.

11 Okay. I told you guys this was going to be
12 long kind of rough ride and we are about at the
13 finish line here, so I would just ask that you
14 bear with me for these last few minutes and
15 listen carefully because there are a lot of
16 points that I want to make and I will try to do
17 it as quickly as possible without leaving
18 anything out and without talking to fast.

19 This is a difficult case to hear. It's a
20 difficult case to fathom that these kinds of
21 things happen. It's difficult to fathom for a
22 13-year old child to come in to Court that she
23 has to and tell you, 14 strangers, people she
24 never laid eyes on before in front of a whole
25 bunch of other strangers she's never laid eyes

1 on before, what this man did to her. That is
2 difficult to hear and it's difficult to do.

3 I told you at the beginning it is a clear
4 case, Mr. Nelson -- I mean a difficult case
5 and Mr. Nelson agreed with me. I believe and I
6 would submit that it is a clear case. You heard
7 the facts from the witness stand and soon it's
8 going to be time for you to take those facts and
9 that's where all the facts come from, that and
10 the evidence that is sitting over here that you
11 guys will have full access too. Just for one
12 second I want to back up and talk to you about
13 the fact that you guys have the right at any
14 point in time to ask to have any testimony
15 replayed, and His Honor will instruct you about
16 that. So if there is anything that I state that
17 you think is questionable and you need to hear
18 it replayed for you that is an option. That is
19 all evidence. It's all at your disposal and I
20 want you to pour over it as much as you need,
21 for as long as you need to so you can get to the
22 truth of this matter which is all the State is
23 asking you to do.

24 As I stated before I think this is clear
25 case. You have heard the facts from the witness

1 stand. The judge is going to give you the law
2 if a little while and your job is to take the
3 law as he tells you that it is and you have to
4 take the facts as you determine them to be. You
5 got to apply the facts to the law and come back
6 with a unanimous verdict. And you are
7 individual people. All 12 of you will have to
8 agree on the verdict.

9 You have heard all the evidence from the
10 witnesses. You guys were chosen because you
11 have common sense, you have good judgement, and
12 I implore you not to leave that at the door as
13 you go into this process. That's the strength
14 of the jurors of your peers and people from the
15 community bring to situations such as this; your
16 common sense. You have to judge the credibility
17 of witnesses, and when I talk about credibility
18 of witnesses these are some things that I would
19 submit you should consider. The consistency of
20 their statement. Did they give a statement, and
21 they give it again and they give it again and
22 they give it again, and did they tell it the
23 same way every time? I would submit that goes
24 towards their credibility. Their demeanor when
25 they testify; how are they acting? Are they

1 calm? Do you believe them, is basically what
2 that means.

3 Motivation. What is their motivation? What
4 is there motivation to tell you the truth? What
5 is the motivation to tell you a lie? And you
6 got to determine whether the people are telling
7 the truth and to what weight you are going to
8 give their testimony and that is completely your
9 purview. No one else's.

10 The Indictment -- and we talked about that
11 at the beginning. Mr. Nelson -- and I agree
12 with what he said, it's not evidence, but it is
13 what formerly brings the charge in front of you
14 so it is important document.

15 This Indictment alleges that on November the
16 third, that sexual battery did occur on the body
17 of Minor 1 She was a child under the age
18 of 16 years. In the eyes of the law in South
19 Carolina you can not consent to have sexual
20 intercourse; vaginally, orally, anally,
21 anything, if you -- or even to have digital
22 penetration, if you are under the age of 16.
23 The child in case you heard testimony she was 12
24 years old at the time this happened. She was
25 under the age of 16 years. The testimony came

1 from her mom, it came from her and you heard
2 testimony from Joy Smith this morning that the
3 defendant is on the sex offender registry. And
4 that's an element of crime. That is why we
5 bring that evidence to you because we got to
6 prove it.

7 I want to go back to sexual battery real
8 quick. His Honor, is going to give you
9 instruction on this too. It's penetration. We
10 talked about at the beginning. Penetration,
11 however slight, which is important as you heard
12 testimony from Doctor Singleton and she used her
13 fingers to talk about how -- where Minor felt the
14 pain, where she felt the defendant's penis go,
15 where she felt his finger go. And every time
16 that it was determined that it went, it
17 penetrated. It penetrated her labia. It
18 penetrated -- he attempted to penetrate her
19 vagina with his penis. He was unsuccessful in
20 doing so with his penis. And that's what's the
21 definition of sexual battery is, however slight.
22 It doesn't mean he has got to get it all way
23 into her vagina which was already covered.

24 I want to talk about reasonable doubt real
25 quick and then I will get into the facts.

1 Reasonable doubt -- and His Honor is going to
2 give it to you -- is going to cause a reasonable
3 person to hesitate to act. And he's also going
4 to tell you that you can't know anything
5 absolutely in your life. No one ever can really
6 know anything absolutely, but you do -- what the
7 definition of reasonable doubt if you take it a
8 little bit further and you are going to hear
9 this hear this from him -- it leaves you firmly
10 convinced. It leaves you firmly convinced that
11 this is only conclusion you can draw. You heard
12 direct evidence. He is going to instruct you
13 about this too. Direct evidence is something
14 that somebody tells you directly happened to
15 them and that's from Minor 1 It is things that
16 are observed by people and seen. Circumstantial
17 evidence is another type of evidence and that's
18 when you take the totality of the circumstances,
19 everything that you know, because some times you
20 can have things like four or five things that
21 are all floating around and you if look at one
22 of those things singularly without putting it
23 all together it doesn't make any sense and may
24 be it wouldn't. But when you put it all
25 together in totality of the circumstances it all

1 comes clear. And I believe there was some
2 circumstantial evidence that was presented in
3 this case and I will get to that in a little
4 while.

5 All right. Let's talk about Minor 1

6 she's 13 years old now. I submit to you
7 she was 12 years old when it happened. We
8 already talked about that. And little Minor 2
9 put the date on it. She came in and she said -M
10 said I know it was a Saturday, but Minor 2 i
11 said I know it was November the third because n
12 that was my little sister's birthday and we were
13 suppose to have a party that day.

14 Mr. Nelson is going to make a big deal --
15 and I knew he would -- about Minor 2 didn't wake
16 up. How can she be within arm's reach and she
17 doesn't wake up. And I want to correct one
18 thing and again, if you need to rehear testimony
19 -- my recollection of the situation and I submit
20 to you that this is the correct recollection of
21 the situation was that she did not say she knew
22 the cup was on table or that she woke up when
23 the cup fell off table. All she said was
24 something woke her up and she looked up and she
25 saw the cup on the floor and she's like, oh,

1 that must have been what it was. Must have been
2 the cup. This kid -- and I submit again common
3 sense, if anybody's ever had a seven-year old
4 apply that common sense to this. Seven-year old
5 child. She goes to sleep, first of all with the
6 TV on. She must be able to sleep through
7 something. She didn't wake up when Minor left
8 and went to the store with her aunt. She comes
9 back. Minor¹ eating her snack and watching her
10 more TV. The kid is still asleep the whole
11 time. It is not unreasonable for her not to
12 wake up. And I would submit to you that the
13 defendant made darn sure she didn't and that's
14 why he had the light on. She moved. Let me
15 just turn the light on over here by the TV.
16 It's not shining in her face. It's not an
17 overhead light. I will turn this light on over
18 by the TV so I can see if the kid does anything
19 so I know to get the heck out of here real
20 quick. And I will submit that he took
21 precautions and that is why she didn't wake up.

22 Minor talks about every time she woke up.
23 She woke up to go to store. She woke up because
24 she was poked in the side and she said I don't
25 know who poked me in the side. When I went to

1 sleep the first time the TV was on. Then I get
2 up and I go to the store with my aunt. Well,
3 come back TV is on. Go to sleep again. Now
4 when I get poked in the side somebody has turned
5 the TV off. I don't know who it was, but the TV
6 is off. Then I wake up again. She doesn't know
7 how long it is between those two things but she
8 wakes up again and she feels the covers being
9 peeled off of her and she feels Minor2 moved
10 and that's when the defendant gets up to take
11 precautions. Minor2 goes back to sleep. He
12 turns the light on so he can watch and make
13 sure. She just wrestling around in the bed a
14 little bit, but never fully wake up. So he goes
15 and turns the light on the TV stand. She sees
16 his face. Minor sees his face. She can describe
17 to you what he is wearing. He has got on his
18 black basketball shorts and he comes back and he
19 gets on top of her. He pulls her pants down and
20 he fingers her. Sticks his finger in this
21 little girl's vagina and she knew it was his
22 finger and she knew it went inside because she
23 felt his fingernail. And she told you that.
24 And you are going to have the medical reports
25 from the nurse and doctors to be able to read

1 what she said for medical purposes, for
2 diagnostic purposes, she repeats this over an
3 over. He tried to guide his private part into
4 mine, but he couldn't get it all the way in. He
5 went as far as he could and he kept doing it and
6 it hurt and I felt his skin. And then she says
7 he left the room and he went to get a cigarette
8 and he comes back and he smokes it. And Minor²
9 corroborates this testimony during her's. She
10 says, yeah, I kind of woke up again and I saw
11 smoke. I thought it was coming from the TV.
12 And I submit to you -- and again, common
13 sense -- people smoking cigarettes floating all
14 over the room. And she didn't think anything
15 about it and went back to sleep. Then Minor
16 keeps telling you what happened to her and I
17 submit that is not an easy thing for a 13-year
18 old child to do. To talk about all their body
19 parts and what somebody has done to them. And
20 he sits there and he watches her. He stands in
21 the doorway and he watches her and then he goes
22 and he sits on the arm of couch and he watches
23 her and he stands over the poor child until she
24 falls asleep. I submit to you that is scary.
25 Then she wakes up again and Monique and Mickie

1 come in. And lets talk about people who don't
2 have any motivation. Mickie, he just happened
3 to be there and may be he thought something was
4 weird. Oh, this guy is walking around in a
5 towel in the middle of the night and there's
6 kids, people sleeping all in the house. What's
7 going on there. And he even thought that it was
8 so weird that he said something to Monique about
9 it. They're not even dating anymore. They were
10 dating at the time. He doesn't have a dog in
11 this fight.

12 Next morning the kids wake up. First thing
13 Minor does is she talks to her little sister and
14 she says I am going to tell Auntie Fatima. She
15 does what Rabbit didn't think she was going to
16 do. She tells. First she tells Minor2 and
17 then she tells Auntie Fatima and she's so
18 embarrassed about it she has to whisper in
19 Auntie Fatima's ear and she does it out on the
20 porch and I submit to you that's a place Rabbit
21 wasn't. That's a place where she felt safe. So
22 then the hullabaloo breaks out and Fatima comes
23 in and confronts Rabbit and of course as anybody
24 would assume he would, he denies everything.
25 That's his first story. Minor2 starts crying.

1 She couldn't answer any questions. People were
2 shooting questions at a little seven-year old
3 and she can't answer questions. She's crying.
4 And so Fatima and Monique take her in to a
5 separate room. Well, the defendant has come in
6 and busts up that conversation because he
7 doesn't want Minor2 to -- Minor has already
8 told -- he doesn't want Minor2 to tell too.
9 He's got to come in there and bust that up. The
10 little girl starts crying again. She can't talk
11 again at that point. So Fatima takes him. She
12 did the right thing. She took him away and she
13 got him away from those kids and she dropped him
14 off. He'll say Rodens Creek, she says Pickney
15 Street. I would submit Pickney Street is where
16 he went because that's where his mom lives.
17 However, I would also submit that doesn't
18 matter. She took him out of there. She dropped
19 him off down the street and leaves him there.

20 Mr. Nelson makes a big deal about the fact,
21 oh, well, I never saw him again after that.
22 Well, that is what she said. She said she
23 hasn't seen him. What she did say though is we
24 talked on the telephone and she never denied
25 that. And I already said this, but I will say

1 it again. Minor did the right thing. She did
2 what Rabbit didn't think she was going to. She
3 told the grownups and the grownups did the right
4 thing and Aunt Fatima did the right thing. She
5 got Rabbit out of there. She took Minor to her
6 momma. They told her momma and they took her to
7 hospital and they called the police.

8 Minor is a brave, strong, amazing little
9 girl. She told. She submitted to a sexual
10 assault exam, and I am going to talk to about
11 this a little bit more in detail. I want you to
12 draw your attention -- during the course of your
13 deliberations -- to this, what's been marked as
14 State's Exhibit 8 and it has been put in to
15 evidence and you are going to have it back in
16 the jury room to look at. You heard the nurse
17 testify a sexual assault exam takes 45 minutes.
18 Forty-five minutes. That's a long time. A long
19 time to be lying on your back in a hospital
20 gown, with a light shining -- with a nurse
21 shining a light all over you. Looking for
22 stuff. Swabbing you in your vagina. Swabbing
23 your mouth. Combing your pubic hair. Taking
24 her panties. Taking the child's panties.
25 That's pretty significant, demeaning, I would

1 say for the 45 minutes of having this done to
2 you. And then she has to -- Minor1 has to go and
3 tell. Now she told -- first she told Tima --
4 first she told Minor2 then she told Tima, now
5 she told her momma, now she told the nurse what
6 happened to her. And again you are going to
7 have that, and I will discuss the consistency of
8 what she has told everybody. And what she
9 ultimately told you all. She said she woke.
10 Somebody pulled her pants down. She said he
11 held her arms down with his upper body without
12 injury. He played with me down there. Please
13 describe play with. Patient said he inserted
14 his fingers into her vagina. Put his penis to
15 her vagina and tried, he couldn't get it in, and
16 tried for a while. Read it. It's is right
17 there. It's exactly was she told you guys.
18 That's what she told the nurse. So then if
19 that's not enough now she's got to go -- now
20 she's got to talked to -- she's talked to all
21 these people. She talked to the detective and
22 now she's got to talk to Margo and give a
23 forensic interview. Then she's got to go talk
24 to Doctor Singleton and she gives Doctor
25 Singleton the same set of facts. And again,

1 this is State's Exhibit 2 and this again is in
2 evidence. Me and my sister were sleeping in the
3 room and I felt something poke me on the side
4 and when I woke up it stopped. He tried to pull
5 my pants down. He got them down to hear. And
6 this is significant so we are going to talk
7 about it. He gets them down to midthigh. He
8 pulled them down to right there. He stopped and
9 he turned on the light. He came back, tried to
10 get his private part in my private part. He
11 tried, and she asked her did you feel it sitting
12 on top of your genitals or did you feel it go in
13 between the folds of genitalia, and again, she
14 showed me how she described it to her. She felt
15 it go in. It hurt and then after it hurt to
16 pee. For the rest of the morning it hurt to pee
17 and then she doesn't know if he ejaculated.
18 That's basically what is included in that. And
19 again you will have it. You will be able to
20 look at it.

21 So then after all that, she for the 7th time
22 now she is going to tell it again. She's going
23 to come in here and tell you all, 14 strangers
24 she never met before in her life. Again, we've
25 been through that, all these people in the

1 courtroom -- bearing her little 12-year old,
2 13-year old self to everybody. And I would
3 submit to you that she has no motivation to do
4 that except because it's true. And thankfully
5 all of this that she put herself through was not
6 in vein because now we have evidence. Because
7 of her bravery and strength we have medical
8 professionals who made diagnosis of her, we have
9 scientists at SLED who took the swabbings and
10 they did something with it and they brought it
11 back and they told you what they found.

12 Let's talk about the nurse. I'm going to go
13 back to this again. Nurse Jennifer Propst comes
14 in here. She's a sexual assault nurse examiner,
15 20 years training and everything that entails,
16 and she goes through this and again this is a
17 six page document of everything she asked her,
18 everything she did to her over the course of a
19 45 minute exam. And what she does find too is
20 -- and we used a bigger picture, but in this one
21 it was just a blown up picture of this. And it
22 shows the top of vaginal area, the bottom of the
23 vaginal area. And she said it was a small
24 reddened area sensitive to touch with a tear
25 noted. And it's a tear on the back of her

1 vagina toward her back, which is completely
2 consistent with somebody trying to ram a penis
3 into her. And the sensitivity is also
4 consistent with the finger insertion and then
5 she said it hurt. And the nurse who was
6 qualified as expert, now she can give an
7 opinion, yes, everything she said happened to
8 her is completely consistent with everything I
9 found. Nothing inconsistent with that at all.

10 So then she gets to go to Doctor Singleton
11 by way of Margo Dixon. Doctor Singleton told
12 you she has been doing this for a long time. I
13 forgot where she started out, but then I
14 remember she went to New York and then she went
15 Houston and she's had all this training and then
16 she comes to Lancaster. She has done over 700
17 hundred sexual assault exams. And she saw Minor
18 on the 19th of October. That was 16 days after
19 this happened. And she talked to her. Again
20 this is about the 6th or 7th person Minor talks
21 to. She told everything. We just read about it
22 in the report. She again said what happened to
23 her. And she doesn't see any injuries. But she
24 says there a healing process and thankfully for
25 this kid, for all kids it heals fast. For

1 people, woman in general, the vaginal area it
2 heals quickly. If anybody has ever had a baby
3 you can apply that common sense knowledge to
4 that fact that everything heals quickly. And
5 this doctor said that a major tear would heal in
6 five days approximately. It has been 16 now,
7 okay, and it's micro tear. So I submit to you
8 that's why she didn't find any injury. However,
9 she said everything Minor told her was completely
10 consistent, it hurt to pee. Consistent with the
11 penel penetration or attempted penel
12 penetration, as well as the fingers. And she
13 said everything was consistent. And then she
14 told us, she educated us on some stuff which was
15 extremely helpful I would submit.

16 She talks about the hymen myth. She talks
17 about people can be pregnant and have a hymen.
18 And I submit that a lot of times people think if
19 your hymen is in tact you never had anything
20 stuck up in you. And I would submit that is not
21 true based on Doctor Singleton's testimony and
22 based on medical facts. This little girl had a
23 hymen. Insignificant. And then she also went
24 on to explain DNA. What's in it. I am sorry,
25 what's it in. And Sam Stewart kind of touched

1 on this too. She said it's in your saliva.
2 It's in your blood. It's in your ejaculation.
3 It's also in your pre-ejaculation. It's in
4 every cell in your body is the way that Sam
5 Stewart put it. Any fluid that comes out of you
6 it's in that too.

7 So then you guys hear from Lieutenant
8 Levister. And as Mr. Nelson -- I knew he would
9 -- he throws it on the police. He tells us
10 about what he they didn't do and how he they
11 didn't get the cushions and they didn't do this
12 and they didn't do that. I want to focus on
13 what they did do.

14 First of all Lieutenant Levister told you
15 all, I didn't go get the cushions because they
16 said they put them all back on the couch. I
17 don't know where anything was at that point.
18 You can't recreate a crime scene of cushions,
19 and you know, they had what they needed. They
20 had a little girl. She was at the doctors
21 getting tested and all the things she had done
22 to her. I would submit to you that the police
23 did a good job. They focused on evidence
24 collection. They got her to the hospital. They
25 did everything that they needed to do. They got

1 her a forensic interviewer and as result of that
2 they got her to the second doctor. And then
3 after they did this investigation, thorough
4 investigation, they got an arrest warrant for
5 him on November the 6th. And I don't care if
6 it's the 14th or the 15th when he gets arrested.
7 You can do the math. It's at least nine days
8 after that. Eight days -- eight to nine days
9 afterwards. And he knew, he knew that he was in
10 trouble. He knew because Fatima had already
11 addressed this with him. She went ballistic on
12 him according to what the kids testified to and
13 what she did.

14 They diligently searched for him. That's
15 what Lieutenant Levister told you. The county
16 was looking for him. The city was looking for
17 him. And they did a real good job when they
18 started listening to the jail phone. They put
19 Fatima in jail on an unrelated charge and they
20 started listening to jail phones. That was
21 smart. That is how they found him. And Mr.
22 Nelson is going to make a big deal he didn't go
23 out of Chester. I would submit maybe he didn't
24 have anywhere to go. He went to the safest
25 place he knew to go, to his momma's house. To

1 somebody he knew would lie for him and that's
2 exactly what she did. They go on the door,
3 knock, knock, knock, is Bunny Rabbit here? No,
4 ma'am, I haven't seen him. Well, we are coming
5 in. And where do they find him, hiding in the
6 attic on Pickney Street. Exactly where Fatima
7 said she dropped him off. And because the
8 police, and the medical professionals, and the
9 grownups did a good job you don't have to guess
10 what's here. We got science. And these people
11 again have no dog in this fight. They're entire
12 job is just to get pieces of evidence. They
13 don't even know who they are coming from. They
14 just have names on a sheet and they start
15 testing this stuff. And you got Verona Gibson
16 up here and she had to go to through the chain
17 of evidence and you know, that is the thing that
18 gets the stuff to you. So some of these
19 witnesses, Amanda Huey, John Poole, this is the
20 stuff that makes sure everything is kept safe
21 and that gets to you. She is an evidence
22 processor, Miss Gibson is, and she tests the
23 evidence. When she tested this evidence in this
24 case she was looking at the underwear. Oh, I
25 see something that looks like bodily fluids so

1 I'm going to cut it out and I'm going to send it
2 out to the next scientist, Jessica Herron. And
3 she says -- and I'm coming back to this -- that
4 the semen that she found was on the buttock of
5 the left back -- well, I guess buttock -- back
6 of the underwear. And she also said it can seep
7 all the way through. She doesn't know. This is
8 Mr. Nelson's question. I don't know if it
9 seeped all the way through, but it certainly
10 can. That was not the thing. I just saw the
11 fluid and sent it on.

12 So then he gets to Jessica Herron, and she's
13 an expert in serology and this is her entire job
14 every day to test items for bodily fluid. Her
15 job is to test items for fluids and to determine
16 what they are. She said she got like an
17 overview of what she was looking for. She knew
18 she was looking for semen. She did the tests
19 that were required to determine whether semen
20 exist or not and she said, oh, yes, in this case
21 three pieces of things kind of come to the
22 forefront for me. And again, you are going to
23 have her report, all these reports, in the back
24 with you. Hers is State's exhibit 9. And that
25 again was the cutting from the underwear.

1 That's from Miss Gibson, and then you are also
2 going to have Miss Herron's which is State's 11.
3 She took vaginal swabs. She thought she saw
4 some semen. She sent them on. She said I
5 didn't need to do the vaginal and oral swabs
6 because I didn't perform an analysis because I
7 had semen on other stuff. So I'm not going to
8 do multiple things and that was normal protocol.
9 Oral swabs no semen found. Didn't do anything
10 with that. Pubic hair combing she didn't find
11 anything. Victim's buccal swabs was the
12 standard that was forwarded. You got to have
13 the DNA from the victim and the defendant in
14 order to figure out who it can be, or you got to
15 have a match. 1.6 suspected bodily fluid, which
16 they were found to be inconclusive. If you
17 remember correctly from Mr. Stewart he didn't
18 have enough of anything to really be able to
19 tell you anything. And that is going to be in
20 his report too. And then the cutting from the
21 underwear, she sends that on to DNA along with
22 the buccal swabs from the defendant. And you
23 got this consent form -- and I'm coming back to
24 that to, because Mr. Nelson makes a big deal and
25 we're suppose to reward the defendant for

1 consenting to let them put a Q-tip in his mouth.
2 And then you get to Sam Stewart, and I would
3 submit to you this underwear, this is the piece.
4 He -- it's staggering statistics that there is
5 one in 720 trillion chance that it's anybody
6 other than him. There's 700 billion people in
7 the world. He said it would take multiple
8 worlds. I can't even do the math on that. And
9 he said the chances of this being anyone else's
10 DNA is slim to none. And I believe the
11 defendant in some ways has conceded that it's
12 his he just has an explanation for it, but so
13 does the State. And Mr. Nelson when he opened
14 -- and I believe in his closing he did it too --
15 he starts talking about stories. And talked
16 about the story of a 12-year old girl and then
17 he cross examined Margo Dixon about the stories
18 that are told to her during the course of this
19 interview process, and she says they are not
20 stories. They are telling what happened to them
21 whether it was last Friday or during being
22 sexually assaulted. This is not a story.
23 They're telling what happened.

24 But I want to talk about Rabbit's stories
25 and there a lot of them. And again, my

1 recollection of the evidence differs from Mr.
2 Nelson's in that the story that Rabbit told to
3 Fatima and the story he told you today are
4 markedly different. The first story he tells,
5 he denies everything. I didn't do it. Take her
6 to the hospital. She's lying. And then number
7 two is what I called blame the child story. He
8 came out of the shower -- this is what he tells
9 Fatima on the telephone. She says, yeah, we
10 talked on the telephone. She concedes that. I
11 talked to him on the telephone. He told me this
12 story while I was talking to him on the
13 telephone. He came out of the shower and Minor
14 offers him -- and she used the term fellatio
15 which I'm going to transfer into oral sex
16 because it's easier to say. She puts her mouth
17 on his penis and he lets her continue. This is
18 his words through Fatima, and he ejaculated in
19 her mouth and she wiped the sperm on her vaginal
20 area. That was the first story. And I would
21 submit to you the reason that he changed from I
22 didn't do anything, she's lying, take her to the
23 hospital if because he found out they did take
24 her to the hospital. That was a challenge.
25 Take her to the hospital. She's lying. Why did

1 he say that? Fatima tells you, I've known this
2 man for a long time. He was saying it to make
3 himself look good. He lies all the time.
4 That's what she said. Take her to the hospital.
5 Oh, well, they took her to the hospital. I got
6 to come up with something else, so he comes up
7 with story number two. And then during the
8 course of everything he abandons this story
9 because if that story -- that was the story
10 given here on the stand he would be guilty by
11 his own admission because he put his penis in
12 her mouth and he let her continue. That is
13 sexual assault right there. Sexual battery
14 right there. So now he changes the story again.
15 And this is again another, let's blame the child
16 story. What he told Devon is, despite the fact
17 that he was high, been on some binge for over
18 12 hours; snorting coke, smoking crack, drinking
19 alcohol, taking pills, that he could remember
20 somewhat. That is what he told Mr. Nelson on
21 direct. I can remember somewhat. But when he
22 started to testify he could remember in minute
23 detail every little tiny thing. And I would
24 submit to you that the reason he can remember in
25 minute detail every little tiny thing is because

1 he's been sitting here the whole time this has
2 been going on and he has heard everything this
3 kid said and everything everybody said. And
4 when you starting thinking about that tiny
5 minute detail these are the things I want to
6 talk about. He's explaining things away. I
7 came out and I laid on the couch. He knows
8 there are no pillows on the couch. Of course he
9 knows that, he's been sitting here the whole
10 time. Oh, and I woke up and Minor was beside me
11 on the floor. She had her hand on my private
12 parts and he says I had on black shorts because
13 again he's been sitting here the whole time.
14 She reached up through my leg and then we are
15 going to talk to flee-flow ejaculation medical
16 problem that seems to be undocumented. I got
17 up. I felt wet. I went to the bathroom and I
18 washed myself off because he has got to get
19 himself to the bathroom. Michael Sanders said
20 he saw him in there, or coming out of there. I
21 went to the kitchen to get a cigarette. He
22 talks about these cigarettes painstakingly. I
23 put my cigarette on the stove. We got an
24 electric stove. It takes a while to heat up.
25 So I left the cigarette sitting there. And then

1 I went -- and he says I went and opened the door
2 for Mickie and Monique. And Mr. Nelson makes a
3 big deal about how the door gets open. I don't
4 care how the door gets open. I submit to you
5 that's insignificant. He's in there in a towel.
6 The significance of it however is in the
7 chronology of it because Minor as she is waking
8 up all these multiple times during the night,
9 she wakes up *grabs Rabbit arm and she goes back
10 to sleep. The next time she wakes up the next
11 thing Mickie and Monique are coming in and I
12 will submit to you may be he did go take a
13 shower. Smoked a cigarette and took a shower.

14 He talks about the cigarette in minute
15 detail because the kids did say he smoked a
16 cigarette. He is going to focus on the
17 cigarette. He is trying to explain away
18 everything. And I will submit to you that this
19 free-flowing sperm situation is absolutely
20 nonsense. I submit to you if you got
21 free-flowing sperm problems how are you going to
22 go to the bathroom. How does he pee. All you
23 got is his word and I submit to you that
24 unreasonable.

25 Let's talk about what the truth is. I

1 submit to you that nothing the defendant has
2 said to anybody including you is the truth. He
3 said swab my mouth.

4 I got a theory on what happened and I will
5 share it with you now and you can take or leave
6 it. If you believe he ejaculated I don't say
7 that this is inconsistent with what I'm getting
8 ready to tell you. Everything Minor said was
9 true. He figured her. He tried to get his
10 penis in. He couldn't get it in there. He got
11 up. He didn't ejaculate. There's
12 pre-ejaculation on her and probably I would
13 submit when she pulled her panties up -- they
14 were down right here mid thigh. When she pulled
15 them that pre-ejaculation semen containing his
16 DNA ended up, if you use your common sense, when
17 she pulled up her panties it's on her. And no,
18 he didn't -- may be he didn't do it right there
19 in the panty part right under her vaginal area,
20 but his DNA is in the kid's underwear. And he
21 said take her to the hospital. They did that.
22 Changed his story trying to make it fit. Then
23 he says, swab my mouth and the reason he does
24 that is because he didn't ejaculate and he
25 didn't think there was anything to be found. He

1 was wrong and he wants to throw Fatima under the
2 bus. She sold pills. She said she never called
3 me again, which is not true. She came over and
4 spent the night with me. She says it's not
5 true. This is the first person who actually
6 believed a little kid. Took her. Told her mom.
7 Did everything right. But what he did do is he
8 ran and he hid because he knew they were coming
9 after him. And again Mr. Nelson wants to make
10 you think he's only hiding in him momma's attic
11 and I submit to you that was the only safe place
12 he had to go, or where he thought to be a safe
13 place.

14 The truth is what Minor told you. You boil
15 it down. She's 13 years old. She's 12 when it
16 happened. It stinks to have to come in here and
17 do that. Everything she went through stinks.
18 Terrible process, the whole thing from beginning
19 to end and it has taken over a year for it to
20 come to a conclusion. She's got tears, redness,
21 soreness, hurts to pee. She's told seven people
22 before she got to you all and I can't even count
23 how many. She got DNA in her panties from the
24 defendant. And again, Mr. Nelson says I want
25 you to do -- don't take the easy route. Don't

1 do the easy thing.

2 I will submit to you there is nothing in
3 this that's easy at all. Convicting John Lowery
4 for sexual assault that he committed on this
5 child is not an easy thing to do. It is not
6 easy way out, but it is your duty as juror.

7 The defendant knew there were allegations
8 against him. He ran. He hid. He tried to get
9 away from this. He told you that and that was
10 probably the only truthful thing that came out
11 of his mouth. That the city police department
12 had not found him hiding in attic he'd still be
13 hiding and he would still be running from the
14 consequences of his action. He would still be
15 running away from the consequences of what he
16 did to this little girl. He told story after
17 story after story to weasel his way out of this.
18 Don't let that happen. You find him guilty.
19 Thank you

20 THE COURT: Thank you. Thank you, very much
21 solicitor.

22 Madame forelady and ladies and gentleman of
23 the jury, my instruction to you will probably
24 take about thirty minutes. If anybody needs a
25 break now please raise your hands and we will

1 take a quick break. If not I will press on.

2 Very good.

3 The way I instruct a jury is I cover the
4 general criminal law that applies to all
5 criminal cases in South Carolina. When I go
6 from one subject matter to another I will give
7 you the caption and cover that specific subject
8 matter. I do the general first and then I do
9 the specific charge in the Indictment. In this
10 case criminal sexual conduct with a minor in the
11 first degree. And finally I will cover the form
12 of the verdict.

13 Charge, arrest, Indictment are not evidence.
14 The Indictment charges the defendant with with
15 criminal sexual conduct with a minor in the
16 first degree. I remind you again that the fact
17 that the defendant was arrested, charged and
18 indicted in this case is not evidence and can
19 not be considered by you as evidence of guilt in
20 this case nor does it present any presumption or
21 inference of guilt. This document is simply the
22 formal written instrument which contains the
23 charges made against the defendant. It is the
24 formal document by which the case is brought if
25 to Court.

1 Duties of jury and trial judge, I remind you
2 that during this trial you and I have certain
3 separate and distinct duties to perform. As the
4 trial judge it is my responsibility to preside
5 over the trial of the case and I also have the
6 duty to rule on the admissibility of the
7 evidence offered during the trial. You are to
8 consider only the competent evidence before you.

9 If there was any testimony ordered stricken
10 from the record in this case you must disregard
11 that testimony. You are to consider only the
12 testimony which has been presented from the
13 witness stand and any exhibits that have been
14 made part of the record.

15 I have an additional duty to charge you the
16 law applicable to this case. As the presiding
17 judge I am the soul judge of the law of this
18 case and it is your duty as jurors to accept and
19 apply the law as now state it to you. If you
20 already have any idea as to what the law is or
21 what the law ought to be and it does not agree
22 with what I now tell you the law is, you must
23 abandon or set aside your idea because you are
24 sworn to accept the law and apply the law
25 exactly as I state it to you.

1 In every case tried in this Court before a
2 jury the jury becomes the soul and exclusive
3 judges of the facts in a case. A trial judge
4 can not intimate, state, common on, or make any
5 statement to a trial jury about the facts in a
6 case. Since you the jury are the soul judges of
7 the facts of this case you are not to infer from
8 what I have said during the course of the trial,
9 ruling upon the admissibility of evidence or
10 otherwise, or anything that I say now during the
11 course of this instruction to you that I have
12 any opinion about the facts in this case. The
13 law does not allow me to have an opinion about
14 the facts in this case. This is solely a matter
15 of you, the jury, to determine. As jurors it is
16 your duty to determine the effect, the value,
17 the weight, and the truth of the evidence
18 presented during the trial.

19 Presumption of innocence. The defendant has
20 plead not guilty to the Indictment. In that
21 plea puts the burden on the State to prove the
22 defendant guilty. A person charged with
23 committing a criminal offense in South Carolina
24 is never required to prove himself innocent. I
25 instruct you that this is an important rule of

1 the law; that the defendant in a criminal trial
2 no matter what the seriousness of the charge may
3 be, to always be presumed to be innocent of the
4 crime for which the Indictment was issued unless
5 guilt has been proven by evidence satisfying you
6 the jury of that guilty beyond a reasonable
7 doubt.

8 The presumption of innocence does not end
9 when you begin your deliberations, but it
10 accompanies the defendant throughout the trial
11 until you reach a verdict of guilt based on
12 evidence satisfying you the jury of that guilt
13 beyond a reasonable doubt. A presumption of
14 innocence has been said to be like a robe of
15 righteousness placed about the shoulders of the
16 defendant which remains with the defendant until
17 it had been struck from the defendant by
18 evidence satisfying you of the defendant's guilt
19 beyond a reasonable doubt. The presumption of
20 innocence is not a mere legal theory. It's not
21 just a legal phrase. It is a substantial right
22 to which every defendant is entitled in which
23 you the jury are satisfied from the evidence of
24 the defendant's guilt beyond a reasonable doubt.

25 Reasonable doubt. What is a reasonable

1 doubt in the law. A reasonable doubt is the
2 kind of doubt that would cause a reasonable
3 person to hesitate to act. The State has the
4 burden of proving the defendant guilty beyond a
5 reasonable doubt. Some of you may have served
6 as jurors in civil cases where you were told
7 that it is only necessary to prove that a fact
8 is more likely true than not true. Such as by
9 the greater weight or the preponderance of the
10 evidence. In criminal cases the State's proof
11 must be more powerful than that. It must be
12 beyond a reasonable doubt. Proof beyond a
13 reasonable doubt is proof that leaves you firmly
14 convinced of the defendant's guilt. There are
15 very few things in this world that we know with
16 absolutely certainty, and in criminal cases the
17 law does not require proof that overcomes every
18 possible doubt. If based on your consideration
19 of the evidence you are firmly convinced that
20 the defendant is guilty of the crime charged you
21 must find the defendant guilty. If on the other
22 hand you think there is a real possibility that
23 the defendant is not guilty, that you find a
24 reasonable doubt, you must give the defendant
25 the benefit of that doubt and find him not

1 guilty.

2 Circumstantial evidence and direct evidence.

3 There are two types of evidence which are
4 generally presented during a trial.

5 Circumstantial evidence and direct evidence.

6 Direct evidence directly proves the existence of
7 a fact and does not require deduction. Ladies
8 and gentlemen, that would be in the form of
9 eye-witness or ear-witness. That would be a
10 direct evidence. Direct testimony.

11 Circumstantial evidence is proof of a chain
12 of facts and circumstances indicating the
13 existence of a fact. Crimes may be proven by
14 circumstantial evidence. The law makes makes no
15 -- by circumstantial evidence or by direct
16 evidence or by a combination of both. The law,
17 our law, makes no distinction between the weight
18 or the value to be given to either direct
19 evidence or circumstantial evidence. However,
20 to the extent the State relies on circumstantial
21 evidence all of the circumstances must be
22 consistent with each other and when taken
23 together point conclusively to the guilt of the
24 accused beyond a reasonable doubt. If the
25 circumstances merely portray the defendant's

1 behavior as suspicious the proof has failed.

2 The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. The
4 burden rests with the State regardless of
5 whether the State relies on direct evidence,
6 circumstantial evidence, or a combination of the
7 two.

8 Credibility of witnesses. As you all know
9 credibility simply means believability.
10 Necessarily you must determine the credibility
11 of the witnesses who have testified in this
12 case. It becomes your duty as jurors to analyze
13 and to evaluate the evidence and determine which
14 evidence convinces you of its truth. In
15 determining the believability of the witnesses
16 who have testified in this case, you may believe
17 one over several or several over one. You may
18 believe a part the of the testimony of a witness
19 and reject the remaining part of the testimony
20 of that same witness. You may believe the
21 testimony of a witness in its entirety or reject
22 the testimony of a witness in its entirety. You
23 may consider whether any witness has exhibited
24 to you or has any interest, bias, prejudice or
25 other motive in this case. You may also

1 consider the appearance, the manner, the
2 demeanor of the witness while on the witness
3 stand. You may take into account a person's
4 representation for honesty and give it what
5 weight if any you think it deserves. As I
6 stated before, you are the finders the fact and
7 you determine this by these various factors and
8 any other factors that you may wish to consider
9 that you may use in determining the credibility
10 of issues in making life's important decisions
11 against the backdrop and inclusive of your
12 individual and collective common sense and good
13 judgement.

14 Prior record of a witness. A person who has
15 a prior criminal record is competent to testify
16 during a trial. A past record does not effect
17 the ability of a witness to testify. The past
18 record may only be considered by you, if at all,
19 in determining the witness's believability,
20 credibility. Again remember you are the soul
21 judges of the facts in the case and of the
22 believability of any and all witnesses. Prior
23 record of a defendant. You have heard evidence
24 that the defendant was convicted of a crime
25 other than the one for which the defendant is

1 now on trial. This evidence may be considered
2 by you if you conclude it is true only in
3 deciding whether the defendant's testimony is
4 believable and for no other purpose in any
5 manner. You must not consider the defendant's
6 prior record as any evidence that the defendant
7 is guilty for the charge we are trying today.
8 It would only go to the issue of the defendant's
9 credibility, if any, and the weight and value
10 you give to that prior record testimony.

11 Expert witnesses. You heard this throughout
12 the course of the trial with a number of the
13 witnesses. The rules of evidence ordinarily do
14 not permit witnesses to testify to opinions or
15 conclusions. An exception to this rule exists
16 with witnesses we call expert witnesses. A
17 witness who by education and experience has
18 become expert in some art, science, profession
19 or craft may state an opinion as to relevant and
20 material matter in which the witness claims to
21 be an expert and may also state the underlying
22 basis for the reasons for holding such opinion
23 or opinions. You should consider any expert
24 witness's opinion received in evidence in this
25 case and like any other evidence give it the

1 weight you think it deserves. If you decide
2 that an opinion of an expert is not based on
3 sufficient education, or experience or if you
4 conclude that the reasons given in support of
5 the opinion are not sound or that the opinion is
6 outweighed by other evidence you may disregard
7 the opinion entirely. An expert witness's
8 testimony is to be given no greater weight than
9 that of any other witness simply because the
10 witness is an expert witness. Further, you are
11 not required to accept a expert's opinion even
12 though it may be uncontradicted.

13 Intent. In order to establish criminal
14 liability, criminal intent is required. For
15 example, the mental state required to be proven
16 by the State for a particular crime might be
17 purpose, intent, knowledge, recklessness or
18 criminal negligence. Criminal intent must be
19 proven by the State beyond a reasonable doubt.
20 Criminal intent is always a matter that the jury
21 must determine from all the facts and
22 circumstances surrounding the situation. There
23 is no way to prove intent to a mathematical
24 certainty. There is no way medical science can
25 dissect a person's brain and determine what the

1 person had in mind. So the law says that
2 criminal intent may be inferred from the
3 circumstances shown to have existed. This is
4 how you make a determination of whether or not
5 the element requiring intent was present. It is
6 not necessary to establish intent by direct
7 evidence, but intent may be established by
8 inference in the same way as any other factor by
9 taking into consideration the acts of the
10 parties and all the facts and circumstances of
11 the case. Criminal intent is mental state, a
12 conscious wrongdoing. It is up to you to
13 determine what the defendant intended to do
14 based on the circumstances shown to have
15 existed.

16 Voluntarily intoxication. Voluntarily
17 intoxication is not a defense to a crime. A
18 person who voluntarily becomes intoxicated by
19 the use of drugs and/or alcohol is just as
20 responsible for the acts committed while under
21 intoxication as when the person is not so
22 intoxicated.

23 That is the general criminal law that would
24 apply to all criminal cases in South Carolina.
25 Now I will cover the specific charge in the

1 Indictment.

2 First degree criminal sexual conduct with a
3 minor is a statute in South Carolina,
4 16-3-655(a) (2). The defendant is charged with
5 first degree criminal sexual conduct with a
6 minor. The State must prove beyond a reasonable
7 doubt that the defendant engaged in a sexual
8 battery with the victim, a minor. Definition of
9 sexual battery, also under the statutes. A
10 sexual battery is sexual intercourse,
11 cunnilingus, fellatio anal intercourse or any
12 intrusion, however slight, of any part of a
13 person's body, or of any object into the genital
14 or anal openings of another person's body except
15 when the intrusion is accomplished for medically
16 recognized treatment or diagnostic purposes.

17 A person is guilty of criminal sexual
18 conduct with a minor in the first degree if the
19 actor -- the actor being the defendant, the
20 person charged, engages in a sexual battery,
21 which I just defined to you -- with a victim
22 who is less than 16 years of age and the actor
23 has previous been convicted of, plead guilty or
24 nolo contendere or adjudicated delinquent for an
25 offense listed in 23-3-430(c) which is the

1 statute that requires registration of a sex
2 offender, or -- or if the actor, the defendant,
3 has been Ordered to be included in the sex
4 offender registry pursuant to section
5 23-3-340(d). So the State must prove beyond a
6 reasonable doubt the defendant engaged in a
7 sexual battery, as I define to you, with a minor
8 which is under the age of 16 and the defendant
9 was required to register as a sex offender.
10 That would be the charge of criminal sexual
11 conduct with a minor in the first degree.

12 Jury verdict. Ladies and gentlemen of the
13 jury, there are two possible verdicts which you
14 may find in this case; not guilty or guilty.
15 There is no significance whatsoever in the order
16 in which I stated those possibilities. It's
17 simply that one must be stated first. Your
18 verdict must be a unanimous one. All 12 of you
19 must agree.

20 Madame forelady, members of the jury, you
21 will have all the items of evidence that have
22 been introduced into evidence in the jury room
23 with you. There are obviously some that may
24 have biological fluids on them. If you want to
25 examine them more closely we will certainly

1 provide you with gloves in that regard. There
2 are others that are just documents, documentary
3 items of evidence; reports and such that you
4 would not need gloves, in my opinion, unless you
5 want to have a gloves on. But you will those
6 items in the jury room with you along with a
7 verdict form.

8 The verdict form you got is a very simple,
9 madame forelady. It has got the caption of the
10 case, The State versus John Henry Lowery, II,
11 the Indictment number, the county, the Judicial
12 Circuit. And it says please mark appropriate
13 verdict below and follow the accompany
14 instructions carefully. Indictment number as to
15 the charge of criminal sexual conduct with a
16 minor in the first degree we the jury
17 unanimously find and there is two choices
18 written there; not guilty or guilty. Again,
19 there is no significance whatsoever in the order
20 I stated them or in the order they are placed on
21 the sheet.

22 If after your review of the evidence, your
23 deliberations, you determine the State has
24 failed to met its burden of proof beyond a
25 reasonable doubt unanimously agree that the

1 defendant is not guilty I would ask you to
2 check, to the left there is a line with two
3 words not guilty. Circle both, both the check
4 mark and those two words, madame forelady and
5 there is a place of the bottom for you to sign
6 as presiding juror and the date. If on the
7 other hand you find the State has met its burden
8 of proving its case beyond a reasonable doubt
9 and find that is a unanimous verdict, I would
10 ask you to check to the left of the word guilty.
11 Circle both the check mark and the word guilty,
12 sign as presiding juror and date it.

13 Once you have reached that unanimous verdict
14 if you knock on the jury room door and inform
15 the bailiff that you have reached a verdict we
16 will receive you back in to the courtroom at
17 that time. Madame forelady, if during the
18 course of the jury's deliberation if you have
19 any question that I can assist you with, please
20 right out a note for me and give it to the
21 sheriff and he will bring it to my attention.
22 I will ask you to now return to your jury room,
23 but do not begin your deliberations until you
24 are instructed to do so by the clerk. What will
25 happen is if I do not have to bring you back out

1 for any further instructions -- everybody looks
2 great today, so I will bring the alternates out
3 and then the evidence and the verdict form will
4 be presented to you and then you will be
5 instructed to begin.

6 All right. Thank you. Thank you, very much
7 for your attention during the course of my
8 instructions. You may go out with the sheriff.

9 (Jury leaves the courtroom.)

10 THE COURT: Exceptions, solicitor?

11 MS. HALL: None.

12 THE COURT: Mr. Nelson.

13 MR. NELSON: No, Your Honor.

14 THE COURT: All right. If you all check the
15 evidence, please.

16 (WHEREUPON the jury started deliberations at
17 2:00)

18 THE COURT: All right, we have a verdict?

19 THE BAILIFF: Yes.

20 THE COURT: Bring the jury in please.

21 Anyone in the courtroom, spectator, if they
22 can not control their emotion at the time of
23 taking the verdict I would ask you to please
24 leave at this time. I consider any outburst,
25 good or bad outburst, I will consider it

1 contempt of court if you remain. I am assuming
2 you have discipline enough to maintain self
3 control.

4 THE COURT: Solicitor, anything before we
5 bring in our jury for the State?

6 MS. HALL: No, sir.

7 THE COURT: Defense.

8 MR. NELSON: No, Your Honor.

9 THE COURT: Somebody get our jury please.

10 (WHEREUPON, the jury enters the courtroom at
11 2:40 with a verdict.)

12 THE COURT: All right. Madame forelady I
13 have been handed up this document by the
14 bailiff. Is this the formal verdict?

15 THE FORELADY: Yes, sir.

16 THE COURT: And has the jury reached a
17 unanimous verdict.

18 THE FORELADY: Yes, sir.

19 THE COURT: All right. If so would you
20 indicate each of you by raising your right
21 hands.

22 All right. All hands are raised. Thank
23 you. Thank you, very much. All right, madame
24 clerk the verdict form appears to be in proper
25 form and signed and dated by foreperson. Please

1 publish the verdict for us.

2 THE CLERK: Yes, sir. Your Honor, this is
3 case number 2014-GS-12-084, the State of South
4 Carolina versus John Henry Lowery II, Indictment
5 Number 2014-GS-12-084 to the charge of criminal
6 sexual conduct with a minor first degree, we the
7 jury unanimously find the defendant guilty.

8 Signed by Diane Brown as foreperson, date
9 December 3, 2014. If this is your verdict
10 please say so by the raising of your right hand.

11 Thank you.

12 THE COURT: All hands being raised,
13 Anything additional for the jury from the
14 State?

15 MS. HALL: No, sir.

16 THE COURT: From the defense?

17 MR. NELSON: Your Honor, we ask the jury to
18 be polled as well.

19 THE COURT: All right. Madame clerk will
20 you explain that procedure to our jury panel and
21 conduct the following process.

22 COURT CLERK: Okay. As a call your name if
23 you would please, I will ask you a question, if
24 this your verdict and do you still decent. And
25 if you do, yes. Okay.

1 Madame foreperson, if this is your verdict
2 please signify by the raising of your right
3 hand.

4 (Juror raises hand.)

5 THE CLERK: Thank you, ma'am.

6 Patricia Anderson, if this is your verdict
7 please say so by the raising of your right hand.

8 (Juror raises hand.)

9 THE CLERK: Thank you, ma'am.

10 Erin Culp, if this is your verdict please
11 signify by the raising of your right hand.

12 (Juror raises hand.)

13 THE CLERK: Thank you.

14 THE CLERK: Rochelle Brantley, if this is
15 your verdict please signify by the raising of
16 your right hand.

17 (Juror raises hand.)

18 THE CLERK: Thank you.

19 Tammy Barrs, if this is your verdict please
20 say so by the raising of your right hand.

21 (Juror raises hand.)

22 THE CLERK: Thank you.

23 Danita Rice, if this is your verdict please
24 say so by the raising of your right.

25 (Juror raises hand.)

1 THE CLERK: Thank you, ma'am.

2 Mary McMickens, if this is your verdict
3 please signify by the raising of your right
4 hand.

5 (Juror raises hand.)

6 THE CLERK: Thank you, ma'am.

7 James E. Horton, if this is your verdict please
8 say so by the raising of your right hand.

9 (Juror raises hand.)

10 THE CLERK: Thank you.

11 Keith P. Sundeen, if this is your verdict
12 please say so by the raising of your right hand.

13 (Juror raises hand.)

14 THE CLERK: Thank you.

15 David C. Morris, if this is your verdict please
16 signify by the raising of your right hand.

17 (Juror raises hand.)

18 THE CLERK: Thank you.

19 Yuangula V. Barber, if this is your verdict
20 please signify by the raising of your right
21 hand.

22 (Juror raises hand.)

23 THE CLERK: Thank you.

24 Kayla D. Brunson, if this is your verdict
25 please signify by the raising of your right

1 hand.

2 (Juror raises hand.)

3 THE CLERK: Thank you. I believe that is it,
4 Your Honor.

5 THE COURT: All jurors have been polled
6 madame clerk?

7 THE CLERK: Yes, sir.

8 THE COURT: Thank you. Anything further for
9 the jury panel from the defense, Mr. Nelson?

10 MR. NELSON: No, Your Honor.

11 THE COURT: Thank you.

12 THE COURT: All right. Madame forelady,
13 ladies and gentlemen of the jury momentarily I
14 will release you from your jury service for the
15 remainder of today, remainder of the week,
16 remainder of the year. Actually even if you
17 were called you only have three weeks left
18 during this calendar year 2014. The State is a
19 Court of record. You would be disqualified,
20 because you can only serve one time per calendar
21 year. If you were called in the next two
22 calendar years you could exercise an exemption
23 because of your service this calendar year.
24 I would like to thank you for your participation
25 in this process this week. I never criticize

1 nor commend a jury for its verdict. But I will
2 say it appeared each and every one of you was
3 very attentive to the parties, both the State
4 and to the defense. You listened intently and
5 followed the instruction of the Court and the
6 law as given by the Court. Again I hope you are
7 never part of the process again, but if you are
8 I am sure you will fulfill your oath in that
9 future time if it ever comes, as you have now.

10 Just in closing I would say I have been in
11 the 6th Circuit, Chester County, throughout the
12 course of this calendar year, 2014. The first
13 week of Court in Chester was January 6th of 2014
14 and that was the first time I ever held Court in
15 Chester County. I have 11 weeks of Court, seven
16 of which have been General Session, four of
17 which have been Common Pleas. I have enjoyed
18 working up here very much. I have enjoyed the
19 people that I am able to work with, the public
20 defender's office; a fine office of good
21 lawyers; the court personnel; the solicitor's
22 office and I know the long time solicitor
23 Barfield is retiring and a new solicitor -- who
24 got elected, Mr. Newman?

25 MR. NELSON: Yes.

1 THE COURT: Sixth circuit has been very
2 fortunate to have such fine solicitors, at least
3 the ones I've known within my lifetime. I have
4 enjoyed working with madame clerk here and her
5 staff, both here in the courtroom, criminal and
6 civil court, sheriff's personnel. It has been
7 my pleasure and privilege. I am not scheduled
8 to be here next year. I think the clerk's
9 office probably contacted Columbia. Don't send
10 that guy back up here. Send somebody else back.
11 But be that as it may, thank you for your
12 participation and it was my pleasure and
13 privilege to work with you. Hope you have a
14 happy and safe holiday.

15 With that being said you are now excused for
16 jury service for the remainder of the week. You
17 don't have to call and don't have to come back.
18 Thank you.

19 If you need employee certificates just go
20 down to the clerk's off and they will provide
21 them to you. Thank you very much. All right.
22 (WHEREUPON, the jury leaves the courtroom.)

23 THE COURT: Anything further the from the
24 State as far as motions is concerned, solicitor?

25 MS. HALL: No.

1 THE COURT: Defense?

2 MR. NELSON: Yes, Your Honor.

3 THE COURT: All right.

4 MR. NELSON: First of all we would make a
5 motion for a new trial and -- first of all we
6 make a motion for a judgement notwithstanding
7 the jury's verdict and if not for that then we
8 would ask for a new trial in this case.

9 THE COURT: What are your grounds?

10 MR. NELSON: Based on all the objections
11 that we previously made and renew all of those
12 objections at this time.

13 THE COURT: All right. Well, I deny that
14 motion. I renew all my previously rulings both
15 for evidentiary and otherwise.

16 MR. NELSON: Thank you, Your Honor.

17 Then we have no further motions at this
18 time, Your Honor.

19 THE COURT: Any reason sentencing can not be
20 imposed at this time, Mr. Nelson?

21 MR. NELSON: No, Your Honor.

22 THE COURT: All right. Let's have Mr.
23 Lowery come around please.

24 All right. Solicitor anything from the
25 State?

1 MS. HALL: Yes, sir. I know that both
2 Minor1 parents would like to address the Court.
3 If you would like to hear from them first.

4 THE COURT: Thank you, very much. Yes,
5 ma'am, tell me your full name please.

6 MS. HARDIN: Jaemil Hardin.

7 THE COURT: All right. I will be glad to
8 hear from you Miss Hardin. Speak up so I can
9 hear you please.

10 MS. HARDIN: This has been a long trial for
11 me and my family. We went through a lot. My
12 daughter has has been going through a lot
13 mentally, with family, friends, her peers and I
14 am just really glad for it to be over. But
15 whatever the law is, for him to get the most
16 time as possible. That's what I want. He
17 taken (sic) a lot from my child. It was the
18 fact that he knows she was previously molested
19 of a family member. He was dating my sister.
20 He knew what she was going through emotionally
21 with that and he took advantage of that.

22 THE COURT: Thank you. Thank you, very much
23 Miss Hardin.

24 MR. HARDIN: Michael Hardin. I'm her
25 father. At the time I was away working. As my

1 wife has stated he knew what had happened to my
2 child before. He took full advantage of the
3 fact he knew that I was on the road working. I
4 was no where around at that point of time. I
5 was like six hours away at Elizabeth City
6 working at like a revocation in hotels and stuff
7 and by me being away from home I felt like he
8 just took full advantage. And I don't know even
9 know to mention the time to be honest Your
10 Honor, but I just put everything into God's hand
11 and let you all do what all have you to.

12 THE COURT: Thank you, Mr. Hardin.
13 Solicitor.

14 MS. HALL: First of all I want to over his
15 prior record and then I'm going to address one
16 of the things particularly, and then I have some
17 other things to say at the end of that.

18 In 1989 he was convicted of shoplifting,
19 simple assault and battery, and larceny. He was
20 sentenced to YOA and then in 1989 another simple
21 assault, 1993 burglary, 2nd degree, violent.
22 For that conviction he received ten years
23 provided upon the service of five, balance
24 suspended and he was placed on probation for two
25 years. In 1997 he was convicted of ADHAN, two

1 counts. He received eight years concurrent. In
2 2012 it was simple possession of marijuana. In
3 2006, Your Honor, he was convicted in the State
4 of West Virginia of criminal sexual conduct in
5 the third degree. I talked -- I actually talked
6 to prosecutor there and obtain the file of that
7 as well as a certified copy of the conviction.
8 That is what is the basis of his sex offender
9 registry status. The facts of that case while
10 not completely similar to this case are not
11 completely dissimilar.

12 He was working at a church. The pastor had
13 a daughter who was 15 and he entered into a
14 sexual relationship over the course of time
15 which was quote, unquote, a consensual
16 relationship. I'll be it very hidden with that
17 child. Her mother found out and he went to
18 trial on that too and he got convicted of two
19 counts, one oddly enough of digital penetration
20 and the other one of penal penetration. He
21 received five years. The way they do it it is a
22 range, one to five on each count and those were
23 to run consecutively.

24 I want to talk about Miss Hardin, herself,
25 and I believe the Court is aware of this.

1 Monique Boyd was one of the witnesses in this
2 case. She has a brother, and we know that
3 Monique is a cousin of Minor 1 Her brother,
4 Freddie Boyd, was convicted, and I prosecuted
5 that case and it was probably a year ago. He is
6 currently serving time in the Department of
7 Corrections for victimizing the same child. And
8 I will be quite honest with the Court, when I
9 got this trial, oh, my goodness, I can't believe
10 lightening has struck in the same place twice.
11 But it has.

12 This defendant knew that this child had been
13 victimized. Was dating Fatima at the time that
14 the man plead guilty and he subjected this child
15 -- subjected any kind of child to this is bad,
16 but subjecting a child you know has been
17 victimized in the past a second time, is
18 exponentially worse in my opinion.

19 We have maximum penalties in our State for a
20 reason. This defendant has been in the
21 Department of Corrections multiple times, none
22 of which seemed to have helped. He has
23 victimized not one, but two children and I would
24 submit to the Court that when you look at the
25 range, ten to thirty, and you look to reasons

1 aggravating -- what I loosely term aggravating
2 factors, to inspire a Court to sentence someone
3 to the maximum penalty, I believe that is
4 written all over this and that's what the State
5 is asking for. We want the full thirty years.

6 THE COURT: Thank you, thank you, very much.
7 Anything further solicitor?

8 MS. HALL: No, sir.

9 THE COURT: Mr. Nelson.

10 MR. NELSON: Yes, sir. As you know I
11 represent Mr. Lowery. Have been representing
12 Mr. Lowery basically from the time he was
13 arrested. I picked up his case in November of
14 last year, a couple weeks after he was arrested.

15 Standing with him today and actually seating
16 in the gallery is Miss Janette Robbins. She's
17 in support of Miss Lowery. She does not wish to
18 say anything at this time, Your Honor. However,
19 his father and his sister would like to make a
20 statement to the Court if the Court would take
21 those statements at this time.

22 THE COURT: I will be glad to hear from
23 anyone who would like to speak?

24 THE COURT: Tell me your name, sir.

25 MR. LOWERY: John Lowery, Sr.

1 THE COURT: All right, Mr. Lowery, I will be
2 glad to hear from you.

3 MR. LOWERY: Judge, Your Honor, this is my
4 oldest son and I am deeply sorry. I'm sorry for
5 all of the mistakes. I am sorry that I wasn't
6 there always for him. But I always -- I don't
7 know why he wasn't -- you know, he needs help.
8 He shouldn't have done this. I don't know. I
9 worked all my life in this town, this community
10 and I never -- I never had no trouble. He's a
11 man. I know that. For some time when -- God
12 knows I have children -- terrible action that an
13 innocence be taken. He needs help. He needs
14 help.

15 Thank you.

16 MR. NELSON: Yes, Your Honor. I represent
17 Mr. Lowery. You've been here throughout the
18 entire course of this trial. Mr. Lowery
19 maintains his innocence and has maintained his
20 innocence from the day he was arrested on this
21 charge. Never admitted guilt on this charge.
22 He is deeply saddened by this. As you can see
23 on his face he is deeply saddened by this
24 verdict the jury came back with.

25 No one that wasn't in that room that night

1 knows what happened that night. And no one that
2 wasn't in that room can say what happened that
3 night. As far as we know based on the evidence
4 that was presented only three people were in
5 that room and only they can know what was in
6 that room.

7 I'm asking Your Honor to show whatever level
8 of mercy you can based on -- based on the
9 nature, the circumstantial nature of the
10 evidence, the story that my client told, the
11 conviction with which he told it on the stand I
12 believe should carry some veracity and I would
13 ask Your Honor to show whatever level of mercy
14 you would deem appropriate in handing down the
15 sentence.

16 Yes, there is maximum penalty of the
17 sentence, Your Honor. But the State of South
18 Carolina has also decided there is a minimum
19 sentence. This verdict carries a minimum of ten
20 years. That is a long time for any of us. I am
21 asking Your Honor to consider whatever sentence
22 closest to ten years that you would consider in
23 this case.

24 THE COURT: Thank you, Mr. Nelson. Anyone
25 else you want to hear from?

1 MR. NELSON: My client would like to say a
2 word to you, Your Honor.

3 THE COURT: All right. Mr. Lowery, I will
4 be glad to hear from you.

5 THE DEFENDANT: Your Honor, I can't say I'm
6 guilty and people can say what they want to. I
7 know people are going to say what they want to
8 say. I didn't -- I didn't put my hands on this
9 girl and I know I didn't and I know for a fact
10 that I didn't. As God is my witness. That's
11 the only witness that is true and I know that
12 will tell the truth about this.

13 Whatever you give me -- do your job because
14 it's your job. I'm not going to beg you.
15 That's your job. Because of my father, I known
16 he ain't been there. I don't blame you for my
17 fault. Do you understand one thing, don't never
18 do that. I love you. I love my sister. I love
19 my family. But don't never put yourself to
20 blame. Do you understand.

21 I love you. That's all I got to say.
22 Whatever you do that's ...

23 THE COURT: Anyone else, Mr. Nelson?

24 MR. NELSON: No, Your Honor.

25 THE COURT: This is not checked on the

1 sentencing sheet. Is this a violent crime?

2 MS. HALL: Yes, sir, and a most serious
3 offense.

4 THE COURT: And it is a most serious
5 offense?

6 MS. HALL: Yes.

7 THE COURT: All right. Taking into account
8 both the presentation by Miss Hardin, Mr.
9 Hardin, the solicitor, as far as prior criminal
10 history and other points that the solicitor
11 made, the impact this has had to the minor
12 victim, the sentencing range, the fact that he
13 has two prior South Carolina Department of
14 Corrections sentences, the fact with his prior
15 conviction for criminal sexual conduct third
16 degree, the victim prior to this one, he had
17 knowledge that Miss Hardin, Minor 1 had
18 previously been victimized, that he is a
19 register sex offender which tells me that should
20 have have completed sex treatment if not court
21 ordered at least in his own efforts. Further
22 taking into account the statement given by Mr.
23 Nelson and by his father who was very pained as
24 a result of this issue with his son. He is
25 saddened by the verdict. He has shown no

1 concern, remorse as to Minor 1 Further --
2 further, lastly, for his testimony if this would
3 have happened in the matter in which he says it
4 happened first thing he should have done when he
5 woke up would go tell the aunt. He never
6 reported it. Never took that one step and said,
7 hey -- may be because of this prior activity
8 from the family member as to Minor 1 you know,
9 you need to get this girl some help. That shows
10 that he has no credibility to me whatsoever.
11 Frankly I have no respect. Someone that goes
12 out and smoke crack cocaine, take pills, take
13 alcohol, snort cocaine and go home in that
14 condition, argue with your girlfriend, goes to
15 the living room and then go in there and abuse
16 his girlfriend's niece, A child 12 years old and
17 then get in front of a jury and lie about it and
18 then blame a young girl. That's incredible.

19 I hope he finds his peace with god, with his
20 heavenly father. 2014-GS-12-034, John Henry
21 Lowery II, criminal sexual conduct with a minor
22 under the age of 16, first degree, having been
23 found guilty by the jury is charged the
24 defendant is confined to the State Department of
25 Correction for a determinant term of thirty

1 years.

2 Good luck to you. Thank you. Thank you,
3 very much.

4 (END OF TRANSCRIPT)
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University of South Carolina
School of Medicine
Department of Pediatrics



Children's Advocacy
Medical Response System

SCCAMRS Child Abuse Database

For SCCAMRS Use Only

Child's Name [REDACTED] Min [REDACTED]

Last First Middle Initial

DOB: 06/13/2001 Date of Medical Evaluation: 11/19/2013 Healthcare Provider: Singleton, Shaunese If Other, specify: [REDACTED]

Supervising Physician (if applicable): [REDACTED] If Other, specify: [REDACTED]

Facility Where Services Provided: Palmetto CASA If Other, specify: [REDACTED]

Primary Reimbursement Source: SOVA If Other, specify: [REDACTED] Medicaid Eligible? ☒ Yes ☐ No

Referring Agency/Healthcare Provider: [REDACTED]

Overall Medical Assessment

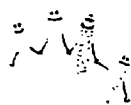
- ☐ Abuse Not Indicated
- ☒ Abuse Undetermined
- ☐ Abuse Indicated
- | | |
|--|---|
| ☐ Drug Endangered Child | ☐ Pediatric Condition Falsification/Medical Child Abuse |
| ☐ Neglect | ☐ Physical Abuse |
| ☐ Emotional Neglect | ☐ Sexual Abuse |
| ☐ Exposure to Domestic Violence | ☐ Chlamydia |
| ☐ Other: Specify [REDACTED] | ☐ Anus ☐ Urethra ☐ Vagina/Cervix |
| ☐ Exposure to Substance Abuse | ☐ Gonorrhea |
| ☐ Failure to Thrive/Malnutrition | ☐ Anus ☐ Pharynx |
| ☐ Physical Neglect | ☐ Urethra ☐ Vagina/Cervix |
| ☐ Medical Neglect | ☐ HIV, positive titers |
| ☐ Supervisory Neglect | ☐ Syphilis |
| ☐ Other: Specify [REDACTED] | ☐ Pregnancy |

As a health care provider in Child Abuse Pediatrics for the state of South Carolina, I acknowledge understanding the process of enhanced reimbursement for forensic medical services. Therefore, I certify the following reimbursement source for prolonged/extended services without direct patient contact associated with this medical evaluation has been billed in accordance with such process. ☒ DHHS-Medicaid ☐ SCCAMRS ☐ No Prolonged/Extended Services Billed

DHHS Prolonged/Extended Forensic Medical Services with no Patient Contact

For accountability purposes for Medicaid eligible children, please select all extended services which were billed for this evaluation.

- ☐ Prolonged services without direct contact (G9008 and/or G9009) ☒ Medical Team Conference (G9007, G9010 or G9011)



SOUTH CAROLINA
Children's Advocacy
Medical Response System

Child Maltreatment Protocol

DEMOGRAPHICS

Child's Name [REDACTED] Mino [REDACTED]

Last First Middle Initial

DOB [REDACTED] Age 12 Gender Female Race Black/African American

Ethnicity Non-Hispanic If Other, specify: [REDACTED] County of Residence Chester If Other, specify: [REDACTED]

Child Brought By Gearnil Hardin Relationship to Child mother

SERVICES PROVIDED

Date of Medical Evaluation 11/19/2013 Type of Evaluation Outpatient Healthcare Provider Singleton, Shaunese If Other, specify: [REDACTED]

Facility Where Services Provided Palmetto CASA If Other, specify: [REDACTED]

☒ Forensic Interview Date Nov 12, 2013 Outcome of Forensic Interview Clear disclosure of abuse

REFERRAL BACKGROUND

Referral/Intake Date Nov 12, 2013

Referral Source

☐ DSS ☐ Community Physician

☒ LE Specialty: [REDACTED] If Other, specify: [REDACTED]

☐ Mental Healthcare Provider ☐ Community/Children's Hospital

☐ Self-Referral Service: [REDACTED] If Other, specify: [REDACTED]

☐ Other: specify [REDACTED]

If referral initiated by healthcare provider/ hospital facility, check if any agency involvement [REDACTED]

Child's Name Minor 1

DOB [REDACTED]

Reason for Referral☒ **Sexual Abuse**☐ Anal/Penile Penetration

Last incident [REDACTED]

☐ Digital Penetration

Last incident [REDACTED]

☐ Fondling☐ Genital Blisters/Vesicles/Ulcers☐ Genital Warts☐ Oral-Genital Contact☐ Other Child in Household With an STI☐ Penile Discharge☐ Other: Specify [REDACTED]☐ Pregnancy☐ Rectal Bleeding☐ Sexualized Behavior☐ STI (Gonorrhea, Chlamydia, Syphilis)☐ Threat of Harm☐ Vaginal Bleeding/Gynecological Trauma☐ Vaginal Discharge☒ Vaginal/Penile Penetration

Last incident > 10 days

☐ **Neglect**☐ Delay in Medical Care☐ Exposure to Parental Substance Abuse☐ Non-Compliance w/ med. treatment☐ Drug-Endangered Child☐ Exposure to Pornography☐ Physical Neglect☐ Emotional Neglect☐ Failure to Thrive☐ Exposure to Domestic Violence☐ Lack of Supervision☐ Other: Specify [REDACTED]☐ **Physical Abuse**☐ Abdominal Injury☐ Bruise☐ Fracture☐ Laceration/wound☐ Threat of Harm☐ Abrasion/Scratch☐ Burn☐ Head Injury☐ Scar☐ Other: Specify [REDACTED]☐ **Miscellaneous Reasons for Referral**☐ Death of Another Sibling/Child in Household Due to Abuse/Neglect☐ Pediatric Condition Falsification☐ Emotional Abuse☐ Witness to Abuse☐ Other: Specify [REDACTED]

Comments:

Child's Name Minor 1

DOB [REDACTED]

CLINICAL HISTORY

Give brief history of allegation as provided by referral source and/or caregiver; please specify. Please indicate alleged perpetrator and relationship to child, if known:

[REDACTED]

Child's Statement

Quote child's words; indicate person(s) present during medical interview and relationship to child:

I spoke with Mino initially to build a rapport. I then asked her if she understood why she was here to be seen. She said yes "ma'am". I then asked her to tell me what happened. She was tentative and hesitant. Her affect was apprehensive and sad appearing. She proceeded as follows: "Me and my sister were in the living room asleep. I felt something poke me on the side. When I woke up it stopped. [REDACTED] Then he tried to pull down my pants, he got them down to here (indicating her mid-thigh). Then he stopped and he turned on the light."

I asked her to proceed. She said [REDACTED]

Then he tried to put his

private part in my private part."

I asked her if when

he "tried" to put his private parts in her private parts did she feel his private sit on top of her genitals or did she feel it go in between the folds of the genital (I demonstrated this to Min by having her hold her thumbs together and indicated to surface of the thumbs or between the thumbs). She clarified that she felt his penis go between. I asked her if it hurt or not. She said "it hurt" I asked her if it hurt when she went to use the bathroom. She said "yes it hurt to pee." I asked her for how long did she hurt. She said "for the rest of the morning". She denied that he used a condom or any lotions or creams. She replied in response to the question of him giving her any alcohol, drugs or cigarette. I asked if she remembered if he ejaculated. She replied "I don't remember."

Child's Name Minor 1

DOB [REDACTED]

SOCIAL HISTORY☐ No adult caregiver available to provide information☒ Prior history, involvement or report of child abuse and/or neglect☐ Conditions hazardous in home☐ Failure to thrive☐ Physical neglect☐ Exposure of child to domestic violence☐ Lack of supervision☒ Sexual abuse☐ Exposure of child to drug manufacturing☐ Medical neglect☐ Pregnancy☐ Exposure of child to caregiver's substance abuse☐ Physical abuse☐ STD☐ Other: Specify☐ Prior DSS involvement☐ Prior Law Enforcement involvement☐ Prior participation in Family Strengthening Services☐ Current domestic violence in home☐ Prior participation in Voluntary Case Management☐ Current substance abuse in home☐ Current participation in Family Strengthening Services☐ Prior history of child abuse in caretaker(s)☐ Current participation in Voluntary Case Management☐ Mental illness in caretaker☐ Negative pertinent social history

Comments:

social: lives with mother, father, father's girlfriend, 3 sisters (age 9, 8, 3, and 2) and 1 brother (5 years). +pet exposure

PERTINENT MEDICAL HISTORY☐ No adult caregiver available to provide information☒ No history of co-morbid conditions/diagnoses☒ No history of prior injuries☐ Prior Injuries☐ Burn, age: _____☐ Ingestion/poisoning☐ Fracture, age: _____☐ Invasive anogenital diagnostic procedure/surgery, age: _____☐ Head injury, age: _____☐ Laceration with sutures, age: _____☐ Has the child been diagnosed with any of the following:☐ ADD/ADHD☐ Developmental Delay☐ Myelodysplasia☐ Asperger Syndrome/PDD☐ Down Syndrome☐ Oppositional Defiant Disorder☐ Autism☐ Gross Motor Delay☐ PTSD☐ Conduct Disorder☐ Language Disorder☐ Schizophrenia☐ Cerebral Palsy☐ Learning Disability☐ Seizures☐ Bipolar Disorder☐ Mental Retardation☐ Depression☐ Microcephaly☐ Other: Specify

Child's Name Minor 1

DOB [REDACTED]

Comments:

Medication: Epi-Pen; Albuterol; Eczema creams
 Allergies: NKDA

REVIEW OF SYSTEMS (ROS)

- ☐ No adult caregiver available to provide information
☐ No behavioral changes identified
☒ Negative pertinent physical review of systems

Behavioral ROS

- ☐ Having difficulty sleeping
☐ Clinging/whining
☐ Fearful of being left alone
☐ Sad or crying easily
☐ Quiet or withdrawn
☒ Hitting/biting siblings/friends
☐ Difficulty making/keeping friends
☐ Ran away from home

☐ Tried to hurt himself/herselfSchool performance ExcellentSchool name Chester Middle schoolLocation chester county, SCGrade 6th

- ☐ Drinking alcohol ☐ Using drugs
☐ Sexualized behavior ☐ Started having sex
☐ In trouble with the law

☐ Other: Specify **Physical ROS**

- ☐ Dysuria ☐ Bed wetting ☐ UTI How frequent? Last episode?
☐ Constipation
☐ Soiling of underpants ☒ Genital pain Age menarche 12 Date of LMP last week
☐ Change in appetite ☐ Anal pain ☐ Use of contraceptives
☐ Frequent stomachaches ☐ Genital bleeding Specify:
☐ Frequent headaches ☐ Anal bleeding
☐ Genital itching ☐ Vaginal discharge
☐ Anal itching ☐ Penile discharge ☐ Pregnancy ☐ Abortion/miscarriage

☐ Other: Specify

Comments:

Due to the case being publicized on the television and in the news Min has had to deal with the other children in the school bringing it up. She got suspended in school after a girl brought the case to her and they began arguing.

She had genital discomfort with urination after the incident.

Child's Name Minor 1DOB **PHYSICAL EXAMINATION**Person(s) present at examination Mrs. Geamil HardinRelationship to the child motherVital Signs: Pulse 85Respiratory rate Blood pressure ($\geq$ age 3) Weight 127 %tile Height 60 %tile HC (< age 2) %tile **General Appearance/Demeanor**

☐ Shy ☐ Crying ☒ Cooperative ☐ Hostile ☒ Apprehensive ☐ Withdrawn
☐ Thin ☒ WDWN ☐ Overweight ☒ Clean ☐ Poor Hygiene ☐ Active

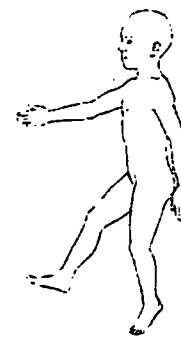
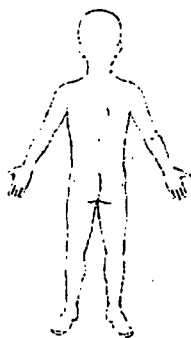
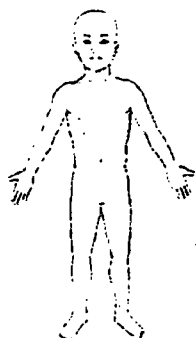
	WNL	ABN	Comments
Development	☒	☐	
Eyes/Fundi	☒	☐	
Ears, Nose, Mouth, Throat	☒	☐	
Lung (Respiratory)	☒	☐	
Heart (Cardiovascular)	☒	☐	
Abdomen (Gastrointestinal)	☒	☐	
Musculoskeletal	☒	☐	
Neurological Exam	☒	☐	

Child's Name Minor 1

DOB [REDACTED]

Anus (visual inspection for anal wink, rugae pattern)	☒	☐	

Document findings on appropriate diagrams, as applicable.

Skin Findings/Comments: ☐ Photos

Female Genital Exam Findings ☒ Exam Documentation ☐ Photos ☒ Colposcope Positioning: ☒ Supine ☐ Prone KC Other Tanner: (SMR) PH 3 B 3 Hymen: Estrogenized If other, specify: Comments: No erythema, no redness, no clefts or transections.		Male Genital Exam Findings ☐ Exam Documentation ☐ Colposcope Positioning: ☐ Prone KC ☐ Supine Other Tanner: (SMR) PH G ☐ Circumcision Comments:	

Child's Name Minor 1

DOB [REDACTED]

☐ Child declined/refused anogenital exam Date: [REDACTED]
OUTCOME OF MEDICAL EVALUATION
☒ No injuries identified

☒ Miscellaneous Symptoms/Findings:

☐ Anal/rectal pain	☐ Genital blisters/vesicles/ulcers	☐ Poor physical hygiene	☐ Vaginal bleeding
☐ Dental caries/disease	☐ Genital warts	☐ Pregnancy	☐ Vaginal discharge
☐ Dysuria	☐ Labial adhesions	☐ Rectal bleeding	☐ Vaginal foreign body
☐ Failing growth parameters	☐ Penile discharge	☐ Seizures	☐ Vaginal/genital pain
☐ Other: Specify [REDACTED]			

☒ No miscellaneous symptoms or findings identified

☐ Fatal outcome
DIAGNOSTIC WORKUP
☐ No Laboratory Studies Ordered

☒ No Imaging Studies Ordered

☐ STI screening performed at referring facility

☐ STI confirmatory testing performed

Test: [REDACTED] Results: [REDACTED]

Test: [REDACTED]

☐ Pregnancy test performed at referring facility

☐ Child treated before STI confirmatory test performed

Results: [REDACTED]

☐ STI testing considered, not clinically indicated

☐ Skeletal survey performed at referring facility

☐ Pregnancy test considered, not clinically indicated

☒ Skeletal survey considered, not clinically indicated

☒ Sexual Abuse Panel

☐ Panel performed as a healthcare maintenance measure

☒ N. Gonorrhea

☐ Culture: ☐ Anus [REDACTED] ☐ Pharynx [REDACTED] ☐ Urethra [REDACTED] ☐ Vagina/Cervix [REDACTED]

☒ NAAT: ☐ Anus [REDACTED] ☐ Pharynx [REDACTED]

☒ Urine Negative ☐ Vagina/Cervix [REDACTED]

☒ Chlamydia Trachomatis

☐ Culture: ☐ Anus [REDACTED] ☐ Urethra [REDACTED] ☐ Vagina/Cervix [REDACTED]

☒ NAAT: ☐ Anus [REDACTED] ☒ Urine Negative ☐ Vagina/Cervix [REDACTED]

☐ Herpes Simplex Virus ☐ Culture [REDACTED] If positive, HSV Type [REDACTED]

☐ PCR [REDACTED] If positive, HSV Type [REDACTED]

Child's Name Minor 1

DOB [REDACTED]

☐ Trichomonas Vaginalls ☐ Wet mount [REDACTED] ☐ Culture [REDACTED] ☐ NAAT [REDACTED]

☒ HIV Negative

☒ Pregnancy test Negative

☒ RPR Negative

☐ Vaginal Culture [REDACTED] If positive, specify [REDACTED]

☐ Other: Specify _____

☐ Physical Abuse Panel

☐ Diagnostic Imaging Panel

☐ Miscellaneous Panel

OVERALL MEDICAL ASSESSMENT (Based on history and physical findings)

☒ **Miscellaneous Sexually Transmitted Diseases**

☐ Herpetic balanitis

☐ HPV Condyloma Acuminata

☐ Trichomonas Vaginalis

☐ Herpetic vulvovaginitis

☐ Perianal Herpes

☒ None

☒ **Miscellaneous Diseases/Conditions**

☐ Bacterial Vaginosis

☐ Lichen Sclerosus et Atrophicus

☐ Straddle injury

☐ Birth Trauma

☐ Molluscum Contagiosum

☐ Streptococcal vulvovaginitis

☐ Candida vulvovaginitis

☐ Mongolian Spots

☐ Urethral prolapse

☐ Encopresis

☐ Obesity

☐ Urinary Tract Infection

☐ Enuresis

☐ Osteogenesis Imperfecta

☐ Vaginitis, non-specific

☐ Glutaric Aciduria

☐ Perianal streptococcal dermatitis

☐ Vitamin K Deficiency Bleeding

☐ Hemangioma

☐ Pinworm

☐ Von Willebrand's Disease

☐ Impetigo

☐ Rickets

☐ Other Specify: [REDACTED]

☒ None

DIAGNOSIS & CONCLUSIONS

Mino is a 12 year old pubertal female who provides a history of genital-vaginal contact with John Henry Lowry, Jr. She provided a history of genital discomfort during and after the alleged incident. The result of her genital exam reveal a pubertal female with no current signs of genital injury. Based on her history this could represent interval healing of an incurred genital injury. This finding is consistent with her history provided based on evidenced based medical literature. A normal exam does not confirm nor does it discredit her history.

Child's Name Minor 1

DOB [REDACTED]

RECOMMENDATIONS AND TREATMENT

Mino will be referred to David Kellin for counselling.
Labs will be ordered today as per sexual assault protocol. I will follow up with the family to order follow up tests.
She should continue seeing her PCP: Dr. Mante for routine well child exam and vaccinations.

Healthcare Provider's
Signature

Shaunese D Singleton, MD

Digitally signed by Shaunese D Singleton, MD
DN: cn=Shaunese D Singleton, MD, o=Palmetto CASA, ou,
email=shaunese77@msn.com, c=US
Date: 2013.12.17 11:04:59 -0500

Date: Nov 19, 2013

Supervising Physician's
Signature (if applicable)

Date:

400h Carolina Law Enforcement Division
Sexual Assault Examination Protocol

Patient information

Name of Hospital: Piedmont Medical Center Date: 11/3/13 Time admitted: 1154

• Age: 12 Gender: M Ethnicity: Black
• Home address: 100 Crosby St. Chester SC
• Date of [redacted] Marital status: Single
• Parent or Guardian: _____

Law Enforcement:

• Agency: Chester Police Case Number: _____
• Forensic Exam Requested: ☒ Yes ☐ No If no, describe: _____
• Reporting Officer: Wayne Levister Time: 10:19 am
• Investigator: Lt Tammy Levister Time: _____

Advocacy: • if indicated

• Rape crisis advocate: Safe Passage Notified: _____ Arrival: 1430
• Other: _____ Notified: _____ Arrived: _____
• Interpreter: _____ ☐ NA

Persons present during collection of history:

☐ Advocate ☐ Family ☒ Law Enforcement ☐ Other: _____

Persons present during medical exam:

☐ Advocate ☒ Family ☐ Other: _____

Pertinent medical history:

• LMP 10/22/13 Normal ☒ Yes ☐ No G O P C
• Any recent (60 days) anal-genital injuries, surgeries, diagnostic procedures or medical treatment that may affect the interpretation of current physical findings?
☐ Yes ☒ No If Yes, describe: _____
• Any other pertinent medical conditions or injuries that may affect the interpretation of current physical findings?
☐ Yes ☒ No If Yes, describe: _____
• Current medications: ☒ None: _____

Pertinent pre and post assault related history:

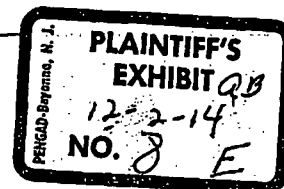
	No	Yes	Date
• Consensual intercourse within 7 days?	☒	☐	_____
• Oral	☒	☐	_____
• Vaginal	☒	☐	_____
• Anal	☒	☐	_____
• If yes, was a condom used?	☐	☐	Describe _____
• Other type of contraception used?	☐	☐	_____

Medications, Social Drugs or Alcohol:

Ingestion of alcohol/drugs by patient: ☒ No ☐ Yes ☐ Unsure
• If yes, ☐ Alcohol ☐ Drugs Time _____ Date _____
Describe: _____

• If yes ☐ Voluntary ☐ Forced ☐ Coerced ☐ Suspected

• Any voluntary use of alcohol 12 hours prior to assault? ☒ No ☐ Yes
• Any voluntary use of drugs 96 hours prior to assault? ☒ No ☐ Yes
• Any voluntary use of alcohol or drugs between time of assault and forensic exam? ☒ No ☐ Yes



South Carolina Law Enforcement Division Sexual Assault Examination Protocol

407
Patient information

Post assault hygiene/activity:

- Urinated
- Defecated
- Genital or body wipes
- Douched
- Removed tampon/diaphragm
- Brushed teeth
- Mouthwash
- Bath/shower/wash
- Ate or drank
- Vomited
- Changed clothing
- Smoked

No

Yes

Describe:

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Soda, fries

Assault History:

- Date of assault: 11/3/13 Time of assault: 0400
- Location of assault: Aunt's house
- Any witnesses see the assault? ☐ Yes ☐ No If yes, identify: possible unsure if sister saw

History of assault per patient:

States she woke to someone

pulling her pants down

States he held her arms down with his upper body without injury. Reports he "played with me down there." Asked patient to describe "played with," patient reports he inserted fingers in her vagina. Report he put his penis to her vagina & "tried but couldn't get it in." States he tried for awhile.

Assailants Name	Age	Gender	Ethnicity	Relationship
[REDACTED]				
#2				
#3				
#4				

Method(s) employed by assailant(s):

- Weapons
- Threatened
- Injuries inflicted
- Types of weapons
- Physical blows
- Grabbing/holding/pinching
- Physical restraints
- Strangulation
- Burns
- Verbal threats of harm
- Other methods:

No

Yes

If yes, describe:

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Used his hands to hold down her arm

408 South Carolina Law Enforcement Division Sexual Assault Examination Protocol

Patient information

Were any injuries inflicted upon the assailant during the assault? ☒ No ☐ Yes

If yes, describe: _____

Is assailant known: to have STD ☐ No ☐ Yes If yes, describe: Unknown

• Had a vasectomy: ☐ No ☐ Yes Was sterile: ☐ No ☐ Yes

• Alcohol/drug use by assailant ☐ No ☐ Yes ☒ Unsure Time _____ Date _____

if yes, ☐ Alcohol ☐ Drugs Describe: Unknown, pt says she overheard aunt say he used cocaine that night

Contacts Described By Patient

*if more than one assailant, identify number

Penetration of vagina by:

Describe: _____

	No	Yes	Attempted	Unsure
Penis	☐	☐	☒	☐
Finger	☐	☒	☐	☐
Object	☒	☐	☐	☐

Penetration of anus by:

Describe: _____

	No	Yes	Attempted	Unsure
Penis	☒	☐	☐	☐
Finger	☒	☐	☐	☐
Object	☒	☐	☐	☐

Oral copulation of genitals:

Describe: _____

	No	Yes	Attempted	Unsure
Of patient	☒	☐	☐	☐
Of assailant	☒	☐	☐	☐

Non-genital acts:

Describe: _____

	No	Yes	Attempted	Unsure
Licking	☒	☐	☐	☐
Kissing	☒	☐	☐	☐
Suction injury	☒	☐	☐	☐
Biting	☒	☐	☐	☐
Fondle	☒	☐	☐	☐

Other acts:

Describe: _____

	No	Yes	Attempted	Unsure
Other	☐	☐	☐	☐
Masturbation	☒	☐	☐	☐
Photographs	☒	☐	☐	☐

Did ejaculation occur:

Describe: _____

	No	Yes	Unsure
☐ Mouth	☒	☐	☐
☐ Vagina	☒	☐	☐
☐ Anus	☒	☐	☐
☐ Body	☒	☐	☐
☐ Clothing	☒	☐	☐
☐ Bedding	☒	☐	☐
☐ Other	☐	☐	☐

Contraception or lubricant used:

Describe type/brand if known: _____

	No	Yes	Unsure
Foam used	☒	☐	☐
Jelly used	☒	☐	☐
Lubricant	☒	☐	☐
Condom used	☒	☐	☐

South Carolina Law Enforcement Division Sexual Assault Examination Protocol

Patient Information **409**

General Physical Examination

Describe general physical appearance: normal, dressed

Describe general demeanor: ☐ Quiet ☐ Tearful ☐ Trembling ☐ Anxious ☒ Controlled ☐ Angry ☐ Sobbing ☐ Tense

• Response to questions: ☐ Briefly ☐ Reluctantly ☒ Readily

• Eye contact: ☒ Good ☐ Poor

• Describe: _____

c/o Non-genital injury, pain and/or bleeding? ☒ No ☐ Yes, describe _____

c/o Anal-genital injury, pain and/or bleeding? ☒ No ☐ Yes, describe _____

Genital Examination-Females:

• Exam position used: ☒ Supine ☐ Lithotomy ☐ Lateral ☐ Knee-chest

• Exam methods for genital examination: ☐ Water lubricated speculum ☐ Foley catheter ☐ Toluidine Blue Dye

☐ Colposcope ☐ UV light (Woods light) ☐ Positive ☐ Negative *show location on diagram on page 5

• Presence of sperm: vaginal wet prep: ☐ Motile ☐ Non-motile ☐ None visualized

Genital Examination-Males:

• Circumcised? ☐ Yes ☐ No

• Exam position used: ☐ Supine ☐ Lithotomy ☐ Lateral ☐ Other (describe) _____

• Exam methods for genital examination: ☐ Toluidine Blue Dye ☐ Coloscope ☐ UV light

Strangulation Assessment*: ☒ NA *Note patient history

• Object used on neck: ☐ One hand ☐ Two hands ☐ Forearm ☐ Other _____

• How long was the patient strangled? _____ How many times? _____

• Any loss of consciousness? ☐ Yes ☐ No

• Throat hoarseness? ☐ Yes ☐ No

• Voice at time of exam _____

Drug Facilitated Sexual Assault Assessment*: ☒ NA *Note patient history

• Orientation: ☐ Oriented x 3 ☐ Disoriented; describe _____

• Ability to recall events: ☐ Well ☐ No memory ☐ Lapses of memory loss

• Patient's speech: ☐ Clear ☐ Garbled

• Patient's gait: ☐ Steady ☐ Unsteady; describe: _____

• History of nausea: ☐ Yes ☐ No Vomiting: ☐ Yes ☐ No times? _____

• Other concerning symptoms or assessments: _____

Lab tests performed:

☒ Pregnancy ☐ Positive ☐ Negative ☐ NA

☐ Wet prep/KOH prep

☒ Urinalysis

☐ Gonorrhea Culture site _____

☐ Chlamydia Culture site _____

☐ RPR, syphilis

☐ HIV

☐ Other _____

Radiological studies: _____

Surgical procedure required: ☒ No ☐ Yes, describe _____

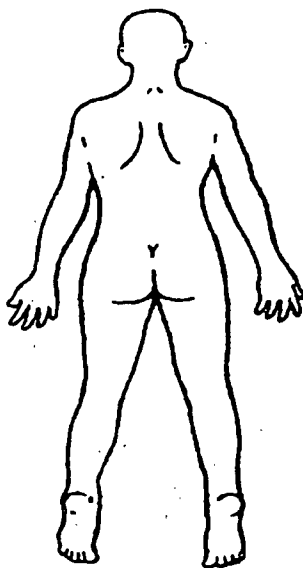
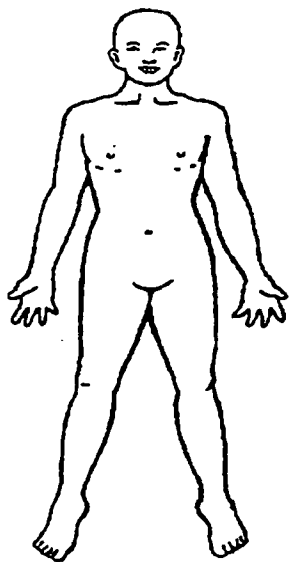
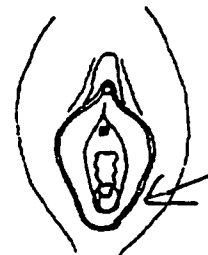


Diagram G



Diagram H



#1

Diagram I



Diagram C

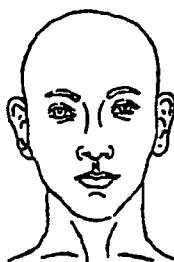


Diagram D

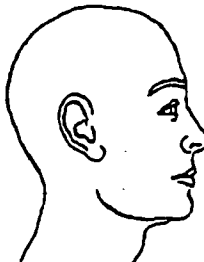


Diagram J

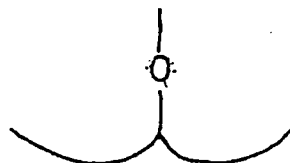


Diagram E

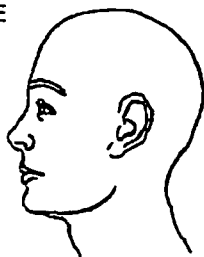
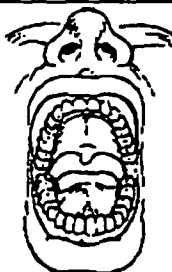


Diagram F



Location #	Description	Location #	Description
1	Fossa navicularis very small reddened area sensitive to touch, micro tore noted		

South Carolina Law Enforcement Division
Sexual Assault Examination Protocol

Patient Information 411

Evidence Collected

Clothing collected: describe clothing ☐ NA ☐ Changed clothes ☐ Bathed

☒ Shirt Blue Shortleeves shirt

☒ Pants Bluejean pants

☒ Underwear

☒ Bra

☐ Jacket

☐ Belt

☐ Shoes

☐ Other

☒ Debris sheet

DNA Evidence Collected:

No

Yes

Describe

Miscellaneous materials

☒

☐

Lick/kiss/suck/bite mark

☒

☐

Oral swab and smear

☐

☒

Fingernail scraping/cuttings

☒

☐

Known DNA/Buccal swab

☐

☒

Combed pubic hairs

☐

☐

Vaginal swab and smear

☐

☐

Rectal swab and smear

☒

☐

Suspected body fluid

☒

☐

Toxicology Evidence Collected:

No

Yes

Describe

Blood/grey top

☒

☐

Urine

☒

☐

Vomit

☒

☐

Other

☒

☐

Photography:

No

Yes

*Photographs stored with forensic chart

Colposcope

☒

☐

Magnification

35mm camera

☒

☐

of pictures

Digital pictures

☒

☐

of pictures

Medications administered:

Gonorrhea prophylaxis: Rocephin 250mg

☐ NA

Chlamydia prophylaxis: Azithromax 500mg

☐ NA

Pregnancy prevention:

☐ NA

Tetanus toxoid:

☐ NA

Other meds:

☐ NA

Discharge Information:

• Time: 11/3/13 Discharged to: home

• Accompanied by: Mother

• Admitted to Hospital: ☐ No ☐ Yes/Room Number _____ Admitting MD _____

• Consults: ☒ NA ☐ Yes

Follow-Up:

• Medical: PCP

Date: _____

• Counselor: _____

Date: _____

Signature of Officer receiving Evidence:

• Signature: _____ Time: _____

• Agency: _____

• Evidence Released: ☒ SLED kit ☒ Clothing ☐ Urine ☐ Other _____

Signature of SANE/MD

Revised June 2008

WITNESSES

T. Levister (Chester City PD)

ARREST WARRANT NUMBER/DOA

2013A1220100144 (DOA- 11-15-13)

ACTION OF GRAND JURY

Foreperson of Grand Jury

e: 2-18-14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-12-084

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2014

THE STATE

vs.

JOHN HENRY LOWERY, II

Indictment for

**Criminal Sexual Conduct with a Minor
First Degree**

SC Code: § 16-3-655(A)(2)

CDR Code: 3022

Class: A

STATE OF SOUTH CAROLINA)

INDICTMENT

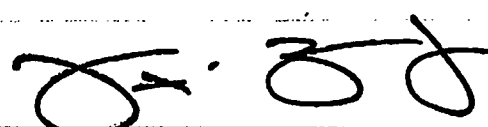
COUNTY OF CHESTER)

At a Court of General Sessions, convened on February 18, 2014, the Grand Jurors of Chester County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

That JOHN HENRY LOWERY, II did in Chester County on or about November 03, 2013, willfully and unlawfully commit criminal sexual conduct with a minor first degree by engaging in sexual battery with a minor who was less than sixteen years of age and JOHN HENRY LOWERY, II, having been previously convicted of, pled guilty or nolo contende to, or adjudicated delinquent for an offense listed in Section 23-3-430 (C) to wit: Sexual Assault in the Third Degree, or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430 (D), in violation of Section 16-3-655 Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 5th, 2016



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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April 5th, 2016



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ATTORNEY FOR APPELLANT

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