

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTIN RODRIGUEZ,

APPELLANT

APPELLATE CASE NO 2015-001902

RECORD ON APPEAL

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1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions

3
4 Indictment No.: 2015-GS-32-1404
2015-GS-32-1531

5
6 State of South Carolina,)
7 Plaintiff.)
8 vs.) Transcript of Record
9 Martin Rodriguez,)
10 Defendant.)

11
12 August 24-26, 2015
13 Lexington, South Carolina

14
15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge and a jury.
17

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

19 Suzanne Mayes, Assistant Solicitor
20 Micah Caskey, Assistant Solicitor
Attorney for the State

21 Robert T. Williams, Sr., Esquire
22 Attorney for the Defendant

23
24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
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MONDAY, AUGUST 24, 2015

THE COURT: All right. Solicitor, you may call your first case for trial.

MS. MAYES: May it please the Court? Your Honor, this is Case No. 2015-GS-32-1404, the State of South Carolina versus Martin Rodriguez. He is represented by attorney Theo Williams.

This indictment is for criminal sexual conduct with a minor in the second degree.

Indictment No. 2015-GS-32-153, the State of South Carolina versus Martin Rodriguez. This indictment is for criminal sexual conduct with a minor in the third degree.

Your Honor, the State is ready for trial in this case.

MR. WILLIAMS: May I approach, Your Honor?

THE COURT: Yes, sir, certainly.

(There was a bench conference out of the hearing of the jury venire and the court reporter.)

THE COURT: All right. And, Mr. Williams, you represent Mr. Rodriguez?

MR. WILLIAMS: I do, Your Honor.

THE COURT: And Mr. Rodriguez is present?

MR. WILLIAMS: He is, Your Honor.

THE COURT: And ready for trial?

MR. WILLIAMS: He is, Your Honor.

1 THE COURT: All right. Thank you.

2 VOIR DIRE

3 THE COURT: Ladies and gentlemen of the jury panel,
4 if you'd please give me your complete and undivided
5 attention, we're going to go through a procedure whereby we
6 select a jury for the first case that has been called for
7 trial, the case of the State versus Martin Alejandro
8 Rodriguez. As a result of that, I will ask you certain
9 questions to determine your eligibility and your
10 qualifications to serve as a fair and impartial, unbiased
11 juror in the trial of this case for both Mr. Rodriguez and
12 the State of South Carolina. Please consider yourselves
13 still under oath that you have previously been administered
14 to by the Clerk this morning.

15 I will read or publish to you the indictments that
16 have been called for trial. The indictments are not
17 evidence. The indictments are formal charging documents by
18 which an individual is placed on notice of charges that
19 have been brought against him or her. They contain mere
20 allegations and in no way are the indictments any evidence
21 of the allegations contained therein. I read these
22 indictments to you because of certain questions that I will
23 ask you to determine, again, your qualifications to serve
24 as jurors on this specific case.

25 The first Indictment 2015-GS-32-0153, the State

1 versus Martin Alejandro Rodriguez, alleges that Martin
2 Alejandro Rodriguez, DOB , being a person
3 fourteen years of age, over the age of fourteen, did in
4 Lexington County, South Carolina on or about January 1st,
5 2013 through September 11th, 2013, willfully and lewdly did
6 commit or attempt to commit a lewd and lascivious act upon
7 or with the body or parts of a child under 16 years of age
8 with the intent of arousing, appealing to or gratifying the
9 lust or passions or sexual desires of himself or of the
10 child, to wit: Touching and physical contact of a sexual
11 nature involving a child, Minor , with her date of
12 birth. Furthermore, the said child was under the age of 14
13 during the time of this offense in violation of Section
14 16-3-655(C) of the South Carolina Code of Laws, as amended.
15 That is an indictment for criminal sexual conduct with a
16 minor in the third degree.

17 The next indictment 2015-GS-32-01404 alleges that
18 the defendant did in Lexington County, alleges his same
19 date of birth, between the same dates of January 1st, 2013
20 and September 11th, 2013, commit the offense of criminal
21 sexual conduct with a minor in the second degree by
22 engaging in a sexual battery with a minor who was 14 years
23 of age or less, but who was older than 11 years of age, to
24 wit: Sexual intercourse and/or genital intrusion upon the
25 body of Minor , with her date of birth, in violation

1 of 16-3-655(B)1. That is an indictment for criminal sexual
2 conduct with a minor in the second degree.

3 The State is represented by Assistant Solicitor --
4 Solicitors, if y'all would please stand and --
5 Solicitor Mayes and Solicitor Caskey, if you'd please stand
6 and introduce yourselves to the jury panel and any other
7 members of the Solicitor's staff that may assist you in the
8 prosecution of this case?

9 MS. MAYES: Yes, sir, Your Honor. May it please
10 the Court? I am Suzanne Mayes. I am a prosecutor here
11 with the Eleventh Circuit Solicitor's Office. Also working
12 with this case from the Solicitor's Office is Investigator
13 Jill Smith and victim advocate, Lindsay Frazier.

14 MR. CASKEY: My name is Micah Caskey. I'm a
15 prosecutor as well with the solicitor's office and I'll be
16 assisting Ms. Mayes in this case.

17 THE COURT: Thank you, Solicitors.

18 The defendant, Mr. Rodriguez, is represented by Mr.
19 Williams, if you'd please stand and introduce yourself, Mr.
20 Williams, and your client to the jury panel.

21 MR. WILLIAMS: I'm Theo Williams. I practice law
22 with the firm of Williams Hendrix Stiegner & Brink, which
23 is the firm right across street on the corner.

24 Martin, if you will stand.

25 This is my client, Martin Rodriguez. He was -- he

1 is the person charged with the crimes.

2 THE COURT: Thank you. Thank you, Mr. Williams.

3 MR. WILLIAMS: Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Rodriguez.

5 Is he any member of the jury panel related --
6 related by blood or marriage, close personal friends, have
7 any social, business, professional relationship with any of
8 the attorneys involved in the case, Assistant Solicitor
9 Mayes, Caskey or Mr. Williams? If so, please stand.

10 (No one stood.)

11 THE COURT: Is any member of the jury panel or any
12 member of your immediate family ever been a party to a law
13 suit, civil or criminal, where the opposing party was
14 represented by Mr. Williams, Assistant Solicitor Mayes or
15 Assistant Solicitor Caskey? If so, please stand.

16 Has any member --

17 Yes, ma'am, your number and name please?

18 THE JUROR: 11, Jessica Barlongo.

19 THE COURT: All right. Would you step up here to
20 the court reporter please?

21 (The juror approached.)

22 (The following conversation was on the record, out
23 of the hearing of the jury venire.)

24 THE COURT: Come right over here for me please.

25 Thank you. To me. Tell me your name again?

1 THE JUROR: Jessica Barlongo.

2 THE COURT: Tell me your situation.

3 THE JUROR: My brother may or may not have been
4 represented by Mr. Williams.

5 THE COURT: Okay.

6 THE JUROR: I think it was probably for DUI.

7 THE COURT: Okay.

8 THE JUROR: But I'm not sure. I'm not 100 percent;
9 I just heard him talk about it sometimes.

10 THE COURT: And give me a time frame?

11 THE JUROR: Probably about a year ago.

12 THE COURT: About a year ago?

13 THE JUROR: Uh-huh (affirmative response).

14 THE COURT: What's your brother's name?

15 THE JUROR: Parker Drask.

16 THE COURT: Parker Drask?

17 THE JUROR: Yes.

18 THE COURT: All right. Well, when you say may or
19 may not, let's say that he was represented by Mr. Williams.
20 Given that fact, could you still be a fair and impartial
21 juror in the trial of the case for both the State and Mr.
22 Rodriguez?

23 THE JUROR: Yes, sir.

24 THE COURT: All right. And that wouldn't have any
25 effect --

1 THE JUROR: No, sir.

2 THE COURT: -- whatsoever on your fairness and
3 impartiality?

4 THE JUROR: No, sir.

5 THE COURT: Thank you. I believe you can stay with
6 us.

7 Number 11 is going to stay with us.

8 (The juror returned to her seat.)

9 THE COURT: The indictments, as I have published or
10 read them to you, ladies and gentlemen, allege criminal
11 sexual conduct with a minor in the second degree and
12 criminal sexual conduct with a minor in the third degree
13 alleging between the dates of September -- excuse me --
14 January 1st of 2013 and September 11th of 2013 in Lexington
15 County. The named victim being Minor .

16 Does any member of the jury panel have any
17 knowledge about the case from any source whatsoever? If
18 so, please stand.

19 (No one stood.)

20 THE COURT: Has any member of the jury panel heard
21 or know anything about the case, whether by hearsay, news
22 reports, if any, any type of talk, any type of publication
23 whatsoever? If so, please stand.

24 (No one stood.)

25 THE COURT: Is any member of the jury panel biased

1 or prejudice towards the parties, that being Mr. Rodriguez
2 and the State, or towards the subject matter involved in
3 the case? If so, please stand.

4 (No one stood.)

5 THE COURT: Has any member of the jury panel or any
6 member or your immediate family ever been a victim of a
7 crime of a sexual nature and/or investigated concerning a
8 crime of a sexual nature? If so, please stand.

9 (Several jurors stood.)

10 THE COURT: All right. Yes, on the front row, your
11 number and name please?

12 THE JUROR: 211, James Warren.

13 THE COURT: All right. The young lady in the back,
14 your number and name please?

15 THE JUROR: 200, Armetria Thompson.

16 THE COURT: If y'all would just step up to the gate
17 for me please.

18 THE BAILIFF: 211, Your Honor.

19 THE COURT: Tell me your name again, sir?

20 THE JUROR: James Warren.

21 THE COURT: Warren?

22 THE JUROR: Yes.

23 THE COURT: All right. And tell me your situation.

24 THE JUROR: I probably should have come up on the
25 last question. My sister been messed with when she was a

1 little kid. So the prejudice -- I'm a little concerned.

2 THE COURT: Given the fact -- and you say she was
3 child; how old is she now?

4 THE JUROR: She's twenty-something. She's -- she
5 was older than me. She was a lot younger than what we're
6 talking about right now, but...

7 THE COURT: And given those facts of what occurred
8 to your sister, do you feel like you could be a fair and
9 impartial juror in the trial of the case for both Mr.
10 Rodriguez and the State?

11 THE JUROR: I can try. I'm just passionate on the
12 subject.

13 THE COURT: And nothing with that. There's no --
14 there's no wrong answers. It's whatever your answer is
15 when you say you're passionate, can you --

16 THE JUROR: Yeah, I mean -- I don't have much
17 remorse as far as the people who do these things or
18 whatever, whether they're guilty or not.

19 THE COURT: I think I'll set you aside for the
20 trial of this case. Do not say anything to your fellow
21 jurors. Okay. All right. Thank you. Thank you, Mr.
22 Warren.

23 Yes?

24 THE BAILIFF: 200, Your Honor.

25 THE COURT: All right. Yes, ma'am, your number and

1 name, please; I know your number, your name please.

2 THE JUROR: Armetria Thompson.

3 THE COURT: Thompkins?

4 THE JUROR: Thompson.

5 THE COURT: And tell me your situation.

6 THE JUROR: My son's been involved in some issues
7 and there was an investigation.

8 THE COURT: All right. And can you give me a time
9 frame?

10 THE JUROR: I would say two years ago.

11 THE COURT: Two years ago?

12 THE JUROR: Uh-huh (affirmative response).

13 THE COURT: Given that fact, can you be a fair and
14 impartial juror in the trial of this case for both the
15 State and Mr. Rodriguez?

16 THE JUROR: I'll try.

17 THE COURT: When you say you'll try, can you
18 explain --

19 THE JUROR: I'll do my best. I do get a little
20 angry about stuff like that. It's still kind of fresh.
21 I'll do my best to be fair.

22 THE COURT: Well --

23 THE JUROR: I'm a fair person.

24 THE COURT: -- I guess the question would be, could
25 you set aside whatever occurred to your son and make your

1 decision based on the evidence and the testimony you hear
2 in this courtroom?

3 THE JUROR: Yes, sir.

4 THE COURT: And not being affected by what may have
5 occurred within your family, correct?

6 THE JUROR: Yes, I can.

7 THE COURT: Can you be a fair and impartial juror
8 to Mr. Rodriguez?

9 THE JUROR: Yes.

10 THE COURT: And to the State?

11 THE JUROR: Yes.

12 THE COURT: Any question in your mind whatsoever
13 about that?

14 THE JUROR: I was a little upset when you just said
15 what this is about.

16 THE COURT: Sure.

17 THE JUROR: It bothered me a little bit, but I can
18 be fair.

19 THE COURT: But bothering you, does that relate to
20 have you formed an opinion as to what --

21 THE JUROR: No, I don't have an opinion. I don't
22 know the situation.

23 THE COURT: -- whether Mr. Rodriguez is guilty or
24 not guilty?

25 THE JUROR: No, I don't know anything.

1 THE COURT: You haven't heard about it.

2 THE JUROR: No.

3 THE COURT: And you're not going to form that
4 opinion until you've heard all the evidence and testimony
5 and the law as I tell you the law is?

6 THE JUROR: Huh?

7 THE COURT: And the law as I tell you the law is?

8 THE JUROR: Yes.

9 THE COURT: Any question in your mind about that?

10 THE JUROR: No.

11 THE COURT: I believe you can stay with us.

12 THE JUROR: Okay.

13 THE COURT: Okay. Thank you very much.

14 Yes, sir?

15 THE BAILIFF: 62, Your Honor.

16 THE COURT: 62, all right.

17 And tell me your name, please.

18 THE JUROR: My name is Mary English.

19 THE COURT: All right. And tell me your situation.

20 THE JUROR: It was my -- he was sexually assaulted.

21 THE COURT: Can you give me a time frame?

22 THE JUROR: It was something like ten or eleven
23 years ago.

24 THE COURT: A little bit louder?

25 THE JUROR: About ten or eleven years ago.

1 THE COURT: About ten or eleven years ago and was
2 that in Lexington County he was accused?

3 THE JUROR: Yes.

4 THE COURT: All right. What was his name?

5 THE JUROR: Freddie English.

6 THE COURT: And was there -- was he accused? Was
7 he charged?

8 THE JUROR: He wasn't charged.

9 THE COURT: He was not charged?

10 THE JUROR: It was not founded.

11 THE COURT: All right. So it was a DSS case?

12 THE JUROR: Yes.

13 THE COURT: All right. Given those facts, can you
14 be a fair and impartial juror in the trial of this case for
15 both Mr. Rodriguez and the State?

16 THE JUROR: Yes, sir.

17 THE COURT: Any doubt in your mind about that?

18 THE JUROR: No.

19 THE COURT: Thank you. I believe you can stay with
20 us.

21 62 is going to stay with us.

22 Yes, sir?

23 THE BAILIFF: 138, Your Honor.

24 THE COURT: Good morning. And tell me your name
25 please.

1 THE JUROR: Shanna Millender.

2 THE COURT: All right. And tell me your situation?

3 THE JUROR: My child was abused by a young man
4 named Jason Parker and two cousins also. And he was
5 convicted with that but it was on another charge -- but I
6 don't believe it would sway my opinion on somebody else
7 that has.

8 THE COURT: When you say you don't believe, I mean
9 you can set aside whatever may have happened with your son?

10 THE JUROR: Yes.

11 THE COURT: And make a decision based on the
12 evidence and testimony --

13 THE JUROR: Yes.

14 THE COURT: -- here in this courtroom?

15 THE JUROR: Yes.

16 THE COURT: Any doubt in your mind about that?

17 THE JUROR: No, sir.

18 THE COURT: I believe you can stay with us. Thank
19 you.

20 Any others?

21 (No one stood.)

22 THE COURT: Thank you.

23 Has any member of the jury panel ever been employed
24 by Southeast Frozen Foods located at 220 State Road 424 in
25 Gaston, South Carolina? If so, please stand.

1 (No one stood.)

2 THE COURT: Has any member of the jury panel ever
3 been employed by Sanchez Construction located at 20 -- 2534
4 Charleston Highway in the Cayce area of South Carolina? If
5 so, please stand.

6 (No one stood.)

7 THE COURT: Ladies and gentlemen, I'm going to call
8 a list of potential witnesses in the trial of this case. I
9 would advise the witnesses when your names are called, if
10 you'd please stand and face the jury panel. I would advise
11 the jury panel that the witnesses are not required to be
12 present during this procedure. Therefore, there may be
13 names called and no one stand.

14 The question of course is, is any member of the
15 jury panel related by blood or marriage, close personal
16 friend, know, have any social, business, professional
17 relationship with any of these individuals whose names I
18 call and/or who stand before you. If you do, I would ask
19 you to please stand.

20 I will call the names in groups of about five.

21 Minor to my front right.

22 Thank you,

23 Detective Trish Stoner.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Detective Stoner to my front right.

1 Renee Strickland, Ms. Strickland to my front right.
2 Doug Novak; Margaret Beth Holliman.

3 Those last four names all with the Lexington County
4 Sheriff's Department.

5 The next five names; Candy Kyzer, Roger D. Gilland,
6 Glenn Ross; those three with the Lexington County Sheriff's
7 Department.

8 Louis Gossett, Lexington -- Lexington, South
9 Carolina; and Mildred Moore, Lexington County DSS.

10 Again, ladies and gentlemen, the question is, is
11 any member of the jury panel related by blood or marriage
12 or close personal friends, have any business, social,
13 professional relationship with any of these individuals
14 whose names I called and/or who stands before you. If so,
15 please stand.

16 Now this is No. 11?

17 THE JUROR: Yes, sir.

18 THE COURT: All right. And what -- related?
19 Friendship?

20 THE JUROR: Candy Kyzer is my great aunt's
21 granddaughter. I don't know if that --

22 THE COURT: I'm going to have to track this. We
23 need ancestry.com now.

24 Candy Kyzer. Ms. Kyzer is your --

25 THE JUROR: My great aunt's, it's her

1 granddaughter. I haven't seen her in a really long time,
2 but I know who she is.

3 THE COURT: And when you say a really long time,
4 how long ago is that?

5 THE JUROR: I don't know.

6 THE COURT: So you don't remember the last time you
7 saw Ms. Kyzer?

8 THE JUROR: Probably like ten years at least.

9 THE COURT: Given that fact, can you be a fair and
10 impartial juror in the trial of this case for both Mr.
11 Rodriguez and the State?

12 THE JUROR: Yes, sir.

13 THE COURT: Thank you. You may be seated.
14 Yes, your number and name please.

15 THE JUROR: 140, Ginger Moorer.

16 THE COURT: All right. Relation or friendship?

17 THE JUROR: I attend church with Renee Strickland.

18 THE COURT: Say it again?

19 THE JUROR: I attend church with Renee
20 Strickland.

21 THE COURT: All right. And for what -- for what
22 period of time?

23 THE JUROR: Continuing. Ongoing.

24 THE COURT: Given that fact, can you be a fair and
25 impartial juror in the trial of this case for both the

1 State and Mr. Rodriguez?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you. You may be seated.

4 Any others?

5 (No one stood.)

6 THE COURT: The next five names, Margeurite
7 "Meggie" Ricard, Lexington County DSS; Meredith Vox,
8 Lexington County DSS; Brenda M. Summer, Daybreak Pregnancy
9 Center; Maggie Downing, Daybreak Pregnancy Center; Doris
10 Yarborough, State Law Enforcement Division.

11 Again, is any member of the jury panel related by
12 blood or marriage or close personal friends, have any
13 business, social, professional relationship with any of
14 these individuals whose names I just called? If so, please
15 stand.

16 (No one stood.)

17 THE COURT: The next five names, Amy Stephens with
18 SLED; Jennifer L. Bartman also with SLED; Heather M. Smith,
19 LPC Assessment and Resource Center, Columbia, South
20 Carolina; Laurie Harris Caldwell with SLED; and Bonnie E.
21 Smalley, RN, Lexington Medical Center.

22 And the final six names, Hilary Timmons, LMSW,
23 Lexington Medical Center; Gail Collins, Rolling Meadows
24 Mobile Home Park; Custodian of the records, unnamed,
25 Sanchez Construction; Custodian of records, Southeast

1 Frozen Foods and/or Maria Nunez; Alicia Cortez; Roy
2 Rodriguez. Mr. Rodriguez to my front right.

3 Thank you, Mr. Rodriguez; you may be seated.

4 Alicia Cortez or Alicia Mata, Lexington, South
5 Carolina.

6 Again, ladies and gentlemen, is any member of the
7 jury panel related by blood or marriage, close personal
8 friends, have any social, business, professional
9 relationship with any of those individuals whose names I
10 just called and/or who stood before you? If so, please
11 stand.

12 (No one stood.)

13 THE COURT: Any additional requested voir dire from
14 the --

15 THE CLERK: You have one standing, Your Honor.

16 THE COURT: Yes, your number and name please.

17 THE JUROR: Brenda Winter.

18 THE COURT: Step up here for me please.

19 Tell me your name.

20 THE JUROR: Brenda Winter.

21 THE COURT: And tell me your number again?

22 THE JUROR: 222.

23 THE COURT: 2-2-2?

24 THE JUROR: Yes.

25 THE COURT: All right. And --

1 THE JUROR: When you were calling that last group
2 of names, I thought I heard Esther Nunez; I'm sorry, it
3 just --

4 THE COURT: It must have been my poor
5 pronunciation. There was --

6 THE JUROR: No, no, no.

7 MS. MAYES: Maria Nunez.

8 THE JUROR: And I worked with someone that I just
9 wanted to make sure.

10 THE COURT: So you don't know any of them?

11 THE JUROR: No.

12 THE COURT: All right. Thank you very much.

13 THE JUROR: Thank you.

14 THE COURT: Thank you very much.

15 MS. MAYES: Judge, I just wanted to bring to the
16 Court's attention that Juror Number. 118 is a cousin of
17 Teresa Aikens, our victim advocate and then Juror Number
18 87, Renee Strickland, said she knew that one. But the
19 juror didn't stand up. So I just wanted to make everyone
20 aware of that.

21 THE COURT: Now she knows who?

22 MS. MAYES: 87 knows Renee Strickland.

23 THE COURT: Why didn't she stand up.

24 MS. MAYES: I don't know. That is Lakin Hayes.

25 THE COURT: And in public, she knows Ms.

1 Strickland.

2 MS. MAYES: I just wanted to handle that.

3 THE COURT: Let me find out about that. What's her
4 number?

5 MS. MAYES: 87.

6 THE COURT: What's her name?

7 MS. MAYES: Lakin Hayes.

8 THE COURT: Juror Number 87, Ms. Hayes; step up
9 here for me, Ms. Hayes. You didn't know I was going to
10 call you out, did you?

11 THE JUROR: No.

12 THE COURT: How are you, Ms. Hayes?

13 THE JUROR: Good.

14 THE COURT: Do you know Ms. Strickland?

15 THE JUROR: No, sir.

16 THE COURT: Renee Strickland?

17 THE JUROR: Huh-huh.

18 THE COURT: Okay. You're good.

19 Maybe Renee knows Lakin, but Lakin doesn't know
20 her.

21 THE JUROR: Yeah, I don't know Renee.

22 THE COURT: You good?

23 THE JUROR: I'm good.

24 THE COURT: You can go back and have a seat. Thank
25 you very much, Ms. Hayes.

1 And what was the other one?

2 MS. MAYES: That was the one that his cousin works
3 in our office, but I don't think that question was asked.

4 THE COURT: No, it was not. Do you want that
5 asked? I didn't ask about everybody.

6 (There was a bench conference out of the hearing of
7 the jury panel and the Court Reporter.)

8 THE COURT: Thank you. Thank you, Solicitor.

9 Thank you, Mr. Williams. Thank you.

10 All right. Again, any additional questions of voir
11 dire from the State, Solicitor?

12 MS. MAYES: None from the State, Your Honor.

13 THE COURT: From the Defense, Mr. Williams?

14 MR. WILLIAMS: None from the Defendant, Your Honor.

15 THE COURT: All right. And, ladies and gentlemen
16 of the jury panel, as I explained to you at the beginning
17 of this procedure, our purpose, our goal, is to select a
18 jury panel made up of members of the jury pool that will be
19 fair, impartial, unbiased and unprejudiced to both Mr.
20 Rodriguez and the State per the allegations of the
21 indictment. You've been asked numerous questions, you've
22 identified certain kinships or friendships you have with
23 individuals or any knowledge you may have of the
24 individuals.

25 No one has indicated that they have any knowledge

1 about the facts of this case whatsoever. Others have come
2 forward and explained their particular personal situation
3 and I've either allowed them to remain in the jury pool or
4 have set them aside for the purposes of this case.

5 You know yourselves best. With that background,
6 what the case involves, who the parties are, the potential
7 witnesses, is there any member of the jury panel know any
8 reason why you, you feel like you could not be a fair and
9 impartial juror in the trial of this case for both the
10 State and Mr. Rodriguez? If so, please stand.

11 If it's something in your mind that concerns you
12 that you have a question about, it concerns me. If you
13 have something in your mind, please stand.

14 Yes, sir, your number and name please?

15 THE JUROR: 34, Gregory Cannon.

16 THE COURT: All right. Come forward for me please.

17 Any others?

18 And it was 34?

19 THE JUROR: 34, yes, sir.

20 THE COURT: Tell me your name again.

21 THE JUROR: Gregory Cannon.

22 THE COURT: All right. Tell me your situation.

23 THE JUROR: I would say based on my personal
24 convictions and my Bible-trained conscience that I could
25 not impartially sit on a jury of this nature due to the

1 sexual content. It no doubt would be part of the potential
2 evidence, I guess. Being with that mindset, it's not, my
3 Bible conscience, my personal conscience, I would not want
4 to be subjected to such material.

5 THE COURT: So as a result of that, you don't feel
6 like you can be a fair and impartial juror in a case of
7 this nature?

8 THE JUROR: Quite possible, yes.

9 THE COURT: It concerns you?

10 THE JUROR: It does.

11 THE COURT: Well, I'd rather know it now than you
12 be a person in the jury box.

13 THE JUROR: Right.

14 THE COURT: Well, I'll --

15 THE JUROR: You know, for the particular type of
16 case.

17 THE COURT: Sure. I'm going to set you aside for
18 the trial of this case. Do not say anything to your fellow
19 jurors. Thank you.

20 THE JUROR: Thank you, Your Honor.

21 THE COURT: Thank you very much.

22 Of course that was my final question and this is my
23 final, final question. That was my pen all final question.

24 Does any member of the jury panel have any
25 religious or mental beliefs which would prevent you from

1 passing judgment on another person as a member of the jury
2 panel? If so, please stand.

3 A JUROR: Could you repeat that?

4 THE COURT: Yes.

5 Does any member of the jury panel have any
6 religious or moral beliefs which would prevent you from
7 passing judgment on another person as a member of a jury
8 panel? If so, please stand.

9 All right. No one stands.

10 I find our panel is qualified with the exceptions
11 of those I have set aside.

12 **JURY SELECTION**

13 THE COURT: Madam Clerk, if you'd give us a panel,
14 please. And if you would instruct the panel.

15 THE CLERK: Yes, sir.

16 THE COURT: Thank you.

17 THE CLERK: What about strikes, Your Honor?

18 THE COURT: Strikes, Solicitor?

19 MS. MAYES: Five for the State, Your Honor; ten for
20 the defense.

21 THE COURT: Do you agree with that, Mr. Williams?

22 MR. WILLIAMS: I do agree.

23 THE COURT: Five for the State; ten for the
24 defense. All right.

25 THE CLERK: Ladies and gentlemen --

1 THE COURT: Thank you.

2 THE CLERK: Excuse me, Your Honor?

3 THE COURT: Go right ahead.

4 THE CLERK: Ladies and gentlemen, as I call your
5 name, I'll need you to come forward and stand where Mr. Dan
6 is like I showed you earlier. Make sure you bring your
7 purses, books, whatever you have with you so in case you go
8 to the jury box instead of back out in the audience.
9 Proceed, Your Honor.

10 THE COURT: Yes, ma'am.

11 THE CLERK: Okay. As I call your name, come
12 forward please.

13 139, James Miller. (White male)

14 THE COURT: Just turn around. Thank you. Thank
15 you very much.

16 THE CLERK: That's perfect.

17 What say ye for the State?

18 MS. MAYES: Please present the juror.

19 THE CLERK: What say ye for the defense?

20 MR. WILLIAMS: Please excuse the juror from the
21 trial of this case.

22 THE CLERK: Return to your seat, please, sir.

23 Number 171, Zana Roberts. (White female)

24 What say ye for the State?

25 MS. MAYES: Please present the juror.

1 MS. MAYES: What say ye for the defense?

2 MR. WILLIAMS: Please excuse the juror from the
3 trial of this case.

4 THE CLERK: Return to your seat, please, ma'am.

5 107, Herbert Koon. (White male)

6 Right up here in front of this box. There you go;
7 now turn around.

8 What say ye for the State?

9 MS. MAYES: Please present the juror.

10 THE CLERK: What say ye for the defense?

11 MR. WILLIAMS: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, sir.

13 21, Keith Bowen. (White male)

14 What say ye for the State?

15 MS. MAYES: Please present the juror.

16 THE CLERK: What say ye for the defense?

17 MR. WILLIAMS: Please swear the juror.

18 THE CLERK: Have a seat in the jury box, sir.

19 178, Linda Ruess. (White female).

20 Ruess, I'm sorry, Ms. Ruess.

21 What say ye for the State?

22 MS. MAYES: Please present the juror.

23 THE CLERK: What say ye for the defense?

24 MR. WILLIAMS: Please excuse the juror from the
25 trial of this case.

1 THE CLERK: Return to your seat, please, ma'am.

2 205, Judy Vreeman. (White female).

3 What say ye for the State?

4 MS. MAYES: Please present the juror.

5 THE CLERK: What say ye for the defendant?

6 MR. WILLIAMS: Please swear the juror.

7 THE CLERK: Have a seat in the jury box, ma'am.

8 120, Donald Lunar -- Lunardini. (White male).

9 What say ye for the State?

10 MS. MAYES: Please present the juror.

11 THE CLERK: What say ye for the defense?

12 MR. WILLIAMS: Please excuse the juror from the
13 trial of this case.

14 THE CLERK: Return to your seat, sir.

15 Number 3, Winifred Allen. (Black female)

16 What say ye for the State?

17 MS. MAYES: Please present the juror.

18 THE CLERK: What say ye for the defense?

19 MR. WILLIAMS: Please swear the juror.

20 THE CLERK: Have a seat in the jury box, ma'am.

21 Number 10, Carl Barber. (White male)

22 What say ye for the State?

23 MS. MAYES: Please excuse the juror from the trial
24 of this case.

25 THE CLERK: Return to your seat, please, sir.

1 158, Karen Phipps. (White female)
2 What say ye the State?
3 MS. MAYES: Please present the juror.
4 THE CLERK: What say ye for the defense?
5 MR. WILLIAMS: Please swear the juror.
6 THE CLERK: Have a seat in the jury box, ma'am.
7 195, Ashely Teasdel. (Black female)
8 What say ye the State?
9 MS. MAYES: Please present the juror.
10 THE CLERK: What say ye for the defense?
11 MR. WILLIAMS: Please swear the juror.
12 THE CLERK: Have a seat in the jury box, please,
13 ma'am.
14 225, Ann Worman. (White female)
15 What say ye for the State?
16 MS. MAYES: Please present the juror.
17 THE CLERK: What say ye for the defense.
18 MR. WILLIAMS: Please swear the juror.
19 THE CLERK: Have a seat in the jury box, ma'am.
20 85, Betty Hawes. (White female)
21 What say ye for the State?
22 MS. MAYES: Please present the juror.
23 THE CLERK: What say ye for the defense?
24 MR. WILLIAMS: Please excuse the juror from the
25 trial of this case.

1 THE CLERK: Return to your seat, please, ma'am.
2 Number 5, Robert Anderson. (White male)
3 What say ye for the State?
4 MS. MAYES: Please present the juror.
5 THE CLERK: What say ye for the defense?
6 MR. WILLIAMS: Please swear the juror.
7 THE CLERK: Have a seat in the jury box, sir.
8 Number 140, Ginger Moorner. (White female)
9 What say ye for the State?
10 MS. MAYES: Please present the juror.
11 THE CLERK: What say ye for the defense?
12 MR. WILLIAMS: Please excuse the juror from the
13 trial of this case.
14 THE CLERK: Return to your seat, please, ma'am.
15 Number 56, Sarah Doro. (White female)
16 What say ye for the State?
17 MS. MAYES: Please present the juror.
18 THE CLERK: What say ye for the defense?
19 MR. WILLIAMS: Please swear the juror.
20 THE CLERK: Have a seat in the jury box, ma'am.
21 Number 100, Mark Inabinette. (White male)
22 What say ye for the State?
23 MS. MAYES: Please present the juror.
24 THE CLERK: What say ye for the defense?
25 MR. WILLIAMS: Please excuse the juror from the

1 trial of this case.

2 THE CLERK: Return to your seat, please, sir.

3 77, Robert Groves. (White male)

4 What say ye for the State?

5 MS. MAYES: Please present the juror.

6 THE CLERK: What say ye for the defense?

7 MR. WILLIAMS: Please swear the juror.

8 THE CLERK: Have a seat in the jury box, sir.

9 Number 141, Robert Morris.

10 THE JUROR: That's John Groves.

11 THE CLERK: Oh, I'm sorry. John Morris. (White
12 male) I was looking at Robert above your name. I
13 apologize.

14 THE JUROR: It's no big deal.

15 MS. MAYES: That number again, Madam Clerk?

16 THE CLERK: 141, John Morris.

17 What say ye for the State?

18 MS. MAYES: Please excuse the juror from the trial
19 of this case.

20 THE CLERK: Return to your seat, please, sir.

21 150, Trevor Parks. (White male).

22 What say ye for the State?

23 MS. MAYES: Please excuse the juror from the trial
24 of this case.

25 THE CLERK: Return to your seat, please, sir.

1 170, Beverly Roberts. (White female)

2 What say ye for the State?

3 MS. MAYES: Please present the juror.

4 THE CLERK: What say ye for the defense?

5 MR. WILLIAMS: Please excuse the juror from the
6 trial of this case.

7 THE CLERK: Return to your seat please, ma'am.

8 29, Leo Buckle. (White male)

9 What say ye for the State?

10 MS. MAYES: Please present the juror.

11 THE CLERK: What say ye for the defense?

12 MR. WILLIAMS: Please excuse the juror from the
13 trial of this case.

14 THE CLERK: Return to your seat please, sir.

15 67, Glenn Forde. (White male)

16 What say ye for the State.

17 MS. MAYES: Please present the juror.

18 THE CLERK: What say ye for the defense?

19 MR. WILLIAMS: Please swear the juror.

20 THE CLERK: Have a seat in the jury box, sir.

21 74, Harold Grant. (White male)

22 What say ye for the State?

23 MS. MAYES: Please present the juror.

24 THE CLERK: What say ye for the defense?

25 MR. WILLIAMS: Please swear the juror.

1 THE CLERK: Have a seat in the jury box, sir.

2 Proceed with alternates, Your Honor?

3 THE COURT: All right. The two alternates, strikes
4 are one for the State and two for the defense,
5 non-cumulative.

6 THE CLERK: 136, Angela Meiggs. (White female)

7 What say ye for the State?

8 MS. MAYES: Please present the juror.

9 THE CLERK: What say ye for the defense?

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

12 THE CLERK: Return to your seat please, ma'am.

13 Number 111, Jessica Barlongo.

14 THE JUROR: Number 11.

15 THE CLERK: Oh, I'm sorry, I thought I said 11.

16 What did I say 111?

17 THE JUROR: Yes.

18 THE CLERK: Yes, ma'am. I'm lost. It's Number 11.

19 11. (White female)

20 What say ye for the State?

21 MS. MAYES: Please excuse the juror from the trial
22 of this case.

23 THE CLERK: Return to your seat please, ma'am.

24 153, Kenneth Pawlowski. (White male)

25 What say ye for the State?

1 MS. MAYES: Please present the juror.

2 THE CLERK: What say ye for the defense?

3 MR. WILLIAMS: Please swear the juror.

4 THE CLERK: Have a seat in the jury box, sir.

5 That's alternate one, Your Honor.

6 117, Bryan Linet -- Linetty. (White male)

7 What say ye for the State?

8 MS. MAYES: Please present the juror.

9 THE CLERK: What say ye for the defense?

10 MR. WILLIAMS: Please swear the juror.

11 THE CLERK: Have a seat in the jury box, sir.

12 That's alternate number 2, Your Honor.

13 THE COURT: Any motions regarding the jury
14 selection process from the State?

15 MS. MAYES: None from the State, Your Honor.

16 THE COURT: From the defense?

17 MR. WILLIAMS: None from the defendant, Your Honor.

18 THE COURT: Ladies and gentlemen of the jury panel
19 selected for the trial of this case, momentarily I'm going
20 to ask you to step to your temporary home, your jury room,
21 while I address your colleagues concerning their jury
22 service for the remainder of the day and the remainder of
23 the week. I would advise you, during this brief recess,
24 you're not to discuss this case with anyone. That includes
25 your fellow jurors or anyone else. You will not be

1 authorized to discuss the case with anyone until you've
2 heard all the evidence, all the testimony in the case, the
3 closing arguments by the attorneys and instruction on the
4 law by the Court and then directed by the Court to begin
5 your deliberations with your fellow jurors in your jury
6 room.

7 With that in mind, again I'm going to ask you to
8 step with your bailiff to your left to your new temporary
9 home, your jury room, and I will have you back out here in
10 say about ten minutes. Thank you. Thank you very much.

11 (The jury left the courtroom at 1:43 a.m.)

12 THE COURT: All right. Any pretrial matters from
13 the State, Solicitor?

14 MS. MAYES: Yes, sir, Your Honor. We do have
15 several matters dealing with rape shield. We have a
16 Jackson v. Denno hearing in which the State will offer two
17 witnesses; and then we'll also take up the matter of the
18 collection of DNA buccal swabs from the defendant in this
19 case that were ultimately used for paternity tests that
20 will be evidence in this case. And I believe there may be
21 a challenge as to the consent or voluntariness of those
22 buccal swabs.

23 THE COURT: All right. Any additional pretrial
24 matters, Mr. Williams?

25 MR. WILLIAMS: Your Honor, the only thing I can

1 think of would be a sequestration order dealing with this
2 number of these witnesses, Your Honor. I don't know that
3 that would be opposed.

4 MS. MAYES: The State is prepared to comply with
5 that, Your Honor, with the exception of Detective Trish
6 Stoner. She is the chief investigating officer, and the
7 exception of the victim in this case, Minor .

8 THE COURT: All right. Is that suitable to the
9 defense then, Mr. Williams?

10 MR. WILLIAMS: Yes, Your Honor.

11 THE COURT: All right. How long do you think these
12 motions will take then, Solicitor, as far as the rape
13 shield, Jackson v. Denno, and DNA.

14 MS. MAYES: We're both estimating two hours, Your
15 Honor. So it may be safe to have the jury return in the
16 2:45 to 3 o'clock range. We should have enough time to
17 have the victim testify today and get all of her testimony
18 up and completed by 5:00 to 5:30.

19 THE COURT: All right. All right. Thank you.
20 Thank you, Solicitor.

21 (The Court motioned to the bailiff to bring the
22 jury into the courtroom.)

23 THE BAILIFF: All right. Yes, sir, Your Honor.

24 (The jury entered the courtroom at 11:52 a.m.)

25 THE COURT: All right. Ladies and gentlemen of the

1 jury panel, momentarily I'm going to release you for your
2 luncheon recess. It is going to be somewhat of an extended
3 recess. I have certain pretrial matters that I must take
4 up outside of your presence, which is more the rule than
5 the exception in most of these cases. Once those matters
6 are resolved, the hope then is that the case will proceed
7 more efficiently. But there's certain matters I have to
8 hear outside of the jury's presence before we may proceed.
9 Well, as I said, as a result of that, I'm going to give you
10 somewhat of an extended luncheon recess rather than have
11 you report back and have you being held captive in your new
12 temporary home, your jury room, for a period of time while
13 we're still out here working.

14 I remind you during your service on this jury, you
15 are not to discuss this case with others. That includes
16 your fellow jurors, lunch mates, family, friends or anyone
17 else. If anyone tries to talk with you about the case,
18 please report that to me. You're not to read, listen to,
19 watch any news accounts about the case, should there be
20 any. You may not have a computer, cellular phone or any
21 other electronic device with communication capabilities
22 while in attendance at trial or during deliberations. You
23 certainly may use the devices during luncheon recesses and
24 also during overnight recesses, but you may not use them to
25 review or research or disclose any information which is

1 prohibited.

2 Information which is prohibited about the case
3 include, but is not limited to the following: Information
4 about a party, a witness, an attorney, or a court officer;
5 news accounts of the case, past or present, should there
6 have been any; information collected through juror research
7 on any topics raised or testimony offered by any witness or
8 information collected through juror research on any other
9 topic that the juror might think would be helpful in
10 deciding the case. You decide the case based on the
11 evidence and the testimony that you hear from the witnesses
12 testifying under oath before you in this courtroom, any
13 physical items of evidence that may be introduced, any
14 reasonable inferences you may -- you may think may properly
15 be drawn from the evidence and the law as I tell you the
16 law is. Do not do any independent research. Do not do any
17 research on the internet.

18 With that being said, as I said -- as I previously
19 stated, it will be somewhat of an extended luncheon recess.
20 I would ask you to please report back to your jury room at
21 three o'clock. Three o'clock.

22 Now, with that being said, upon reporting back, I
23 will give you an assignment, your first assignment as a
24 jury. I would ask you to select one among your number to
25 serve as the foreperson of this jury panel. It has to be a

1 member of the primary first selected twelve. It may not be
2 Mr. Pawlowski; did I pronounce that correctly?

3 THE JUROR: That's correct.

4 THE COURT: Nor Mr. Linetti; however I'm sure
5 either one of them would be a fine jury foreperson. Right
6 now they're in status as alternate jurors and it has to be
7 one of the primary twelve. You use whatever factors that
8 you think would be appropriate in deciding who would be a
9 good jury foreperson, whether it's prior jury service,
10 whether it's occupation, whether it's whoever is the last
11 one to get back from lunch or whether it's whoever was the
12 first one that gets back from lunch; it's your good
13 judgment, your common sense as to who you choose, who you
14 select to be the foreperson of the jury.

15 Once you have made that selection, if you would
16 write the number and name down of that individual, knock on
17 the jury room door, give that information to your bailiff,
18 who will present it to me and I'll have you, hopefully,
19 right back in the courtroom and we will proceed shortly
20 after three o'clock.

21 Any questions?

22 Thank you very much. With that being said, you are
23 now excused, if you'd please report back promptly at three
24 o'clock. You may now go with your bailiff.

25 (The jury left the courtroom at 11:57 a.m.)

1 THE COURT: All right. Solicitor, Mr. Williams,
2 what order do y'all want to take up the motions.

3 PRETRIAL MOTIONS

4 MS. MAYES: Your Honor, we can start with the rape
5 shield issue.

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

7 MS. MAYES: Yes, sir, Your Honor. In this case,
8 the State did file a motion pursuant to the rape shield
9 statute to exclude any evidence of -- of reputation or
10 opinion type evidence. And also at this time, Your Honor,
11 I'll pass up a copy of the statute itself which governs the
12 rape shield law and that is 16-3-659. It does require
13 notice to the State if the defendant intends to offer any
14 alternative evidence under rape shield statute. We have
15 not received notice that anything would offered. But at
16 this time, I'm going to present the Court with both a copy
17 of the statute and then the SLED DNA Report and then a
18 second report from a private lab in Texas, Cellmark
19 Forensics, both of which confirm with 99.99 percent
20 probability, Your Honor, that the father of the child born
21 to a 12 year old, Minor , is the defendant, Martin
22 Rodriguez.

23 So that really brings us to a situation where the
24 indictment alleges criminal sexual conduct between the
25 dates of January 2013 through September 2013 when the

1 victim was 11 years old and that is when the child was
2 conceived. The child was born in April of 2014 when the
3 victim was 12 years of age. But we are only focused on
4 that time period in which the child was conceived, which is
5 estimated to be the Summer of 2013 and the indictment
6 covers ongoing sexual abuse during the timeframe January
7 through September. So that's the timeframe that we're
8 focused on. And so anything allegedly occurring after that
9 date would be excluded under rape shield.

10 And in addition to that, Your Honor, this child has
11 only named one perpetrator and that is Martin Rodriguez.
12 He is the only person she has ever alleged had sexual
13 intercourse with her during that timeframe.

14 Now when the defendant was interviewed by law
15 enforcement, he alluded to her liking a boy named Jason
16 that drove a red truck. He alluded to her talking to boys
17 in the mobile home park. He alluded to her having a chair
18 near her window and he -- throughout a period that perhaps
19 she had snuck out the window and met up with a boy. There
20 was also allusions or aspersions about an older boy named
21 Eliazar that she liked. But all of that, Your Honor, would
22 be inadmissible to rape shield and we move to exclude that.

23 THE COURT: Thank you. Thank you, Solicitor.

24 Mr. Williams.

25 MR. WILLIAMS: Your Honor, while I understand the

1 Solicitor's argument dealing with rape shield and dealing
2 with any other allegations involving whether or not the
3 child had any type of sexual contact with someone other
4 than that and that is probably an appropriate motion to
5 take in the event, since the DNA has come back this way.
6 An interesting thing has just presented itself to me, Your
7 Honor, and that is, I was just handed a copy of a
8 counseling services report and I think the correct way to
9 handle this is to hand the report up to the Court and let
10 the Court at least look at this.

11 MS. MAYES: We have a copy for the Court and, Your
12 Honor, this was sent over to us yesterday by fax by the
13 child's therapist. She did question the child or interview
14 the child concerning prior sexual intercourse with any
15 other subjects and she has addressed that on page 2 of her
16 report.

17 MR. WILLIAMS: And, Your Honor, what -- what I am
18 interested in doing is having read the report that was
19 handed to me about five minute ago, it indicates that the
20 child states that while she was staying at the Ivy's home.
21 Your Honor, the Ivy's Home is a foster home where the child
22 was moved after the child -- after the allegations of the
23 sexual abuse were commenced. But anyway, the discussion is
24 about her not being happy about the Ivy Home, but it goes
25 into an allegation where a friend of the family of the

1 Ivy's came into the house, threw her down on the bed and
2 made sexual advances to her.

3 Now she's telling this counselor this and to my
4 knowledge, that's the only person that she told these
5 matters to was to the counselor. She had not -- she didn't
6 report it to anyone else. And, Your Honor, what I would
7 like to ask about when she is on the stand and it appears
8 that the allegations of her being assaulted had to do with
9 the fact that she didn't like where she was staying. She
10 didn't like staying at the Ivy House just as she made the
11 allegations about my client, we would take the position,
12 because she didn't like Mr. Martin, because he was a
13 step-father. She said that he wasn't nice to her, things
14 of that nature.

15 So we would -- we would like to at least address
16 only this, when she's on the stand, only this about the
17 allegations that occurred in the foster -- in the foster
18 parents house because it appears to be a -- could be --
19 could be a trend or could be a reason why she would say
20 these types of things because she didn't like where she was
21 staying.

22 Now that's not -- that's not offered in terms of
23 her reputation, in terms of her having some sort of sexual
24 encounters with other boys, so she's not trustworthy to be
25 believed for that basis. It's offered because this is a

1 statement that she has made that she didn't make to anybody
2 else, which appears to be a rationale when she doesn't like
3 where she's staying, that she has made these allegations.
4 And I think the jury is entitled to hear that for that
5 purpose only, Your Honor.

6 THE COURT: And let me make sure I'm clear, Mr.
7 Williams. Nothing is going to come up about Jason in a red
8 truck, boys in the trailer park, chair under the window as
9 far as those issues that the Solicitor brought up?

10 MR. WILLIAMS: Now, when it comes to chair
11 underneath the window, Your Honor, let me see if I could --
12 because I don't want -- I don't want to violate rape shield
13 either. In terms of whether or not she's telling the truth
14 about the chair underneath the window or not, for that
15 purpose, if she's lying about the chair underneath the
16 window or she's made stories about how things happened,
17 then we should be able to ask about that. Like if she
18 says, because she originally said that she's vague about
19 who had sex with her or who didn't have sex with her. She
20 says that she heard this noise in the night. She never
21 addressed my client as being the perpetrator of the crime,
22 not any reference to the names of any boys, any reference
23 to her hanging with any boys, none of that, Your Honor, but
24 when it comes to the factual events of how she was
25 assaulted, whether someone came in through the window

1 because at one point in time, she said somebody came in
2 through the window and assaulted her.

3 So it could have been Martin who came in through
4 the window. So I should at least be able to address those
5 things which she has said, which are not true. If -- if
6 she's changed the story about when it occurred, I should be
7 able to address those issues in regards to what she says,
8 which are not true, not referencing the names of anybody
9 who may or may not have been involved in the assault.

10 THE COURT: Thank you, Mr. Williams.

11 MR. WILLIAMS: I hope I'm not being -- I'm not
12 trying to muddy it up, Your Honor.

13 THE COURT: Thank you, Mr. Williams.

14 MR. WILLIAMS: Thank you, Your Honor.

15 THE COURT: Solicitor?

16 MS. MAYES: Yes, sir, Your Honor; the victim had
17 reported that there was at least one occasion when she
18 believes the defendant had come in through her bedroom
19 window because his bedroom was on the opposite side of the
20 mobile home and it's believed there was someone in the
21 living room. So he gained entry on at least one occasion
22 through her window. However, I don't believe that relates
23 to rape shield in any aspect. He can certainly ask about
24 that prior statement that she made about the window.

25 But, Your Honor, to clarify this issue with the

1 therapist, Jonathan Leach, this is not someone in her
2 foster home or a friend of someone at her foster home that
3 committed this offense she disclosed. What occurred -- and
4 we provided this information to Mr. Williams in an e-mail
5 on August 14th, but what occurred is at some point, while
6 in foster care, she disclosed to a foster parent that there
7 had been a previous incident involving a family friend of
8 Mr. Rodriguez back when she lived with Mr. Rodriguez and
9 her mother. At one point in time, they all lived together
10 at Rolling Meadows Mobile Home Park prior to this pregnancy
11 coming to light. And she made a delayed report to the
12 foster care worker that while living in that mobile home
13 with Mr. Rodriguez and her mother, that a family friend had
14 come in and made her feel uncomfortable. This was not a
15 sexual assault; there was no sexual touching, but it was
16 enough that she felt like she needed to disclose to the
17 foster parents.

18 As a result, they had her therapist address it with
19 her in therapy and that is the summary that Your Honor
20 sees. And that incident did not involve intercourse. So
21 it should be excluded pursuant to rape shield.

22 MR. WILLIAMS: Your Honor, if she testifies, I
23 assume we're going to have an in-camera hearing in
24 reference to that. If she says indeed what the Solicitor
25 has said, then I agree with her. But from reading the

1 report, you can't tell whether it occurred at Mr.
2 Rodriguez's home or if this -- because the report reads and
3 I know Your Honor has a copy of it, it reads in such a way
4 that you can determine that it happened at the foster
5 parents house and that was the only reason why I was
6 referencing that particular episode. But obviously if it
7 happened at Mr. Rodriguez's house, then that wouldn't be an
8 issue.

9 MS. MAYES: The report states it. And again, we
10 spoke with Dr. Leach about this and -- and so we're --
11 we're very clear on this. She stated -- well, she talked
12 about her family and the reasons why she could not live
13 there. So that's referring back to the household she lived
14 at with the defendant. Minor talked about an incident in
15 which she was at home cleaning the house when a male friend
16 of the family came in. She stated that the family -- that
17 this friend followed her into the bedroom and then it goes
18 on to say that she changed the subject when questioned
19 further and it did not involve intercourse. And she
20 reported that disclosure to her foster parents, which is
21 the reason that the therapist was made aware of it.

22 We also have received an e-mail from one of the
23 foster parents, Mr. Ivy, that we forwarded on to Mr.
24 Williams and again, he emphasized that this was a prior
25 event that had occurred sometime in the year 2013 when she

1 was living with the Rodriguez family and that this was the
2 main topic of Thursday's counseling with Dr. Linda Leach.
3 Dr. Linda is very experienced in rape crisis. So again the
4 foster parents referred her on to the therapist to clarify
5 that further.

6 MR. WILLIAMS: The first sentence, Your Honor, says
7 Minor was angry with her current placement in the Ivy's
8 home. So I would think just two or three questions to --
9 to the witness would indicate whether or not it was -- it
10 occurred, in-camera, whether or not it occurred at the
11 fosters -- at the foster parents house or at the Rodriguez
12 house.

13 THE COURT: So I'm clear, if it happened at the
14 foster parents house, do you intend to go into it?

15 MR. WILLIAMS: I would like to go into it, Your
16 Honor.

17 THE COURT: If it happened at the Rodriguez house,
18 do you intend to go into it?

19 MR. WILLIAMS: I do not intend to go into it, Your
20 Honor.

21 THE COURT: And where did the incidents for which
22 she's -- where did the incidents for which he's indicted
23 alleged to have occurred?

24 MS. MAYES: That is Rolling Meadows Mobile
25 Home Park. It's in the West Columbia area of Lexington

1 County.

2 THE COURT: And where is the foster home located,
3 generally?

4 MS. MAYES: Swansea area of Calhoun County.

5 THE COURT: So why -- why then -- why then, Mr.
6 Williams, would it be relevant if she were assaulted, as I
7 understood, if I'm tracking you correctly, in the foster
8 parents home? Why would that be relevant? The State's
9 allegations are that she was sexually assaulted by Mr.
10 Rodriguez at Rolling Meadows?

11 MR. WILLIAMS: Your Honor, it would only be
12 relevant if the jury interprets that what she is saying is
13 not true and that she made these statements to get out of
14 the Rodriguez home because there is a connection, if you
15 will, Your Honor. If she says that she's angry with her
16 current placement, the Ivy's, and it's very simple, Your
17 Honor. If -- if she says that this event did not occur at
18 the foster home; if she says it occurred at the Rodriguez
19 home, then I -- I don't think I have a leg to stand on in
20 that reference. But if she's -- if she's repeating
21 allegations that someone assaulted her so that she could
22 move to a different location or go to a different location,
23 then that would -- that would be, if you will, a motive for
24 why she's making those statements.

25 THE COURT: And her motive would also include the

1 ability to be pregnant?

2 MR. WILLIAMS: No, sir, but that's a separate
3 issue, Your Honor. Because --

4 THE COURT: I believe that goes to the credibility
5 though in whether or not it goes to her credibility.

6 MR. WILLIAMS: There are actually two indictments,
7 Your Honor. There's one for lewd act and then there's --
8 which is a CSC third. Then there's one for CSC second,
9 which references penetration. Now, the lewd act, if you
10 will, Your Honor, could be obviously lack -- lack of
11 penetration. So it would be important in regards to
12 whether or not she said that she was -- and that has
13 nothing to do, Your Honor, that has nothing to do with
14 whether or not she became pregnant or didn't become
15 pregnant. And -- and -- and I assume it could happen at
16 two different times, Your Honor, because we have what, six,
17 nine month span in which these allegations supposedly
18 occurred. It's not -- the indictments are not saying that
19 those two criminal offenses occurred on the same day or the
20 same time, only that the occurred with the same defendant.

21 THE COURT: Solicitor, do you want to present any
22 in-camera testimony.

23 MS. MAYES: We can do so, Your Honor, on the
24 limited -- with the limited scope of where the incident
25 that she disclosed occurred.

Minor - Direct Examination In-Camera by Ms. Mayes

1 THE COURT: All right. Call your witness.

2 MS. MAYES: State would call Minor .

3 Minor ,

4 having been duly sworn, testified as follows:

5 THE CLERK: Have a seat please, ma'am. Once you're
6 seated, speak up loud and clear. State your full name
7 spelling your last, please.

8 DIRECT EXAMINATION - IN-CAMERA

9 BY MS. MAYES:

10 Q Can you state your full name?

11 A Minor .

12 Q Okay. Let me just -- speak up loud enough for this
13 lady here to hear you?

14 A I'm --- Minor .

15 Q Okay. Minor , do you recall talking with your
16 therapist, Ms. Leach, about an incident that had occurred
17 where you felt uncomfortable around someone that was not
18 Martin?

19 A Yes, ma'am.

20 Q Who was that person?

21 A That wasn't our family, it was really close
22 friends.

23 Q Okay. With what family was that; was that the Ivy
24 family or the Rodriguez family?

25 A The person that made me feel uncomfortable?

Minor - Cross-Examination In-Camera by Mr. Williams

1 Q Uh-huh (affirmative response).

2 A Was my mom's side of the family.

3 Q Okay. And what is your mother's name?

4 A Alicia Mata Cortez.

5 Q And what is her relationship to the defendant,
6 Martin Rodriguez?

7 A That's her husband.

8 Q Okay. And this incident occurred where, Minor ?

9 A In my house in Rolling Meadows.

10 Q Okay. And was that the place you lived before the
11 police found out about your pregnancy?

12 A Yes, ma'am.

13 Q Okay. And before you went into foster care?

14 A Yes, ma'am.

15 Q Nothing further, Your Honor.

16 THE COURT: Mr. Williams?

17 MR. WILLIAMS: Your Honor, since it's in-camera,
18 just two quick questions.

19 CROSS-EXAMINATION - IN-CAMERA

20 BY MR. WILLIAMS:

21 Q Did this event occur between January of -- the
22 dates of the indictment or did this occur after the dates
23 of the indictment?

24 A Can you repeat that?

25 MR. WILLIAMS: Your Honor, I want to be delicate

Minor - Cross-Examination In-Camera by Mr. Williams

1 with the question, but I don't, you know, the short answer
2 I guess, the short question.

3 BY MR. WILLIAMS:

4 Q What was read in the statement, is that what
5 happened or did any type of sexual intercourse occur?

6 A They just made me feel uncomfortable. They touched
7 me in a way that it was really uncomfortable and that was
8 about it. But there was actually no parts going into other
9 parts.

10 MR. WILLIAMS: Your Honor, if that -- if that's the
11 testimony, then we -- we would withdraw our attempt to
12 introduce that statement into evidence.

13 THE COURT: Thank you very much, Mr. Williams.

14 MR. WILLIAMS: Thank you, Your Honor.

15 MS. MAYES: And finally, Your Honor, on the matter
16 of the rape shield motion, there had been somewhere along
17 the way, Mr. Williams and I had been in various discussions
18 leading up to what ultimately became a trial. We had been
19 in plea negotiations. There was also a request by the
20 defendant himself to have his own testing of the DNA sample
21 sent to a second lab and the State complied with that, had
22 the evidence sent to Cellmark in Texas. That was after the
23 State Law Enforcement Division had completed all of their
24 testing.

25 We are not bringing anyone up from Cellmark. They

1 are located in Texas and so I wanted to make sure that
2 there was no reference or inquiry by counsel about a second
3 test. We want to make sure that's excluded unless that's
4 evidence that defense intends to -- to offer in full.

5 And then secondly, there had been a request by Mr.
6 Williams to have, I believe it was, a brother of the
7 defendant also tested and he was Roy Rodriguez. The victim
8 has never implicated Roy Rodriguez in any kind of sexual
9 contact. The Solicitor's Office has communicated with Roy
10 Rodriguez, the brother of the defendant. He maintains he's
11 never had any contact with the victim. He's actually here
12 under subpoena as well and can verify that for the record,
13 but we just want to make sure that there's no inquiry by
14 counsel or reference to this Roy Rodriguez since he's never
15 been a suspect in the case.

16 THE COURT: All right. Mr. Williams?

17 MR. WILLIAMS: Your Honor, that's kind of an
18 open -- that's kind of an open-handed motion, I guess, to
19 suppress. But the one thing that I would like the ability
20 to do, Your Honor, is when the DNA expert is testifying,
21 that I have the full right to cross-examine the DNA expert
22 in reference to whether or not relatives of the person
23 whose charged with the offense, whether or not that has any
24 impact on the DNA testing and as to certainty in regards to
25 who the perpetrator -- who the parent of this unborn child

1 or this born now child -- who the parent of this child
2 might be. So she's -- I guess she's used the word Roy
3 Rodriguez, but I should have the right to question the DNA
4 expert as to whether or not it makes a difference whether
5 or not you tested one person or you test more family
6 members. When you start talking about alleles and things
7 like that, whether or not you used 15 sites that you test
8 or whether or not you site and test 20 or 21. So that's
9 really a question for the DNA expert that I should be
10 allowed to ask as to whether or not that has any impact on
11 whether or not her tests are accurate or not and obviously
12 I guess it's a question for the jury in regards to what
13 truth they place in that.

14 THE COURT: All right. Solicitor?

15 MS. MAYES: Yes, sir, Your Honor. The State's
16 objection here or it would be a motion in limine I suppose,
17 would be to -- to limit any questioning by counsel as to
18 that person, Roy Rodriguez, because that somehow implies
19 that he is a suspect. Now, if Mr. Williams wants to
20 cross-examine the DNA expert about the work or how many of
21 his relatives were tested; well, none of his relatives were
22 tested; I mean that's one thing, but to start putting names
23 out there as if they are suspects, I believe would be a
24 violation of rape shield because Roy Rodriguez is not a
25 suspect and has never been a suspect and was never named in

1 this case. So that would be misleading and confusing to
2 the jury.

3 THE COURT: And I didn't take it that that's what
4 you were going to ask, Mr. Williams. I thought you were
5 going to ask --

6 MR. WILLIAMS: You took it the correct way, Your
7 Honor.

8 THE COURT: -- could there -- could there be
9 others -- based on the result by Ms. Bartman, the forensic
10 scientist, scientifically could there have been individuals
11 that share similar DNA with the defendant that have not
12 been excluded?

13 MR. WILLIAMS: That is basically --

14 THE COURT: I'm not sure that's the question
15 without saying, you know, Roy Rodriguez is his brother,
16 have you excluded Roy Rodriguez; that's not what you're
17 going to ask?

18 MR. WILLIAMS: No, sir. I'm not going to ask that.

19 THE COURT: Does that -- does that clarify it,
20 Solicitor, or --

21 MS. MAYES: Yes, sir, Your Honor.

22 THE COURT: All right. So the rape shield then
23 issue is resolved.

24 Cellmark you're not going into, Mr. Williams?

25 MR. WILLIAMS: No, Your Honor.

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 THE COURT: You're not going into Mr. Rodriguez,
2 just the cross-examination of the expert, correct?

3 MR. WILLIAMS: That is correct, Your Honor.

4 THE COURT: All right. And then what other motion
5 do you have, Jackson v. Denno, Solicitor.

6 MS. MAYES: Yes, sir, Your Honor, and the same
7 witnesses on the Jackson v. Denno will also be the
8 witnesses on the buccal swab consent issue, so we'll --
9 we'll go ahead and proffer testimony on both of those
10 topics.

11 JACKSON V DENNO HEARING

12 THE COURT: All right. You may call your witness.

13 MS. MAYES: The State calls Detective Tricia
14 Stoner.

15 TRICIA STONER,

16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat. Once you're seated, state
18 your full name, spelling the last name.

19 THE WITNESS: My name is Detective Tricia,
20 T-R-I-C-I-A, Stoner, S-T-O-N-E-R.

21 DIRECT EXAMINATION - IN-CAMERA

22 BY MS. MAYES:

23 Q All right. And Detective Stoner, where are you
24 currently employed?

25 A With the Lexington County Sheriff's Department.

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 Q All right. And how long have you been a detective
2 there with the Sheriff's Department?

3 A Approximately nine years.

4 Q All right. And how long with you been with the
5 Sheriff's Department all together?

6 A Approximately fifteen.

7 Q Detective Stoner, how did you become involved
8 initially in the investigation of a pregnant 11 year old
9 here in Lexington County?

10 A The Daybreak Crisis Pregnancy Center had contacted
11 law enforcement when the victim showed up there and
12 received a positive pregnancy test. Initially another
13 jurisdiction was contacted until it was learned that it
14 occurred in Lexington County's jurisdiction at which time,
15 our department --

16 Q If you could just slow down a little bit so the
17 court reporter can get everything?

18 A Sorry. Once we determined the incident occurred in
19 Lexington County, our agency was contacted and my
20 supervisor sent Detective Strickland and I to Daybreak
21 Crisis Pregnancy Center to begin the investigation.

22 Q All right. And upon arrival, who did you find
23 there at Daybreak Crisis Pregnancy Center?

24 A Minor , her mom, Alicia Cortez, Martin
25 Rodriguez, Brenda Summer with the Daybreak Crisis Pregnancy

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 Center and Martin and Alicia had their minor child, Brother ,
2 with them as well.

3 Q All right. So just sort of to break this down, the
4 victim in this case was how old at the time?

5 A 11 years old.

6 Q All right. And she is Minor ?

7 A Yes.

8 Q And her mother is Alicia Cortez?

9 A Yes, ma'am.

10 Q And what is your understanding of the mother's
11 relationship to the defendant, Martin Rodriguez.

12 A That they are married.

13 Q Okay. So it is the mother, the step-father, who is
14 the defendant, and Minor ; and then you mentioned a
15 sibling?

16 A Yes, ma'am.

17 Q How old was that sibling approximately?

18 A Approximately one year.

19 Q Okay. Did you have the opportunity to speak with
20 the victim?

21 A I did.

22 Q Did she make a full disclosure at that time?

23 A No, ma'am.

24 Q Had she in some way indicated inappropriate contact
25 or possibly inappropriate contact with the defendant,

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 Martin Rodriguez?

2 A Yes.

3 Q Following that interview with Minor , did you have
4 an opportunity to interview the defendant there at Daybreak
5 Pregnancy Center?

6 A Yes.

7 Q Where at the Pregnancy Center do you recall
8 speaking with him?

9 A It was in a very large waiting room.

10 Q Okay. Was anyone with you?

11 A Detective Strickland.

12 Q Also with the Lexington County Sheriff's
13 Department?

14 A At the time, yes, ma'am.

15 Q Now, at this point in time, was he in custody?

16 A No, ma'am, he was seated on the couch playing with
17 Brother .

18 Q With the child?

19 A Yes, ma'am.

20 Q Was he under arrest?

21 A No.

22 Q Did you make notes during the course of your
23 conversation with the defendant?

24 A Yes, ma'am, I did.

25 Q And were they made contemporaneously, literally as

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 you spoke with him?

2 A As best as I could, yes, ma'am.

3 Q Okay. And do you have those with you today?

4 A I do.

5 Q Now, at this point in time, did you feel that
6 advising Mr. Rodriguez of his Miranda Rights was necessary?

7 A I did not. We were very early into the
8 investigation.

9 Q Okay. And from your communications with him, can
10 you tell us whether or not he understood English?

11 A Yes, ma'am, he did.

12 Q Was he able to speak to you in English?

13 A Yes, ma'am. We actually asked him if he could
14 understand us and speak with us because there was an
15 interpreter available, if necessary.

16 Q All right. And what was his response to whether he
17 needed an interpreter?

18 A He didn't need one.

19 Q Were any threats made of Mr. Rodriguez in order to
20 have him participate in this interview?

21 A No, ma'am.

22 Q Were any promises made to Mr. Rodriguez?

23 A No, ma'am.

24 Q What about by Detective Strickland; did she use any
25 threats or coercion to have him participate?

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 A No, ma'am.

2 Q At any point in time, Detective Stoner, did he
3 refuse questioning?

4 A No.

5 Q Did he request an attorney at any point in time?

6 A No.

7 Q Based upon your observations there that day in the
8 waiting room of the Daybreak Crisis Pregnancy Center, did
9 his communication with you appear to be free and voluntary?

10 A It did.

11 Q At this time, had you learned that Minor was, in
12 fact, pregnant?

13 A We had.

14 Q Was the Department of Social Services also
15 notified?

16 A They were and they responded as well.

17 Q All right. You mentioned that you have with you
18 the notes that you took during the course of that
19 interview?

20 A I do.

21 Q Okay. Are those your original notes?

22 A These are.

23 Q Would it be possible for you to find the notes that
24 correspond with what I'm going to hand you now to take a
25 look at? It will be three pages.

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 A I have it.

2 Q Three pages of written notes pertaining to the
3 subject, Martin?

4 A Yes, I have them.

5 Q Okay.

6 A Yes.

7 Q Okay. If you could take all three of those pages
8 and set them aside.

9 MS. MAYES: I would like at this time to mark them
10 as a Court's Exhibit.

11 THE WITNESS: It's also -- one of them is the
12 backside.

13 Q You can refer to the document.

14 A Thank you.

15 THE COURT REPORTER: This is Court's Exhibit Number
16 1.

17 (Court's Exhibit Number 1 was marked for evidence.)

18 MS. MAYES: Your Honor, at this time, I'm going to
19 pass those up for the Court's examination.

20 BY MS. MAYES:

21 Q Now, Detective Stoner, did you also have the
22 opportunity to convert your handwritten to the format of a
23 written supplemental report?

24 A Yes, ma'am, I did.

25 Q And do you have that supplemental written report

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 with you today?

2 A I do.

3 Q I'm going to ask you to refer to your written
4 supplemental report and if you could, please tell us
5 whether you have any notations that were done at the
6 Daybreak regarding your interview with the defendant at the
7 Daybreak Pregnancy Center that begins, We then spoke with
8 Martin?

9 A Yes, ma'am.

10 Q And again, what was the date of that interview?

11 A September 11th.

12 Q And this was during business hours?

13 A Yes, ma'am.

14 Q Could you please start with the line, We then spoke
15 with Martin, and read into the record -- read into the
16 record the relevant portions and for purposes of this
17 hearing, we're excluding references that may be to other
18 third parties pursuant to rape shield.

19 A Yes, ma'am.

20 Q And I'll need you to read very slowly for the
21 benefit of the court reporter?

22 A We then spoke with Martin. He told us that Alicia
23 was wondering why Minor period had not come so they
24 brought her here. He did not know that she was having sex.
25 I asked him if he ever had sex with Minor or touched her in

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 a sexual manner. He said that he has a step-father and
2 worried about that for his sister. He denied ever touching
3 Minor or having sex with her. He told us about a time on
4 August 27th when Minor was watching a movie with them.
5 Alicia thought that she had, I missed a word in there it
6 should have been saw, him touch Minor on the hip and threw
7 a phone at him and told him she didn't want him living with
8 her anymore. He said what happened was Minor was looking
9 for something in the couch and went to get up and Alicia
10 saw it and thought he touched her on the waist so she threw
11 the phone at him.

12 Q Okay. I'm going to stop you right there.

13 Now, that portion when he's referring to Alicia,
14 who would be the child's mother, walking in and witnesses
15 an event; did you also document that in your handwritten
16 notes that you took there at Daybreak Pregnancy Center?

17 A Yes, ma'am.

18 Q And looking at your handwritten notes, can you tell
19 us whether or not it contains the word saw?

20 A Yes, it does.

21 Q What does it read?

22 A Wife thought saw him.

23 Q Okay. And what's the next?

24 A Victim's hips, touched victim's hips and threw
25 phone and told him she didn't want him living with her

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 anymore.

2 Q All right. Thank you.

3 And if you could go back to your supplemental
4 report and continue with the statement of Martin Rodriguez
5 on September 11th, 2013.

6 A I asked him about the kids sleeping arrangements.
7 He said that Sister and Uncle have always slept with
8 Minor. She didn't have her own room for a little while,
9 but that was about 7 to 8 months ago. I asked him about
10 waking her up in the middle of the night and he said that
11 he never did that. I asked him about sleeping with the
12 kids. He has not slept with them either. He said that he
13 has checked on them in the middle of the night when he
14 heard a noise from the mattress.

15 I asked him why she would have told us that he was
16 the baby's father. He said that maybe she said that
17 because she doesn't like him or to get him in trouble. He
18 has told Alicia about guys that Minor likes and thinks she
19 was not in for that. I asked him if he would consent to
20 providing a DNA sample and he said that he would. We
21 agreed to meet tomorrow at his work to get the sample. He
22 provided me with his cell phone number as

23 Would you like me to continue?

24 Q All right. No, you can stop right there. Now,
25 this statement was made to you in what format? Was this in

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 writing or verbally?

2 A Verbally.

3 Q And did he ever put this statement into the form of
4 a written statement?

5 A No, ma'am.

6 Q You mentioned that at that point in time, he did
7 agree to provide a buccal swab or DNA sample?

8 A Yes.

9 Q And what efforts were made to follow up on that?

10 A The next day, Detective Strickland and I met with
11 him at -- near his job and obtained the buccal swab. I
12 contacted him via the phone and set up a date and time or a
13 time and place to meet with him.

14 Q And who went with you to collect the buccal swab
15 sample?

16 A Renee Strickland.

17 Q All right. And did Detective Strickland have any
18 experience in collecting buccal swab samples?

19 A Yes, ma'am, she previously served in Crime Scene
20 Investigation at Lexington County Sheriff's Department and
21 at SLED.

22 Q All right. And can you tell us a little bit about
23 the arrangements that were made to go meet with him to
24 collect the sample; what was he doing in Cayce?

25 A He was working. So when I contacted him and made

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 arrangements to meet him somewhere since they were on a job
2 site and it would be very difficult for me to find him. I
3 tried actually to find him and got lost. So I contacted
4 him and -- told him where I was and it was near the
5 Farmer's Market or inside that area, and explained to him
6 where I was and he had a co-worker drive him to the
7 location where we were and meet with us outside in the
8 parking lot.

9 Q All right. And was that arrangement made based on
10 your observations, freely and voluntarily by Mr. Rodriguez?

11 A Yes, ma'am.

12 Q Did he refuse to provide the buccal swab at any
13 point in time?

14 A No.

15 Q Did he give any physical resistance during the
16 collection of the buccal swab?

17 A No.

18 Q You were a witness to that?

19 A Yes, ma'am.

20 Q Did he sign any type of consent form to allow you
21 to collect this buccal swab for the purpose of DNA?

22 A Yes, he did.

23 Q And do you have with you that original form?

24 A I do.

25 Q And, Detective Stoner, whose signature is on this

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 document?

2 A Mine and the defendant, Martin Rodriguez.

3 Q And what is the date of this document?

4 A September 12th, 2013.

5 Q And does it advise him exactly what is being
6 collected?

7 A Yes, ma'am, I wrote in there that it was for a DNA
8 swab.

9 Q Okay. Had it been discussed with Mr. Rodriguez
10 that the DNA ultimately would be used for the purpose of
11 paternity analysis of the fetus?

12 A Yes.

13 MS. MAYES: Your Honor, at this time, we would mark
14 this as Court's Exhibit 2.

15 MR. WILLIAMS: Could I see that for one second.

16 MS. MAYES: Yes.

17 THE COURT REPORTER: That's Court's Exhibit 2, Your
18 Honor.

19 THE COURT: All right.

20 (Court's Exhibit Number 2 was marked for evidence.)

21 BY MS. MAYES:

22 Q Detective Stoner, did his signature on that form
23 appear to be freely and voluntarily given?

24 A Yes, ma'am.

25 Q Did you threaten him in any way to provide a buccal

Tricia Stoner - Direct Examination In-Camera - by Ms. Mayes

1 swab sample?

2 A No.

3 Q Was he promised anything in exchange for the buccal
4 swab sample?

5 A He was not.

6 Q And he understood the purpose of the sample?

7 A Yes, ma'am.

8 Q Now, you had mentioned that he was on a work
9 site -- Going back to the situation at Daybreak Pregnancy
10 Center, at any point that day, was he under arrest?

11 A No, ma'am.

12 Q Or in custody?

13 A No, ma'am.

14 Q Was he handcuffed at any time?

15 A No, ma'am.

16 Q Ultimately, how did he leave Daybreak Crisis
17 Pregnancy Center, if you know?

18 A He drove.

19 Q And he had driven there as well?

20 A Yes, ma'am.

21 Q He went home to his own residence that night?

22 A I don't know where he went, I just know that he
23 left the facility and he was driving.

24 Q And he went on to the work site the next day?

25 A Yes.

Tricia Stoner - Cross-Examination In-Camera - by Mr. Williams

1 Q Now ultimately, Detective Stoner, on what date was
2 Martin Rodriguez, the defendant, arrested in this case?

3 A Approximately May 20th, 2014.

4 Q All right. So he was arrested in 2014 in May, so
5 approximately 8 months later?

6 A Yes.

7 Q What process was necessary to undergo prior to you
8 developing probable cause to actually arrest someone in
9 this case?

10 A I waiting for the DNA results to come back.

11 Q And those were the DNA results from the State Law
12 Enforcement Division?

13 A Yes, ma'am.

14 Q And you received those results when?

15 A 5/16 of 2014.

16 Q Up until that time when the defendant was arrested
17 in May of 2014, can you tell us whether or not he was
18 freely living in the community?

19 A Yes, ma'am, as far as I know.

20 MS. MAYES: Nothing further at this time from
21 Detective Stoner, Your Honor?

22 THE COURT: Thank you. Mr. Williams?

23 MR. WILLIAMS: Just briefly.

24 **CROSS-EXAMINATION - IN-CAMERA**

25 BY MR. WILLIAMS:

Tricia Stoner - Cross-Examination In-Camera - by Mr. Williams

1 Q Detective Stoner, on the form that you handed up in
2 Court noted as a Consent to Search, the body of that form
3 references searching property, buildings, vehicles, both
4 inside and out of the property, located at -- and I think,
5 I don't have a copy of it right here; I'm reading from the
6 form that you used -- located at -- let me see, Congaree
7 Drive or something like that. Then you -- do you have your
8 copy in front of you?

9 A I do not.

10 Q Then you say -- and the only part of this whole
11 form that references DNA says both inside and outside my
12 property located at 1120 Fort Congaree Trail, Cayce, South
13 Carolina for DNA swab?

14 A Yes. That's where I met him was that was the
15 location that I met Mr. Rodriguez at to obtain the sample.
16 We don't have a Consent to Search form specifically for DNA
17 so I used this and put down that it was just for DNA, not
18 to search anything else. That was just the location the
19 DNA was taken from.

20 Q Is there anything on this form that you have that
21 says anything about taking DNA from his body?

22 A No.

23 Q As a matter of fact, this -- this appears to be a
24 regular property search where you go inside somebody's
25 house?

Tricia Stoner - Redirect Examination - In-Camera by Ms. Mayes

1 A It is. It's used for that as well.

2 Q You would agree, would you not, this really doesn't
3 tell someone that you're going to take a DNA swab, does it?

4 A I wrote it on there.

5 Q Do you say that you're going to take a DNA swab?

6 A It says for DNA swab.

7 Q Do you say that you're going to take a DNA swab?

8 A I wrote in there for DNA swab.

9 Q Well, it's an indication on here, is it not, that
10 you're looking for a DNA swab at those locations, at that
11 location?

12 A That's not the way I explained it to him.

13 Q You know how much education Mr. Rodriguez has?

14 A I do not.

15 Q You certainly know he's Hispanic, right?

16 A It doesn't mean he doesn't understand what I was
17 explaining to him.

18 Q It would be your impression that he understood
19 what -- what the form said?

20 A Yes, it is.

21 Q And your interpretation of that form is that it's
22 him authorizing you to take a DNA swab?

23 A Yes.

24 Q That's all I have, Your Honor.

25 **REDIRECT EXAMINATION - IN-CAMERA**

Tricia Stoner - Redirect Examination - In-Camera by Ms. Mayes

1 BY MS. MAYES:

2 Q Detective Stoner, does the form also -- will you
3 tell us whether or not the form also allows for the
4 collection of any other property or things which they
5 desire as evidence?

6 A Yes.

7 Q And you mentioned that you had initially discussed
8 with him providing a DNA swab where?

9 A At the Daybreak, we initially talked about it at
10 the Daybreak Crisis Pregnancy Center the day before.

11 Q So that was the first conversation. And the second
12 conversation took place where?

13 A It would have been over the phone explaining to him
14 that I needed to meet with him to collect that sample.

15 Q All right.

16 A And then again once we met, explaining again the
17 procedure of how the sample was taken.

18 Q So there would have been at least three separate
19 communications with Mr. Rodriguez regarding collection of
20 these buccal swabs?

21 A Yes.

22 Q For the purpose of paternity?

23 A Yes.

24 Q And the forms or paperwork that Detective
25 Strickland uses for that suspect standard, do you know

Tricia Stoner - Redirect Examination - In-Camera by Ms. Mayes

1 whether that also requires any type of signature or
2 acknowledgement?

3 A It does.

4 Q And do you have with you, I realize it's sealed,
5 but do you have with you the evidence in this case?

6 A I do.

7 Q Would that include the buccal swab and suspect
8 standard collected by Detective Strickland?

9 A It should.

10 Q And throughout your communications with Mr.
11 Rodriguez at Daybreak Pregnancy Center, then by telephone,
12 him having provided you with his telephone number, and then
13 thirdly, there on his worksite in Cayce, did he ever appear
14 to have trouble understanding the English language?

15 A No.

16 Q Did he ever have trouble communicating back to you
17 in the English language?

18 A No.

19 MS. MAYES: Nothing further.

20 THE COURT: Any recross, Mr. Williams?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Thank you, Detective, you may step
23 down.

24 THE WITNESS: Thank you.

25 MS. MAYES: The State -- the State calls Detective

Renee Strickland - Direct Examination - In-Camera by Ms. Mayes

1 Renee Strickland.

2 RENE STRICKLAND,

3 after being duly sworn, testified as follows:

4 THE CLERK: Have a seat, please, ma'am. Once
5 you're seated, state your full name spelling your last on
6 the record, please.

7 THE WITNESS: My name is Renee Strickland,
8 S-T-R-I-C-K-L-A-N-D.

9 **DIRECT EXAMINATION - IN-CAMERA**

10 BY MS. MAYES:

11 Q And Detective Strickland, where are you currently
12 employed?

13 A With the South Carolina Attorney General's Office.

14 Q In what capacity?

15 A I'm a Special Investigator with the Medicaid Fraud
16 Provider Department.

17 Q Prior to your employment there at the Attorney
18 General's Office, where were you employed?

19 A The Lexington County Sheriff's Department.

20 Q All right. And how long were you a member of the
21 Lexington County Sheriff's Department?

22 A I began working there in 2009 and then resigned in
23 January of 2014.

24 Q All right. And you also have prior experience at
25 the State Law Enforcement Division?

Renee Strickland - Direct Examination - In-Camera by Ms. Mayes

1 A Yes, ma'am.

2 Q Okay. Now, discussing your involvement there at
3 the Lexington County Sheriff's Department, did you have
4 specific training in the field of CSI or Crime Scene
5 Investigation?

6 A Yes, ma'am, and also with SLED.

7 Q And did that include the collection of buccal swabs
8 for suspect standards?

9 A It did.

10 Q For the purpose of DNA analysis?

11 A Yes, ma'am.

12 Q Now, how did you first become involved in the
13 investigation of this case?

14 A I accompanied Detective Stoner to the Daybreak
15 Crisis Pregnancy Center in Columbia on September 11th of
16 2013, I believe.

17 Q All right. And did you -- were you present when
18 the 11 year old victim, Minor , was interviewed?

19 A Yes, ma'am.

20 Q And subsequently were you present when the
21 defendant, Martin Rodriguez, was interviewed?

22 A I was.

23 Q And what can you tell us about that particular
24 interview; who was present and what do you recall
25 concerning whether or not he could communicate in English?

Renee Strickland - Direct Examination - In-Camera by Ms. Mayes

1 A Present was myself and Detective Stoner and also
2 his minor child. We had no problem communicating with him.
3 He was very cordial. The interaction was he answered our
4 questions and appeared to have no problem understanding
5 what we were asking and had no problem communicating back
6 with us.

7 Q All right. And did you or Detective Stoner feel
8 like Miranda warnings were necessary at that point in time?

9 A No, ma'am, at that point in time, we were still
10 gathering facts. The investigation was very -- it was very
11 early in the stage of the investigation.

12 Q Was Mr. Rodriguez in custody there at Daybreak
13 Crisis Pregnancy Center?

14 A He was not, no, ma'am.

15 Q Was he threatened or coerced by you or Detective
16 Stoner in any way?

17 A No, he was not.

18 Q Was he promised anything in exchange for
19 participating in this interview?

20 A No, ma'am.

21 Q Ultimately did he participate in a verbal interview
22 with Detective Stoner?

23 A He did, yes, ma'am.

24 Q Was he able to give verbal responses throughout
25 that interview?

Renee Strickland - Direct Examination - In-Camera by Ms. Mayes

1 A He was.

2 Q Do you recall whether or not Detective Stoner
3 documented those communications in any way?

4 A She did.

5 Q In what format?

6 A Written, handwritten notes.

7 Q Okay. And following that interview with Mr.
8 Rodriguez, Detective Strickland, was he placed under arrest
9 at that point?

10 A He was not, no.

11 Q Was he, in fact, free to go?

12 A He was.

13 Q Based upon all of your observations, can you tell
14 us whether or not the communications made by Martin
15 Rodriguez on September 11th at Daybreak Crisis Pregnancy
16 Center appeared to be freely and voluntarily provided?

17 A Yes, ma'am.

18 Q Was any discussion had with Mr. Rodriguez about
19 providing a suspect standard or buccal swab for DNA
20 purposes?

21 A Yes, ma'am, Detective Stoner asked if he would be
22 willing to provide a buccal swab for -- for DNA and he
23 agreed to do so.

24 Q All right. And did he understand that was for the
25 purpose of paternity once the baby was born?

Renee Strickland - Direct Examination - In-Camera by Ms. Mayes

1 A He did, yes.

2 Q What was his response?

3 A He agreed to do so and he made arrangements to meet
4 with us the following day.

5 Q And ultimately were you present when the buccal
6 swab was collected?

7 A Yes, ma'am, I collected the buccal swab myself.

8 Q And have you seen the, what I believe is Court's
9 Exhibit 2 --

10 THE COURT: It's right here.

11 BY MS. MAYES:

12 Q -- Court's Exhibit 2 which is the consent form in
13 this case?

14 A Yes, ma'am.

15 Q Okay. Now, in addition to that consent form, what
16 type of paperwork do you have a subject sign or acknowledge
17 that they are providing a buccal swab?

18 A There is a form that's actually on the envelope
19 where the -- the sample is taken that the subject for
20 purposes of collection of DNA will also sign. And they
21 also provide identification so that we can confirm that it
22 is indeed the person that we want to get the sample from.

23 MS. MAYES: Your Honor, for purposes of this
24 hearing, we would unseal what is currently sealed. And
25 this is SLED Lab No. L1404963.

Renee Strickland - Direct Examination - In-Camera by Ms. Mayes

1 BY MS. MAYES:

2 Q Detective Stoner, if you can unseal that packaging.
3 What are we looking at?

4 A This is the outer envelope. This is a -- a buccal
5 swab collection kit and this the outer envelope that it
6 gets sealed in before we submit it for evidence.

7 Q All right. And that's yet an additional seal, if
8 you could break that seal as well for purposes of this
9 hearing.

10 All right. And is there a date on this envelope?

11 A Yes, ma'am.

12 Q What is the date?

13 A 9/12 of 2013.

14 Q And whose name is printed on this as the person
15 collecting the sample?

16 A It's myself, Renee Strickland.

17 Q Now you mentioned that the subject also
18 acknowledges what he's doing and what he's providing. How
19 so?

20 A The subjects signature, there's a spot for the
21 subject's signature next to his social security number on
22 this form and it's signed by the subject.

23 Q Which is Martin Rodriguez?

24 A Correct.

25 Q And that was contemporaneous with the collection of

Renee Strickland - Direct Examination - In-Camera by Ms. Mayes

1 the buccal swab sample?

2 A It was, yes, ma'am.

3 Q Detective Strickland, at any point that day did Mr.
4 Rodriguez refuse to provide a buccal swab sample?

5 A No, ma'am.

6 Q Did he show any resistance?

7 A No, he was very friendly and cordial and there was
8 no problem in collecting the sample.

9 Q And you actually collect it from what part of the
10 body?

11 A The inside portion of his cheek. Buccal actually
12 means cheek cell or inside-the-mouth cell. A swab is
13 swabbed on either side of the mouth to collect the cells
14 for analysis.

15 Q Did he open his mouth voluntarily for collection of
16 that sample?

17 A Yes, ma'am.

18 Q Based upon all of your observations, Detective
19 Strickland, beginning with his agreement the day before,
20 his participation the day of the collection, and signature
21 of the suspect kit, can you tell us whether or not Martin
22 Rodriguez appeared to voluntarily provide a suspect
23 standard for the purpose of DNA analysis?

24 A Yes, ma'am.

25 MS. MAYES: Nothing further, Your Honor.

1 THE COURT: Mr. Williams?

2 MR. WILLIAMS: Just a couple of questions.

3 CROSS-EXAMINATION - IN-CAMERA

4 BY MR. WILLIAMS:

5 Q The Solicitor asked whether or not you explained
6 that the purpose of providing a DNA sample was to establish
7 paternity and you said yes; is that correct?

8 A Yes, sir.

9 Q At any point in time, did you or the other
10 detective tell him that it was also for the purpose of
11 determining whether or not a warrant would be issued for
12 his arrest?

13 A No.

14 MR. WILLIAMS: That's all the questions I have.

15 THE COURT: All right. Anything in redirect,
16 Solicitor?

17 MS. MAYES: No, sir, Your Honor. We may need to
18 reseal that evidence or have it repackaged.

19 THE COURT: All right. Thank you. Thank you,
20 Detective Strickland, you may step down.

21 MS. MAYES: That would be the extent of the State's
22 witnesses, Your Honor, on the issue of the verbal statement
23 the Jackson v. Denno custodial issue and collection of the
24 buccal swab.

25 THE COURT: Thank you. Mr. Williams?

1 MR. WILLIAMS: We have nothing to present in
2 regards to that.

3 THE COURT: Solicitor --

4 You may step down.

5 Solicitor, I'll be glad to hear from you.

6 MS. MAYES: Yes, sir, Your Honor. It is apparent
7 that Mr. Rodriguez was not in custody during the verbal
8 statement made to law enforcement officers on September
9 11th. He ultimately was not arrested or placed in the
10 custody until about 8 months later in May of 2014 once the
11 results of the DNA sample came back and established that he
12 was the father of the child that was ultimately born in the
13 year 2014.

14 The testimony has been that he understood English.
15 He communicated freely and voluntarily with the officers.
16 He answered questions pertaining to their inquiries. He
17 was there with a minor child and drove there and then
18 ultimately left on his own, so we do feel that we have
19 sufficiently established he was not in custody, and
20 therefore, the Miranda warnings were not required.

21 Secondly, Your Honor, as to the collection of the
22 buccal swab, the standard, he first consented verbally to
23 provide it on September 11th. Arrangements were made by
24 phone for him to provide it ultimately on the following day
25 on September 12th. He voluntarily provided it on his

1 worksite. He signed at least two documents acknowledging
2 that he was giving the buccal swab freely and voluntarily.
3 As Detective Strickland indicated, it does require opening
4 of the mouth and some degree of cooperation from a
5 participant and there was no indication whatsoever that he
6 refused to provide that sample.

7 THE COURT: Thank you. Mr. Williams?

8 MR. WILLIAMS: We have no other argument on that
9 point, Your Honor.

10 THE COURT: All right. As to Jackson v. Denno, I
11 find there was no custodial interrogation, that he was not
12 in custody, not under arrest, free to leave, that he could
13 understand the officers, spoke the English language, the
14 officers could understand him, that he was in a public area
15 with two -- just with two detectives and no other
16 individuals around, as I take it, in that area. There was
17 no threats, no coercion, or promises of any type made.

18 Further, that it was requested that he give a
19 buccal swab and he agreed and met with the officers the
20 next day. The officers' testimony is that they explained
21 that to him. Further they have a written form, although
22 perhaps -- and I take into account that it is marked
23 193LCSD revised, 1 of 7 and it appears to be a standard
24 consent to search by the Lexington County Sheriff's
25 Department. However, it does indicate on it that standard

1 was taken, DNA swab is indicated on it.

2 The officers both testified that he was
3 cooperative. He actually met with them after the cell
4 phone -- they limited the search, there's no testimony that
5 they went outside of the scope of the search, only to the
6 buccal swab. I also take into account that -- that the
7 question by Mr. Williams indicated both officers they told
8 him it was far paternity. I take the factor into account
9 that he was not told that it could be basis for probable
10 cause for an arrest warrant.

11 I do that because there's a law is whether consent
12 to search was voluntary or the product of duress or
13 coercion impressed or implied is a question of fact to be
14 determined by the totality of the circumstances. The State
15 bears the burden of establishing the voluntariness of the
16 consent citing Schneckloth, S-C-H-N-E-C-K-L-O-T-H, v.
17 Bustamonte, B-U-S-T-A-M-O-N-T-E, 412 U.S. 218, 1973. The
18 State has the burden of proving the validity of the consent
19 under the totality of the circumstances test, I imply, it
20 was clear that it was in a noncustodial situation when he
21 did consent. It's clear that the officers explained to him
22 the procedure that was to follow and even if he were in
23 custody, which he was not, that would just merely be a
24 factor. Custody alone is not enough itself to demonstrate
25 coercion of consent to search.

1 The issue of voluntary consent when contested by
2 contradicting testimony is an issue of credibility to be
3 determined by the trial judge. Citing State v. Maybank, I
4 only have the Opinion No. 3566. All of this reading right
5 now comes in State versus Mattison, M-A-T-T-I-S-O-N, 579
6 S.E. 2d 852, 2003 case, Court of Appeals. I think that
7 case also went to the United -- to the South Carolina
8 Supreme Court. I didn't realize I was reading from the
9 Court of Appeals.

10 However, given the totality of the circumstances
11 the consent to search was voluntarily and freely given and
12 the statement is admissible. The State intends to produce
13 it and the buccal swab is admissible.

14 Anything further, Solicitor?

15 MS. MAYES: Just briefly, Your Honor. We will be
16 pre-marking some exhibits. We can go ahead and do that now
17 prior to starting back at three. And then finally, we just
18 want to make sure that there is not any type of improper
19 character evidence that the victim will be questioned
20 about. So we ask for a motion in limine in that regard. I
21 believe she has had some issues recently where she ran away
22 from a foster home or her most recent placement and we do
23 not believe that's relevant or admissible.

24 THE COURT: Mr. Williams?

25 MR. WILLIAMS: I don't know of any questions I'm

1 going to ask that would be improper, Your Honor.

2 THE COURT: And if you do, Mr. Williams, you --
3 you've tried cases in front of me. All you have to do is
4 say you have a matter of law to take up.

5 Or if you think he's fixing to, Solicitor, all
6 you'd have to do is the same.

7 MS. MAYES: Yes, sir, Your Honor.

8 THE COURT: All right. Anything further?

9 MS. MAYES: No, sir, we'll give Mr. Williams a
10 chance to look over any exhibits -- we'll go ahead and
11 mark.

12 THE COURT: Anything from the defense, Mr.
13 Williams?

14 MR. WILLIAMS: Your Honor, one question.
15 Obviously, the jury has not been sworn yet, so I would
16 assume my client is still at liberty. At some point in
17 time, I assume we're breaking for lunch at this point in
18 time after we look at the exhibits.

19 THE COURT: Yes, sir.

20 MR. WILLIAMS: At some point in time, I assume we
21 will address whether or not he remains at liberty or not.
22 I have secured a letter from the bonding company.

23 THE COURT: I'll take that up after the jury's
24 sworn.

25 MR. WILLIAMS: All right, sir.

1 THE COURT: All right. Thank you very much. Then
2 y'all can take up whatever matters y'all need to take up.
3 Court will be in recess until three o'clock.

4 MS. MAYES: Thank you, Your Honor.

5 MR. WILLIAMS: Thank you, Your Honor.

6 (A recess was observed for lunch.)

7 THE COURT: Anything from the State before we bring
8 in our jury?

9 MS. MAYES: Nothing from the State, Your Honor.

10 THE COURT: Defense?

11 MR. WILLIAMS: Nothing from the defendant, Your
12 Honor.

13 THE COURT: They finished with their election?

14 THE BAILIFF: I'll check, Your Honor. They were in
15 the process while ago.

16 THE COURT: I'm not going to have a recount.

17 MS. MAYES: I do want to request, Your Honor, that
18 the juror with the hearing aids be positioned fairly close
19 to the witness stand?

20 THE COURT: Sure. That could be another factor in
21 the decision. That was 77; is that right, Juror 77?

22 THE CLERK: Yes, sir.

23 THE BAILIFF: You ready for them, Your Honor?

24 THE COURT: Give me just a moment.

25 Juror No. 195, Ashely Teasdel is our foreperson.

1 And Juror No. 77, Mr. Knight?

2 THE BAILIFF: Yes, sir.

3 THE COURT: The gentlemen with the hearing problem.

4 If you will have him sit right next --

5 THE BAILIFF: -- to the foreperson.

6 THE COURT: -- to the foreperson, that would be
7 great.

8 THE BAILIFF: All right.

9 THE COURT: Thank you. Thank you very much.

10 (The jury entered the courtroom at 3:03 p.m.)

11 THE COURT: All right. Madam Clerk, will you place
12 our jury under oath, please.

13 THE CLERK: Yes, sir; Your Honor. Please stand and
14 raise your right hand.

15 (The jury was sworn at 3:03 p.m.)

16 THE CLERK: Be seated please.

17 THE COURT: Was there any member of the jury panel
18 unable to take the oath; if so, please stand?

19 All right. Welcome back, ladies and gentlemen, I
20 hope you all had a pleasant lunch.

21 Madam Forelady, thank you very much for
22 volunteering for that very important position.

23 **OPENING REMARKS BY THE COURT**

24 THE COURT: Ladies and gentlemen, the case we are
25 about to try is a case of the State versus Martin Alejandro

1 Rodriguez, seated to my front left, who has been previously
2 introduced to you. What I will now say is intended to
3 serve as an introduction to the trial of this case. These
4 remarks are not an instruction on the law on this case.
5 I'll instruct you on the law applicable to this case at the
6 end of the trial before you retire to consider your
7 verdict. This is merely an explanation of the procedure
8 that we will follow in the trial so that you may better
9 understand what may be happening.

10 The defendant, as you have been informed, is
11 charged by two indictments filed with this Court with the
12 crimes of criminal sexual conduct with a minor second
13 degree and criminal sexual conduct with a minor third
14 degree, the elements of which will be explained to you
15 later.

16 The indictments, ladies and gentlemen, are simply
17 the charge by which the case is brought into this court and
18 they are not in any sense, evidence of any of the
19 allegations they contain. The defendant has pled not
20 guilty to these indictments. The State, therefore, the
21 party to my front right, has the burden of proving each of
22 the elements of the indictment beyond a reasonable doubt
23 and it will be your duty, ladies and gentlemen, to decide
24 whether or not the State meets that burden.

25 Your purpose as jurors is to find and determine the

1 facts. You are the sole judges of the facts. If at any
2 time I make any comment regarding the facts, you must
3 disregard them. You are to determine the facts on the
4 sworn testimony that you will hear from this witness stand
5 and any other evidence that may be introduced in court. It
6 is up to you to determine any inferences, which you feel
7 may properly be drawn from the evidence. It is especially
8 important that you perform your duty of determining the
9 facts diligently and conscientiously because ordinarily,
10 there is no way to correct an erroneous determination of
11 the facts by a jury. And on the other hand, with equal
12 emphasis; the same law that makes you the judges of the
13 facts, make me the judge of the law. The law as given by
14 the Court is the only law you may consider. You must
15 accept it and follow it even though you may disagree with
16 it.

17 I cannot tell you what the facts are and you cannot
18 disagree with me about what the law is or what the law
19 should be. Your job is to take the law as I give it to
20 you, apply it to the facts as you find them from the
21 testimony of the witnesses and any other evidence that is
22 introduced. After doing that, you will render your
23 verdicts, true and just verdicts, under the solemn oath
24 that you have just taken as jurors.

25 It is important during the trial that you keep an

1 open mind and not decide any issue in the case until all of
2 the evidence has been presented, the parties have made
3 their closing arguments to you and I have instructed you on
4 the law in this case. It is your solemn responsibility to
5 determine the guilt or innocence of the defendant and your
6 verdicts must be based solely on the evidence as it is
7 presented to you during the trial and on the law as I
8 instruct you during and at the close of the trial.

9 Now in just a moment, the Solicitor will make what
10 is called an opening statement, which the solicitor will
11 explain to you the issues in this case or at least what the
12 solicitor thinks the issues are in the case. Mr. Williams,
13 the attorney for Mr. Rodriguez, may also make an opening
14 statement although he is not required to do so. As you
15 recall; the State has the burden of proving its case beyond
16 a reasonable doubt. A criminal defendant in South
17 Carolina, regardless of the serious nature of whatever the
18 charges may be, is never required to prove himself or
19 herself innocent. The burden is on the State of South
20 Carolina to prove guilt beyond a reasonable doubt and
21 always remains on the State of South Carolina.

22 What the attorneys tell you during their opening
23 statements is not evidence in the case. They're not sworn
24 witnesses in the case. It -- it's the procedure we follow.
25 They're closing arguments will not be evidence in the case.

1 The questioning by the attorneys is not evidence in the
2 case. It's the framework by which the testimony, the
3 evidence, is extracted from the witnesses testifying under
4 oath. The evidence in this case will be presented by that
5 testimony of the witnesses from this witness stand and by
6 any exhibits that may be introduced into evidence.

7 From time to time during the trial, you may hear
8 one of the attorneys say something like, Your Honor, I
9 believe we have a question of law or a matter of law to
10 discuss with you; or Your Honor, may we approach the bench;
11 or sometimes I myself might find it necessary to excuse you
12 from the courtroom for a short while so the attorneys and I
13 can discuss a matter of law. The reason for this is not to
14 hide anything from you. This is because you are the judges
15 of the facts in this case and sometimes when I am
16 discussing matters of law with the attorneys, it may be
17 necessary for me to make some comment as to the facts in
18 connection with ruling whether or not a particular law
19 applies.

20 I'm not supposed to tell you what I think the facts
21 are, so I will excuse you from the courtroom while these
22 discussions take place so that in no way will you be
23 influenced by anything that I might say or do in connection
24 with the facts. In determining what the true facts are in
25 this case, you must decide whether or not the testimony of

1 the witnesses is believable. It will be my responsibility
2 to rule as a matter of law as to whether certain testimony
3 is admissible at all or not. In other words, whether you
4 get to hear it or see it or not, but once the testimony is
5 admitted, whether or not you believe it is solely for you,
6 the jury, to determine.

7 In deciding whether to believe a witness, using
8 your individual common sense and good judgment and
9 collective common sense and good judgment, you have the
10 right to consider the interest of any witness, the bias of
11 any witness, the prejudice of any witness, the opportunity
12 for the witness to have seen the matters and things about
13 which the witness may testify, and the way the witness acts
14 on the witness stand, the demeanor of the witness. You
15 have the right to consider anything that is in the record
16 that will help you evaluate the testimony of the witnesses.

17 That means it will be your duty to pay close
18 attention to the witnesses, to observe them, to listen to
19 the witnesses and to pay close attention to the attorneys
20 and to the Court. Don't let your thoughts wander, but give
21 strict attention to the testimony in this case so that at
22 the end of all the evidence, after the arguments of the
23 attorneys and the instruction on the law by the Court, you
24 will then be in that position to determine what the true
25 facts are and to apply the law to those facts as you find

1 them to be and thus a render true and just verdicts.

2 It will be an added responsibility, Madam Forelady,
3 to preside in the jury room and be the jury spokesperson in
4 the Court. It will also be your duty to write the
5 verdicts, but I will give you further instructions about
6 that at the conclusion of the case.

7 Just a few administrative matters, ladies and
8 gentlemen, if you cannot hear a witness or see a witness,
9 just please get my attention, the attention of the clerk or
10 one of the bailiffs. We will certainly, there is a speaker
11 system in here, and we will have that witness speak up or
12 sit up or what have you. Also I have found, it has been my
13 observations trying cases for many years, that jurors many
14 times are very territorial. By that I mean they like to
15 sit in the same seat in -- when they're in the jury box in
16 the courtroom and that's fine. I like to sit in the same
17 seat in the courtroom each and every time.

18 I need to keep up with fourteen folks. I need our
19 foreperson, if she would always maintain that seat.

20 Juror No. 77, if you would always maintain that
21 seat.

22 And if our two alternates would always maintain
23 those two seats on the back row.

24 The others, you are welcome to sit anywhere you
25 would like to sit within the jury box. It is not required,

1 I don't assign seats. As I say, I have observed over the
2 years many times jurors can be very territorial. Sometimes
3 if they do sit in the same seat, I may even know their
4 names or know who they are by the end of the trial, but
5 that's certainly up to y'all.

6 If items or documents are offered or introduced
7 into evidence, sometimes they're presented on the screen,
8 sometimes they may be handed to the foreperson and passed
9 among members of the jury while you are in the courtroom in
10 your jury box. If I allow a physical item or document into
11 evidence, you will have the opportunity to see it in the
12 courtroom. You will also have it in your jury room at the
13 time of your deliberations. You may look at those items as
14 much and as long as you wish in the courtroom. Just keep
15 it in mind that -- that you will have it in the jury room
16 during your deliberations giving you further opportunity to
17 view it.

18 Finally, ladies and gentlemen, breaks. I have a
19 real simple rule about breaks. When I want to take a
20 break, we take a break. It works out great. This is not
21 some type of judicial marathon. If your thoughts get to
22 wandering, you can't focus on the facts, please, please
23 raise your hand. You're probably not the only one that
24 needs a break. Y'all will take y'all's break; we will take
25 our break. So at any time if anyone needs to take a break

1 and you sit out here too long, you get my attention, y'all
2 will take y'all's break; we will take ours.

3 With that being said, any objections to anything
4 I've told the jury from the State, Solicitor?

5 MS. MAYES: None from the State Your Honor.

6 THE COURT: From the defense, Mr. Williams?

7 MR. WILLIAMS: None from the defendant, Your Honor.

8 THE COURT: All right. Solicitor, you may address
9 the jury.

10 **OPENING STATEMENTS**

11 MR. CASKEY: Thank you, Your Honor, may it please
12 the Court.

13 THE COURT: Yes, sir.

14 MR. CASKEY: Good morning. Back in the early
15 Spring and throughout the Spring into the Summer of 2013,
16 after her mom had gone to bed late at night, after her
17 brother, , who was about one years old, had gone to
18 bed; after , her sister, about 8 -- 7 or 8 years
19 old, had gone to bed, Minor was attacked. She
20 wasn't attacked in her dreams, wasn't attacked in her
21 nightmares; she was attacked right here in Lexington
22 County. Sometimes those attacks were at her home and
23 sometimes they were in her own bed.

24 And the person who attacked her, the evidence is
25 going to show, was that man, Martin Rodriguez, her own

1 step-father. But these attacks, these attacks weren't
2 punches to the face, they weren't kicks to the shins.
3 These attacks were sexual. Martin Rodriguez took advantage
4 of an 11 year old girl and he used her body again and again
5 and again for his own perverse pleasure. That is what this
6 case is. She was 11 years old. He had sexual intercourse
7 with her. He had sex with her. How do we know; two ways,
8 the first, Minor , sitting right there in the front row,
9 she's going to take that stand in just a few minutes.
10 She's going to tell you. She's going to tell you that that
11 man had sex with her.

12 Second, we know this is true because in the Summer
13 of 2013, Minor , then just 11 years old, got pregnant and on
14 , by the grace of God, she was able to
15 deliver a beautiful baby boy named Child . And law
16 enforcement was able to obtain DNA samples from the
17 defendant, from Minor and from her son. Those DNA samples
18 were then submitted to the State Law Enforcement Division
19 and you will hear SLED's expert in DNA paternity analysis
20 tell you unequivocally Martin Rodriguez is the man who
21 impregnated her. That's this case. That's the case that's
22 before you now.

23 You're going to hear from others involved in this
24 case. You're going to hear from law enforcement and you're
25 going to hear from those people who were at Daybreak Crisis

1 Pregnancy Center there in Columbia and those who were there
2 on September 11th, 2013 when Minor pregnancy test came
3 back positive. You're going to hear about how little
4 support there was for her. You're going to hear how scared
5 and frightened that Minor was when this stopped being the
6 secret that Martin Rodriguez always thought this would be.

7 Those folks are going to tell you that Minor
8 doesn't have or didn't have support and love at home. Her
9 own mother emotionally abandoned her on the outset. Her
10 own mother chose Martin, not her daughter. That's the case
11 that you're going to hear this week.

12 Witnesses are going to tell you that Minor as a
13 then 11 year old girl, who had just found out she was
14 pregnant, wasn't able to tell everyone who her attacker was
15 at that time. You'll hear from an expert that's going to
16 take the stand and she'll explain to you that delayed
17 reporting as it is called, is very sadly the norm in cases
18 like this; the rule rather than the exception, but you're
19 also going to get to hear the voice that Minor was able to
20 find in her months to come. Because Minor was able to find
21 her voice in this sea of chaos.

22 And again, she's going to take the stand and she's
23 going to tell you that that man, when she was 11 years old,
24 had sex with her again and again and again. That's what
25 this case is, ladies and gentlemen, and that voice that

1 Nanci is going to take the stand and tell you with will be
2 echoed by the attorney -- the analyst from SLED and she's
3 going to tell you the conclusive results of that testing
4 was that he is the father. That is what this case is.

5 I would go on, ladies and gentlemen, but quite
6 frankly, I am ready to start presenting this evidence to
7 you. Your task now is to listen, listen carefully without
8 prejudice. But I'm going to just sit down because I'm
9 ready to get this case to you probably on Wednesday so that
10 you can come back in there and vote guilty.

11 THE COURT: Thank you. Thank you, Solicitor.

12 Mr. Williams.

13 MR. WILLIAMS: May it please the Court?

14 THE COURT: Certainly.

15 MR. WILLIAMS: Madam forelady, ladies and gentlemen
16 of the jury, I have to remember to say forelady, I heard
17 the Judge say foreperson or lady. I'm older, I guess
18 that's the way I remember it.

19 THE COURT: I'm not.

20 MR. WILLIAMS: I'm sorry. You know, in opening
21 argument, obviously I've been doing this a day or two.
22 Opening argument used to be, used to be where you simply
23 come forward and tell the jurors what you intend to prove
24 in your case. You tell them, you know, what witnesses are
25 coming forward and you tell them what evidence you expect

1 to hear and then you thank the jury for being here and you
2 tell them how important they are and then you put up your
3 evidence because what you say in opening argument really is
4 not evidence of any kind; it's not. It's a preview, if you
5 will. It's like when you go to a play and you open up the
6 book and you see whose going to be up and you see Act 1 and
7 Act 2 and Act 3.

8 Sometimes it's used as a staging ground. I see
9 visions of -- of a coach with five or six basketball
10 players getting ready to play a game, everybody is huddled
11 in and getting everybody riled up, ready to play or
12 something like that. You attach something to the process,
13 which you're supposed to use, which shouldn't be there.
14 You see this is a -- this is a neurological thing. It's
15 a -- it's a mind thing. It's not supposed to be an
16 emotional thing. If we thought that you twelve jurors
17 would be the kind of people that would react to emotion, I
18 feel certain that many of us would have struck you as
19 jurors because it's supposed to be a thought provoking
20 thing because that's how you reach the truth. You don't
21 reach the truth by using your emotions.

22 So I would ask that you not dwell on the type of
23 case it is, that you not dwell on an argument that where
24 the voices are raised and makes you think that something
25 terrible has happened because any time you try a sexual

1 assault case, a criminal sexual conduct case, lewd act
2 case, a murder case, any time you try those types of cases
3 it lends itself to that type of emotion; and of course, we
4 all get all emotional because we would never think about
5 what was going on. I would like for you to think here at
6 the beginning of this trial, just focus on what you need to
7 do to come forth with the verdict, which at the end of this
8 case, that's what you're going to be asked to do and that
9 is to speak the truth, your twelve collective thoughts
10 because they'll be twelve at that time, will reach a
11 decision and it has to speak the truth.

12 So in doing that, I want you to listen to what
13 makes sense. You know we -- the Judge will tell you at the
14 end of this case, will tell you that you're supposed to use
15 your common sense. There are situations in life and we
16 have a standard that says a man is not guilty until he is
17 proven guilty beyond a reasonable doubt. There are many
18 times when people accuse people of doing things, but you
19 can't always prove your innocence and that's why we have
20 that standard that the State must prove to you beyond a
21 reasonable doubt that the person is guilty.

22 So what I would like you to do is focus on the
23 witnesses that are going to testify and the first question
24 that you need to be asking yourself, the first question --
25 you know there was a phrase about the truth will set you

1 free, well, when -- when does the alleged victim say that
2 Martin Rodriguez assaulted her. That's the first thing I
3 want you to think about because you'll learn that months
4 went by. She was interviewed by several people and he was
5 never accused of these types of things. As a matter of
6 fact, Martin Rodriguez and his wife took her to this
7 pregnancy place because they thought she might be pregnant
8 and asked that they check into it. And then Martin
9 voluntarily gave his DNA sample. That's what you've got
10 here in essence, it's a determination of what you believe
11 to be the truth based on the witnesses and based on your
12 examination of this scientific test.

13 I think we've got to a situation now where we think
14 that everything is resolved based on a test. You wonder
15 how we got by all these years before we had tests and we
16 used common sense is what we did. I want you to ask
17 yourself when she made this statement, if ever, she made
18 this statement that Martin Rodriguez committed any type of
19 assault on her and her statements have changed and where it
20 happened, how did it happen; ask yourself, do I believe
21 this. I'm not going to tell you what to think, I'm simply
22 going to tell you I want you to think.

23 Thank you for your attention.

24 THE COURT: Thank you. Thank you, Mr. Williams.
25 Solicitor, you may call your first witness.

Minor

- Direct Examination by Ms. Mayes

1 MS. MAYES: Your Honor, the State calls Minor

2

3

Minor

4

having been duly sworn, testified as follows:

5

THE CLERK: Have a seat up there, please, ma'am.

6

Once you're seated state your full name spelling your last

7

on the record, please.

8

THE WITNESS: My Minor It's

9

spelled with no dash,

10

THE COURT: Would you speak up for us please.

11

MS. MAYES: Yes, sir, Your Honor, I'm going to

12

adjust that.

13

THE COURT: Thank you, Solicitor.

14

DIRECT EXAMINATION

15

BY MS. MAYES:

16

Q If you could pull forward just a little bit more,

17

but sit up straight, Minor. And I am going to push this

18

forward a little bit more towards your mouth. Is that

19

okay?

20

A Yes.

21

Q Okay. Now, you told us your name is Minor

22

. What do you go by at school?

23

A Minor

24

Q Okay. And, Minor, how old are you today?

25

A I'm 13.

Minor

- Direct Examination by Ms. Mayes

1 Q 13. Okay. Still having a little bit of trouble
2 hearing you. What I'm going to do -- move it to where it's
3 about two inches away from your mouth and you may have to
4 lean into it sometimes. Is that okay?

5 A (The witness nodded.)

6 Q All right. Now, Minor, you said you are 13 years
7 old today; is that right?

8 A Yes, ma'am.

9 Q Where is it that you go to school currently?

10 A

11 Q All right. And I'm going to stand back here and
12 the reason I'm going to stand this far away from you for
13 now is to keep your voice up so even this last juror can
14 hear you, okay?

15 A Okay.

16 Q And it's August, so did you just start the school
17 year?

18 A Yes, ma'am.

19 Q And what school year did you just start there at
20 middle school?

21 A I started eighth grade.

22 Q So you're now in the eighth grade; is that right?

23 A Yes, ma'am.

24 Q And what plans, if any, do you have or hobbies or
25 activities this school year?

Minor

- Direct Examination by Ms. Mayes

- 1 A I'm going to start playing soccer for .
- 2 Q All right. And is who?
- 3 A is a school. It's High School,
- 4
- 5 Q Okay. Now I want to go back a little bit before
- 6 you were in the eighth grade like you are now and ask you
- 7 about the fifth grade.
- 8 Where were you living when you were in the fifth
- 9 grade?
- 10 A With my mom in .
- 11 Q Okay. And what is your mother's name?
- 12 A Alicia Mata Cortez.
- 13 Q And in the fifth grade, how old were you?
- 14 A 11 or 12.
- 15 Q All right. In the spring of fifth grade, would you
- 16 have been 11 years old?
- 17 A Yes, ma'am.
- 18 Q And you said you lived with your mom. Tell us
- 19 again exactly where that was; do you know the street
- 20 address?
- 21 A
- 22 Q Okay. You're talking a little fast, so let me
- 23 break down that down. That's on ?
- 24 A Yes.
- 25 Q And you said . What kind of home

Minor

- Direct Examination by Ms. Mayes

1 community is ?

2 A Mobile homes.

3 Q Okay. And how long about -- it doesn't have to be
4 exact -- but about how long had you been living there at
5 with your mom?

6 A I don't remember, but I know it's for a long time.

7 Q Several years?

8 A Yes, ma'am.

9 Q And were you living there at the
10 summer between the fifth grade and the sixth grade?

11 A Yes, ma'am.

12 Q Minor, how is that you know the defendant in this
13 case, Martin Rodriguez?

14 A That's my step-dad, my mom's husband.

15 Q And can you tell us whether or not he also lived at
16 with you?

17 A Yes, ma'am, he lived with us.

18 Q At

19 A Yes, ma'am.

20 Q And I know you said that he's your step-dad. Can
21 you give us a timeline on about how long he and your mom
22 have been together?

23 A I mean --

24 MR. WILLIAMS: Objection to -- she hasn't answered
25 the question yet, Your Honor. We'd request one question at

Minor

- Direct Examination by Ms. Mayes

1 a time.

2 THE WITNESS: Okay.

3 BY MS. MAYES:

4 Q Let me ask you like this, Minor Do they have any
5 children together? And that would be your mom and Martin
6 Rodriguez, the defendant.

7 A Yes, ma'am. It's Brother , he's one -- 3
8 or either 4 something like that.

9 Q Okay. So they have a baby together. Can you tell
10 us whether they were living together at
11 when Brother was born?

12 A Yes, ma'am.

13 Q And what is Brother date of birth?

14 A

15 Q Okay. So at least since 2012 they have been living
16 together there?

17 A Yes, ma'am.

18 Q Now, I'm going to kind of take you through, if you
19 would, the different people in your family. Can you tell
20 us a little bit about that?

21 A Of who lived there?

22 Q Yes.

23 A It was me, my sister, , ; he's my
24 uncle, my brother, , my step-dad, Martin, my mom,
25 Alicia, and David Cortez, my uncle.

Minor

- Direct Examination by Ms. Mayes

1 Q Okay. You're going kind of fast, so if we could
2 just slow down just a little bit.

3 Okay. And this is going to be at . All
4 right. Lot , , correct?

5 A Yes, ma'am.

6 Q All right. So I want to ask you specifically about
7 the time period from January 2013 through around September
8 of 2013, okay?

9 A Yes, ma'am.

10 Q All right. So there was you, we'll put Minor : And
11 you mentioned a sister; who is she?

12 A Sister .

13 Q All right. Now is Sister older than you or
14 younger than you?

15 A She's younger; I'm the oldest.

16 Q Okay. And how old was Sister back in 2013? If
17 you know.

18 A I don't remember to be honest.

19 Q Okay. But she's younger than you?

20 A Yes, ma'am.

21 Q Okay. And you mentioned Uncle ?

22 A He's my uncle.

23 Q Okay. And you say uncle, but now is he an older --
24 is he older than you or younger than you?

25 A He's younger. That's my mom's brother.

Minor

- Direct Examination by Ms. Mayes

1 Q Okay. So even though he's an uncle, he's younger
2 than you?

3 A Yes.

4 Q Okay. And how old was he back then, Minor, in
5 2013?

6 A I don't remember, but he's one year younger than
7 Sister.

8 Q Okay. And do you know how many years younger
9 Sister is from you?

10 A Like four or three.

11 Q Okay. You're 13. How old is Sister now?

12 A 10.

13 Q Okay. So she's three years younger?

14 A (The witness nodded her head.)

15 Q Okay. And then Uncle would be a year younger than
16 that, so he's four years younger; is that correct?

17 A Yes, ma'am.

18 Q Okay. Who else did you list as a sibling when you
19 were telling us who your siblings were?

20 A Brother.

21 Q Okay. Brother. And the -- you said before that he
22 was born in 2012, but what's his date of birth again?

23 A

24 Q Okay. Now who was Brother's father?

25 A Martin.

Minor

- Direct Examination by Ms. Mayes

- 1 Q The defendant, Martin Rodriguez?
- 2 A Yes, ma'am.
- 3 Q Is Martin Rodriguez the father of Uncle ?
- 4 A No, ma'am.
- 5 Q Is Uncle related by blood to Martin or is he kin
- 6 to another part of the family?
- 7 A He's not related to Martin at all.
- 8 Q Okay. How is he related to you? How is he your
- 9 uncle?
- 10 A That's my mom's brother.
- 11 Q It's your mom's brother?
- 12 A Yes, ma'am.
- 13 Q Okay. Okay. And Sister , is her father Martin
- 14 Rodriguez?
- 15 A No, ma'am.
- 16 Q And you said before he was your step-dad, so he's
- 17 not your father either, correct?
- 18 A Yes.
- 19 Q Okay. Now when y'all were living with Martin at
- 20 , what did you call Martin?
- 21 A His name.
- 22 Q Okay. How did Sister refer to Martin?
- 23 A She called him daddy, but in Spanish, which was
- 24 Papi, so that's what she called him.
- 25 Q Okay. Sister called him father or daddy, Papi?

Minor

- Direct Examination by Ms. Mayes

1 A Yeah, Sister did.

2 Q And then you told us before that your mom's name is
3 Alicia?

4 A Yes, ma'am.

5 Q Step-dad is Martin. Okay. Now who all had rooms
6 in the house at Rolling Meadows? How many bedrooms were in
7 that home?

8 A Three.

9 Q Three bedrooms?

10 A (The witness nodded her head.)

11 Q Okay. And was there ever a time that you had your
12 own room?

13 A Yes, I had my own room for a while.

14 Q All right. And then was there a time that you
15 shared a room or usually shared a room?

16 A Yes, I shared a room. When, before I got taken
17 away, I used to have like -- I shared a room with my sister
18 and my brother, well Uncle .

19 Q Okay. So sometimes -- you used to have your own
20 room and then there were also times you shared a room with
21 Sister and Uncle ; is that correct?

22 A Yes, ma'am.

23 Q What about your mom and step-dad; where did they
24 sleep?

25 A They sleep across, way across my room. It was -- I

Minor

- Direct Examination by Ms. Mayes

1 don't know how to explain it to you, but --

2 Q Did they sleep in the same room normally?

3 A They had their own room.

4 Q Okay. All right. Minor, while you were living at

5 , between that time period of

6 January 2013 and September of 2013, did anything ever

7 happen that made you feel unsafe around Martin?

8 A Yes, ma'am.

9 Q Can you tell us what happened?

10 A Things started just making me feel uncomfortable,
11 things he did.

12 Q All right. And you say things he did, I'm going to
13 ask you a little bit more about those, okay?

14 A Yes, ma'am.

15 Q When you say things he did, were these things he
16 did in front of other people or when other people weren't
17 around or couldn't see?

18 A When other people weren't around and couldn't see.

19 Q Can you tell us what that was?

20 A There was touching. There were parts going to
21 other body parts and it was just -- those were the main
22 ones.

23 Q Okay. Can you tell us, Minor whether that
24 happened when you were in fifth grade, which would be that
25 spring between January of 2013 and when you would have

Minor

- Direct Examination by Ms. Mayes

1 broken for summer break?

2 A Can you explain that one more time?

3 Q Okay. I'll show you a calendar real quick. All
4 right. And this calendar is State's Exhibit 7. Can you
5 see from where you are?

6 A Yes, I can.

7 Q Okay. All right. Looking here at this calendar
8 for that spring school year in the fifth grade, if you
9 start back to school after Christmas Break around January
10 and then you keep going through February, March, April,
11 May, about when did you break for your summer break?

12 A Around June.

13 Q Okay. So around June you'd break. Okay. And what
14 you just told us about the touching and the body parts
15 going in other body parts, can you tell us whether or not
16 that was happening during this timeframe in fifth grade?

17 A They were happening.

18 Q Okay. And then once you broke for summer and you
19 got June, July, and August, can you tell us whether it was
20 going on during the summertime?

21 A It was.

22 Q And then finally, all the way up to September 11th
23 and September 11th is going to be the date we stop talking
24 about this, okay. Can you tell us whether or not it kept
25 going up through September?

Minor

- Direct Examination by Ms. Mayes

1 A It did.

2 Q I'm going to ask you a little bit more about that.
3 When you said body parts going in other body parts, okay,
4 what part or part of your body was touched?

5 A My private parts.

6 Q Okay. And what part or part of his body did he use
7 to touch you?

8 A His private part.

9 Q Okay. Do you know whether or not his private part
10 ever went in your private part?

11 A Yes.

12 Q Did that happen one time or more than one time when
13 you lived there at ?

14 A More than one time.

15 Q Minor, did he ever wear -- well let me go back a
16 little bit.

17 Who is it again that you're talking about that put
18 their private part into your private part?

19 A Martin.

20 Q Did he ever wear a condom or use any type of
21 protection?

22 A No.

23 Q How is it that you know that?

24 A Because I never saw him do anything like that.

25 Q Did you ever feel anything on you?

Minor

- Direct Examination by Ms. Mayes

- 1 A Yes.
- 2 Q What did you feel?
- 3 A His private part on my mine.
- 4 Q Do you remember him ever saying anything after it
- 5 happened?
- 6 A No, ma'am.
- 7 Q Did he ever give you anything after it happened?
- 8 A Yes, ma'am.
- 9 Q What was that?
- 10 A Like paper towels.
- 11 Q What do you remember about that?
- 12 A He said to clean myself up.
- 13 Q And what did you feel on you?
- 14 A Well when I woke up it was blood.
- 15 Q Who gave you the paper towels?
- 16 A Martin did.
- 17 Q Did you feel something on you one time or more than
- 18 one time?
- 19 A More than one time.
- 20 Q Can you describe what it was or what it felt like
- 21 on your skin?
- 22 A I don't know how to describe it.
- 23 Q Okay. I'm going to show you a picture of a girl
- 24 and this is State's Exhibit 8, okay? Do you remember where
- 25 it was when you felt something that had to be cleaned up?

Minor

- Direct Examination by Ms. Mayes

- 1 A Yes, ma'am.
- 2 Q Okay. Can you show us on this girl where it was?
- 3 A Can I circle it?
- 4 Q Yes. Yes, you can?
- 5 A Right there.
- 6 Q You can stand up if you need to. And have you felt
- 7 something there one time or more than one time?
- 8 A More than one time.
- 9 Q How would you clean up afterwards?
- 10 A Just go to the bathroom and, you know, clean.
- 11 Q Minor, when this was going on, did you tell your
- 12 mom?
- 13 A No, I didn't.
- 14 Q And why or why not?
- 15 A Because I knew that she wasn't going to believe me
- 16 and if I did say something, then she would have -- I mean
- 17 she would have not been on my side. She would have been on
- 18 his side, not on mine. So there was no point of saying
- 19 anything.
- 20 Q Who was the primary financial provider in your
- 21 family?
- 22 A Martin was.
- 23 Q And did you keep it a secret?
- 24 A I did until they found out.
- 25 Q Okay. So we want to go back a little bit more

Minor

- Direct Examination by Ms. Mayes

1 until before as you say, they found out. What are some of
2 the rooms you remember it happening in in the family home?

3 A My room, David's room, living room, my mom's room,
4 in the car.

5 Q Okay. And when you say the car, was anyone else in
6 the car other than you and the defendant?

7 A No, it was just me and him.

8 Q Your sister, , did you sometimes share a
9 room?

10 A Yes, we did.

11 Q Okay. How was it that Martin was able to put his
12 private part in your private part and Sister was there?
13 Can you tell us a little bit more about that?

14 A Sister would be sleeping with me. Sometimes he
15 would either push her over to the side or like take her to
16 the living room.

17 Q Take her where?

18 A The living room.

19 Q Okay. And when he would take her to the living
20 room, would she be asleep or awake?

21 A Asleep.

22 Q All right. Now if this happened during the night,
23 where would your mom be?

24 A She would be sleeping.

25 Q Do you know how he got in your room?

Minor

- Direct Examination by Ms. Mayes

1 A He would walk to my room, I mean, you know.

2 Q Walk to your room from his room?

3 A Uh-huh (affirmative response).

4 Q Okay. Do you know if he or do you think he may
5 have ever gotten into your room another way?

6 A When I had my own room I remember someone coming
7 through my window and that was that first time where I woke
8 up and there was blood on me and when he said to clean
9 myself up, that's when he came through the window.

10 Q Okay. And when you say he said to clean yourself
11 up, who was that person?

12 A That was Martin.

13 Q Okay. And you recognized his voice?

14 A I -- I saw him.

15 Q All right. Now why is it, if you know, that -- let
16 me ask you this: Would people sometimes be in your living
17 room at night?

18 A Yes, David -- David and mom was in the living room
19 or in the kitchen eating or watching TV.

20 Q And if the defendant had walked from his room to
21 your room, would a person in the living room or kitchen be
22 able to see them walking to your room?

23 A Yes, ma'am.

24 Q And you remember it was through a window?

25 A Yes, ma'am.

Minor

- Direct Examination by Ms. Mayes

1 Q I'm going to show you a diagram and ask you whether
2 or not you recognize it. This is State's Exhibit 6, okay?

3 A I recognize that.

4 Q You do?

5 A Yes, ma'am.

6 Q Can you see it from here?

7 A Yes, I can.

8 Q All right. So looking at this diagram, Minor,
9 what's labeled as the master bedroom is the bedroom shared
10 by who?

11 A My mom and my step-dad.

12 Q Your mom and your step-dad, the defendant?

13 A (The witness nodded her head.)

14 Q All right. And you mentioned before that there was
15 a kitchen and a living room; is that correct?

16 A Yes, ma'am.

17 Q And then there are two additional bedrooms down
18 here?

19 A Yes, ma'am.

20 Q Okay. So if someone walks to your bedroom here,
21 would the person in the kitchen or living room be able to
22 see them?

23 A Yes; because you have to walk through the kitchen
24 and living room to get to either of those rooms.

25 Q Okay. Now, you mentioned that you remember one

Minor

- Direct Examination by Ms. Mayes

1 occasion that your Uncle David was in the kitchen, I
2 believe. Was Uncle David always there?

3 A No, he would spend most of his time with Savannah,
4 his girlfriend.

5 Q Okay. So were there some nights that David didn't
6 stay at your house at all?

7 A Yes.

8 Q Okay. So for example, if it's the middle of the
9 night, where is your mom normally in the middle of the
10 night?

11 A She's sleeping in her room.

12 Q Okay. In the master bedroom?

13 A Yes, ma'am.

14 Q Okay. And normally in the middle of the night,
15 would you be in one of these spare bedrooms either bedroom
16 2 or bedroom 3?

17 A I had my own room for a while.

18 Q Okay.

19 A And David came and lived with us so he started
20 sleeping there, but when David was at his girlfriend's
21 house, Uncle would sleep in his room and me and Sister
22 would sleep in my room.

23 Q Okay. And once you went from your own room to a
24 room you sometimes shared with Sister , was that bedroom
25 number 2 or bedroom number 3 on this diagram?

Minor

- Direct Examination by Ms. Mayes

1 A It was bedroom number 2.

2 Q Okay. So first you were in number 3 and then you
3 normally stayed in number 2?

4 A Yes, ma'am.

5 Q And were you the oldest kid in the house?

6 A Yes.

7 Q Okay. Now, throughout this time that Martin and
8 your mom were together as husband and wife before Brother
9 was born and once Brother was born and after Brother was
10 born, were y'all always in this same house or did you live
11 somewhere else?

12 A We were always in the same house.

13 Q Always in that same house. I'm going to show you
14 some photographs and ask you whether or not you recognize
15 them and these are going to be State's Exhibits 2, 3, 4,
16 and 5?

17 A Yeah, that was my house or the house I used to live
18 at.

19 Q Okay. I need you to keep, I know it's hard, I need
20 you to keep talking into the microphone if you can? These
21 four photographs, do you recognize them?

22 A Yes, ma'am, that was the house I used to live at
23 with my mom.

24 Q Okay. And that's the same house we're talking
25 about here, the Rolling Meadows Mobile Home, correct?

Minor

- Direct Examination by Ms. Mayes

1 A Yes, ma'am.

2 Q Okay. And State's Exhibit 3, are we looking at the
3 front or the back?

4 A That's the front.

5 Q Okay. That would be the front?

6 THE COURT: Any objections to any of this, Mr.
7 Williams?

8 MR. WILLIAMS: I have no objection to those
9 photographs coming in, Your Honor.

10 THE COURT: That's 2, 3, 4, 5, and diagram 6, 7,
11 and 8?

12 MR. WILLIAMS: That's correct, Your Honor.

13 THE COURT: One of which is a calendar, I think.

14 MS. MAYES: Yes, sir, Your Honor, as evidence.

15 THE COURT: All of them are in evidence without
16 objection.

17 (State's Exhibit Number 2, Number 3, Number 4,
18 Number 5, Number 6, Number 7, and Number 8 were entered
19 into evidence.)

20 BY MS. MAYES:

21 Q So having looked at these photos you were in this
22 same mobile home throughout the time that Martin was in
23 your life as your step-dad, correct?

24 A Yes, ma'am.

25 Q All right. Now, moving forward, I know we were

Minor

- Direct Examination by Ms. Mayes

1 talking about it going on from fifth grade, the summer
2 before or between fifth grade and sixth grade and then into
3 September. In September, once September started, what
4 grade would that have been?

5 A I was in sixth grade.

6 Q Okay. So September is the sixth grade. I'm going
7 to put that right here and this would have been the fifth
8 and this is the summer in between right?

9 A Yes, ma'am.

10 Q You mentioned before that Brother date of birth is
11 May; I believe you said ?

12 A Yes, ma'am.

13 Q Did he have a first birthday party around
14 ?

15 A Yes, ma'am, he did.

16 Q Okay. Around that time -- and it doesn't have to
17 be exact -- but around that time, do you recall anything
18 happening with Martin?

19 A Well, something happened at Brother birthday
20 party. And, well, my mom saw some hickeys that I had and
21 E. was at Brother birthday party so my mom was saying
22 it was him that gave them to me and -- but it wasn't him.

23 Q Who was it? Who gave you the hickeys?

24 A It was my step-dad.

25 Q Okay. So you had some hikeys and could they be

Minor

- Direct Examination by Ms. Mayes

1 seen on your body?

2 A Yes, ma'am.

3 Q Where do you remember them being on your body?

4 A Like around my chest area.

5 Q Okay. And where were you when Martin had put those
6 hickeys on you?

7 A In the living room.

8 Q Now, when your mom saw the hickey on you, did you
9 tell your mom how you really got them?

10 A No, I lied to her.

11 Q What did you say?

12 A I told her that me and my sister were playing
13 around like vampires and like I give them to myself and --
14 but she didn't believe me.

15 Q And why, if at all, did you not say it was Martin
16 at that point in time?

17 A Because I was scared.

18 Q What are some of the things that you were scared
19 of?

20 A I was scared the kids would be taken away and me
21 not seeing my brothers, not going home.

22 Q Had anyone ever told you you would be taken away?

23 MR. WILLIAMS: Objection to hearsay, Your Honor.

24 THE COURT: Rephrase the question.

25 MS. MAYES: I can rephrase it.

Minor

- Direct Examination by Ms. Mayes

1 BY MS. MAYES:

2 Q Had you ever talked to Martin or had Martin ever
3 talked to you about whether or not it was okay to tell?

4 MR. WILLIAMS: Leading.

5 THE COURT: Overruled.

6 THE WITNESS: He -- can you repeat the question
7 please.

8 BY MS. MAYES:

9 Q Had Martin ever said anything about whether or not
10 it was okay to tell?

11 A He said not to tell.

12 Q And what, if anything, did he say would happen?

13 A Me being put into foster care and not seeing my
14 mom; mom was going to be on his side and not mine.

15 Q What concerns did you have about being taken away
16 from your family if you told?

17 A Well, I mean, my mom wasn't really that much of a
18 problem, it was mainly my sister, and my brother,
19 and those are the only ones that I cared for. I
20 mean, I would get taken away, but I mean I wanted to be
21 with them, but it wasn't like that.

22 Q And so did you tell yet about Martin back when your
23 mom saw the hickeys?

24 A Can you explain please?

25 Q Did you tell anybody yet about Martin back when

Minor

- Direct Examination by Ms. Mayes

1 your mom saw the hickeys in May?

2 A Yes.

3 Q Did you tell an adult?

4 A I mean when I was in care or when I was with my
5 mom?

6 Q Right, back in May when she first saw the hickeys?

7 A Oh, I didn't tell nobody.

8 Q Okay. And you kept that a secret?

9 A Yes, ma'am.

10 Q Now, I want to move forward to August of 2013. In
11 August of 2013, what, if anything, happened in your home
12 that you recall?

13 A In August -- well, I mean, he would do things that
14 I felt uncomfortable with in the car, in the house -- I
15 mean --

16 Q Okay. In the house specifically, do you know
17 whether or not your mom ever saw anything?

18 A Yeah, she did.

19 Q Okay. I'll put this diagram back up here. Can you
20 tell us what was happening when your mom saw something?

21 A Martin had his hands on my hips and he was fixing
22 to pull my pants down and my mom was walking towards --
23 to -- she was coming out of her room and she saw what my
24 step-dad was doing and so she threw the phone at him and
25 told him to leave the house that she didn't want to see him

Minor

- Direct Examination by Ms. Mayes

1 anymore. But he told her that I was looking for something
2 and he was helping me look for it and she believed it.

3 Q Okay. So I want to stop you right there and ask
4 you a few more questions about that. Where were you when
5 you were with Martin?

6 A I was in the living room.

7 Q Okay. I'm going to show you State's Exhibit 6.

8 MS. MAYES: And Your Honor, if we could ask
9 permission for the witness to step down from the stand for
10 a brief moment.

11 THE COURT: All right. You may step down. Please
12 keep your voice up when you're away from the microphone.
13 Thank you.

14 BY MS. MAYES:

15 Q Okay. I'm going to ask you -- Minor, I'm going to
16 ask you to switch places with me so that the court reporter
17 can look at you if she needs to.

18 Now, if you could step back just a little bit. All
19 right. In the living room, we're talking about the time
20 that your mom walked in and saw you with Martin, can you
21 show us in the living room about where you were?

22 A I was, the couch was right here --

23 THE COURT REPORTER: I can't hear her.

24 BY MS. MAYES:

25 Q Okay.

Minor

- Direct Examination by Ms. Mayes

1 A The couch is on the right side and the TV was like
2 right there (indicating). So I was right there
3 (indicating) and he was right here (indicating), and my mom
4 came out of there (indicating) and she saw and that's when
5 he just jumped to the other couch.

6 Q Okay. Let me stop you right there. So your mom
7 coming from where?

8 A The hallway.

9 Q Okay. So is that about right -- the direction your
10 mom's coming from?

11 A Yes, ma'am.

12 Q Okay. And you said you're here (indicating) and
13 Martin's here (indicating)?

14 A Yes, ma'am.

15 Q Okay. Now from where you and Martin were, could
16 your mom see you?

17 A Yes.

18 Q Okay.

19 A She could see everything.

20 Q Okay. Now -- and this will be the last question
21 about this, okay?

22 A Okay.

23 Q Would you step back a little bit more. Where was
24 Martin touching you?

25 A On the hips.

Minor

- Direct Examination by Ms. Mayes

1 Q Okay. And what was he doing with his hands?

2 A He was fixing to pull my pants down.

3 Q Okay. And when your mom saw that, what, if
4 anything, did she do?

5 A The only thing she did was she had her phone and
6 she threw her phone at him.

7 Q Okay. She threw the phone at Martin?

8 A Yes.

9 Q This is already in evidence --

10 MS. MAYES: State's Exhibit 6, correct?

11 THE COURT REPORTER: Yes.

12 BY MS. MAYES:

13 Q So you testified previously that your mom threw the
14 phone at him and he was also instructed to leave the
15 residence?

16 A Yes, ma'am, she told him that.

17 Q Did he leave?

18 A No, ma'am.

19 Q And what did you do when your mom saw this?

20 A My mom just threw the phone at him and he jumped to
21 another couch and she's just, Well, like, you know, I can't
22 believe you -- you're doing that, you know --

23 Q Okay. And don't say what she said, but what did
24 you say, if anything?

25 A I went to my room and waited until she asked me

Minor

- Direct Examination by Ms. Mayes

1 what was going on.

2 Q How were you feeling at that point?

3 A I was feeling happy and sad at the same time.

4 Q What do you mean by that?

5 A I was happy that -- I mean, she saw what he was
6 doing and then sad at the same time because -- I mean -- I
7 mean, I didn't know whose side she was going to be in, so I
8 mean, I was just kind of like emotional.

9 Q Okay. Did you still relieved that she had seen
10 this?

11 A Yes, I did.

12 Q Okay. And what did he say to your mother to
13 explain this situation or try to explain this situation?

14 A He said that he was helping me look for something
15 in the couch and that was it.

16 Q So he gave her an explanation?

17 A Yes, ma'am.

18 Q By the next day, was he still living there?

19 A Yes, he was.

20 Q And did it appear that your mom was supporting him?

21 MR. WILLIAMS: Objection, speculation.

22 MS. MAYES: I can rephrase that, Your Honor.

23 THE COURT: All right. Thank you.

24 BY MS. MAYES:

25 Q Were your mom and he still together?

Minor

- Direct Examination by Ms. Mayes

1 A Yes, they were.

2 Q Now, when these things started happening, Nanci,
3 going back to spring of fifth grade, summer between fifth
4 grade and sixth grade, was there any type of change in the
5 relationship that Martin had with you?

6 A Yes, ma'am, there was.

7 Q What do you mean by that?

8 A Well, he used to be real mean all the time and then
9 it just kind of sort of changed. He was just being nice.

10 Q Being nice to who?

11 A Me.

12 Q How so? How does he be nice to you?

13 A Like at night, he would tell us to leave because we
14 would stay up watching TV and he wanted to be alone and
15 then it kind of changed because he would let me and my
16 sister and the rest of us stay up there. And I just don't
17 know how to explain it, but he was a lot different than he
18 used to be.

19 Q Okay.

20 A Way nicer.

21 Q Towards who?

22 A Me.

23 Q Then, Minor, once you start sixth grade, August
24 into early September up till September 11th, what, if any,
25 concerns did you have about yourself?

Minor

- Direct Examination by Ms. Mayes

1 A Well, I mean, I was concerned about my period and I
2 was feeling really nauseous and I was just wondering why I
3 was feeling that way.

4 Q Okay.

5 A And I was getting really tired.

6 Q Okay. So you were 11. Did you think that you
7 could -- what did you think?

8 A I mean, I really didn't know what was going on with
9 me until I started throwing up. I was like, what if I'm
10 pregnant and stuff like that, but that was just a thought.
11 I never thought that was going to be true.

12 Q Okay. So you had that thought but you didn't think
13 it would be true?

14 A Yes, ma'am.

15 Q And ultimately -- you can't say what your mom said
16 to you, but did your mom also have concerns?

17 MR. WILLIAMS: Objection.

18 THE COURT: Rephrase the question, Solicitor.

19 MS. MAYES: Yes, sir, Your Honor.

20 BY MS. MAYES:

21 Q Did -- did anyone else question you about whether
22 or not you were having your period?

23 A Yes, ma'am.

24 Q Okay. Who was that person?

25 A It was my mom.

Minor

- Direct Examination by Ms. Mayes

1 Q And ultimately, on September 11th, 2014, what
2 happened?

3 A My mom said I had a doctor's appointment --

4 MR. WILLIAMS: Objection.

5 MS. MAYES: I'm sorry. Let me rephrase that. I'm
6 sorry.

7 BY MS. MAYES:

8 Q September 11th, 2013, okay. Don't say what anyone
9 said to you, but let me ask you this, did anyone take you
10 somewhere?

11 A Yes, ma'am.

12 Q Who took you somewhere?

13 A My mom and my step-dad.

14 Q So your mom and the defendant, Martin Rodriguez,
15 took you somewhere; where did they take you?

16 A The Daybreak Pregnancy Center.

17 Q To Daybreak Pregnancy Center?

18 A Yes, ma'am.

19 Q What happened when you got there?

20 A They did a pregnancy test on me.

21 Q All right. And did you tell me that you were 11
22 years old?

23 MR. WILLIAMS: Objection to leading, Your Honor.

24 THE COURT: You can rephrase the question.

25 MS. MAYES: Yes, sir, Your Honor.

Minor

- Direct Examination by Ms. Mayes

1 BY MS. MAYES:

2 Q Did they ask your age?

3 A Yes, ma'am, they did.

4 Q Did you tell them your true age?

5 A Yes, ma'am.

6 Q SO you're at Daybreak; where was your mom and the
7 defendant?

8 A They were in the waiting room.

9 Q And you said they gave you a pregnancy test?

10 A Yes, ma'am.

11 Q Did you actually see the results or find out the
12 results for yourself?

13 A Yes, ma'am, I was beside the lady that was doing
14 it.

15 Q How were you feeling at that point?

16 A I was just really nervous. I was crossing my
17 fingers and hoping it would only be one line.

18 Q One line would have been what?

19 A Not pregnant.

20 Q How many lines was it?

21 A Two lines.

22 Q Okay. And when you found that out, that you were
23 pregnant, what was your reaction?

24 A I was like, well you know, something must have
25 happened like the little pregnancy tube that they put the,

Minor

- Direct Examination by Ms. Mayes

1 you know, the urine in, must have been old or something
2 like that. Maybe somebody else's urine was on it, not
3 mine.

4 Q Okay. So you find out the results. Now did
5 anybody else come to Daybreak?

6 A Social Services and the detectives, the policemen
7 did.

8 Q Okay. So while you're still at Daybreak Pregnancy
9 Center on September 11th, Social Services shows up?

10 A Yes, ma'am.

11 Q And you said detectives showed up?

12 A Yes, ma'am.

13 Q Okay. Is one of those Detective Stoner, who is
14 sitting here?

15 A Yes, ma'am.

16 Q With the Lexington County Sheriff's Department?

17 A Yes, ma'am.

18 Q Was your mom and the defendant, Martin Rodriguez,
19 still there when Social Services and the detectives showed
20 up?

21 A Yes, ma'am.

22 Q And did the detective and Social Services ask you
23 questions?

24 A Yes, they did.

25 Q Did they ask you how you got pregnant?

Minor

- Direct Examination by Ms. Mayes

1 MR. WILLIAMS: Objection to leading, Your Honor.

2 THE COURT: I'll overrule the objection. You may
3 answer the question,

4 THE WITNESS: Can you repeat that please.

5 BY MS. MAYES:

6 Q Did they ask you if you know how you got pregnant?

7 A Yes, ma'am, they did.

8 Q All right. And what did you tell them at that
9 point?

10 A I didn't say nothing. I would give them hints, but
11 when I would give them the tiny hints I would give them,
12 they would question me about them and then I would just say
13 I don't know.

14 Q Okay. And why were you saying I don't know?

15 A Because I wasn't ready to tell nobody. I mean I
16 had DSS, I had detectives and policemen asking me
17 questions and my mom and my step-dad on the other side. I
18 don't know. I didn't feel like saying anything.

19 Q And what were you afraid of at this point?

20 A I was afraid --

21 MR. WILLIAMS: Objection to leading. She hasn't
22 testified she was afraid.

23 THE COURT: Overruled. You may answer the
24 question.

25 THE WITNESS: Can you repeat the question please.

Minor

- Direct Examination by Ms. Mayes

1 BY MS. MAYES:

2 Q What were your thoughts at this point?

3 A I was scared. I mean, I just, I mean I was
4 thinking I was going to get taken away. I mean social
5 services was there. And those are the people that take
6 kids into foster care. So I was like, this is it; I'm
7 gone.

8 Q Now, you said you gave them hints. What are some
9 of the hints you gave them?

10 A I remember one time telling them that someone came
11 through my window and then they asked me, Well who came
12 through your window and that's when I said, Well I don't
13 know. All I know is somebody came through my window. I
14 never said who was it, I mean I never give names or
15 nothing.

16 Q All right. Do you know whether or not you told
17 someone about the paper towels?

18 A I -- I remember telling somebody.

19 Q Okay. Did you tell them who had given you the
20 paper towels?

21 A No, I just said somebody gave me paper towels and
22 told me to clean myself up. I never said who the person
23 was or the name.

24 Q All right. And did you, can you tell us whether or
25 not you told them that something had happened with Martin?

Minor

- Direct Examination by Ms. Mayes

1 A Can you repeat that please.

2 Q Do you know whether or not you told them that
3 something had happened with Martin?

4 A I don't remember.

5 Q Okay. So at this point, you haven't told
6 everything; is that correct?

7 A Yes, ma'am.

8 Q And you talked to social services and the police;
9 what happened at the end of the day?

10 A I got taken away. I got put into foster care.

11 Q Who actually was the agency or the department that
12 put you into foster care?

13 A DSS.

14 Q Okay. And did that happen that very same day that
15 you found out you were pregnant?

16 A Yes, ma'am.

17 Q And did you go to live with another family member
18 or with strangers?

19 A It was a children's shelter.

20 Q So you went to a children's shelter?

21 A Yes, ma'am.

22 Q After that, did you go to live with people that you
23 knew or strangers?

24 A Strangers.

25 Q So you were placed into a foster family with

Minor

- Direct Examination by Ms. Mayes

1 strangers?

2 A Yes, ma'am.

3 Q Now about 12 days, I'm going to take you forward
4 about 12 days after it was determined you were pregnant
5 when you were at Daybreak Pregnancy Center, do you know
6 whether or not you went for what's called a forensic
7 interview?

8 A Yes, ma'am, I remember going to the forensic
9 interview.

10 Q Okay. So you went -- and you went to a forensic
11 interview. Do you remember if you talked to a lady or a
12 man there?

13 A A lady.

14 Q Okay. Did you tell that lady everything that had
15 happened with Martin?

16 A No, ma'am, I just gave her hints and that's it.

17 Q And why or why not?

18 A The same reason. I was scared.

19 Q When you went into foster care, do you know what
20 happened to your sister, ?

21 A She got taken away and got placed --

22 MR. WILLIAMS: Objection.

23 THE COURT: What's your objection?

24 MR. WILLIAMS: There's no basis for this knowledge,
25 Your Honor.

Minor

- Direct Examination by Ms. Mayes

1 THE COURT: Re-state the question, Solicitor.

2 MS. MAYES: Yes, sir, Your Honor.

3 BY MS. MAYES:

4 Q Do you know of your own personal knowledge where
5 -- where your sister, , went?

6 A Yes, ma'am.

7 Q Okay. Where is that?

8 A She was with my aunt.

9 Q So she was placed with your aunt?

10 A Yes, ma'am.

11 Q Where did your mom go to live?

12 A She was living in the same place.

13 Q Okay. So your mom kept living at the same place?

14 A (The witness nodded her head.)

15 Q What about Martin Rodriguez, the defendant?

16 A He was living there.

17 Q Okay.

18 THE COURT: Let me -- let me stop you just a
19 minute. Let's take about a fifteen minute recess.

20 Ladies and gentlemen, please step to your jury
21 room. Do not discuss the case during this brief recess.
22 Thank you. Thank you very much.

23 (The jury left the courtroom at 4:22 p.m.)

24 THE COURT: All right. Minor , you may certainly
25 step down during this brief recess. You may refresh

Minor

- Direct Examination by Ms. Mayes

1 yourself. You may not discuss your testimony with anyone
2 during this recess.

3 MS. MAYES: Your Honor, if we could have just Ms.
4 Frazier watch out for her during this recess, just to make
5 sure there's not any --

6 THE COURT: Sure. Thank you very much.

7 Court will be in recess for fifteen minutes.

8 (A brief recess was observed.)

9 THE COURT: You have our witness, Solicitor.

10 MS. MAYES: Yes, sir, Your Honor.

11 THE COURT: If you'd have her come back around
12 please.

13 All right. It has come to my attention over the
14 break and I wanted to take a break because of the
15 observations and advise those in the courtroom that are
16 spectators, I let lawyers try their cases provided it is
17 within the rules of evidence and decorum of the courtroom.
18 This jury has a very difficult and important job to
19 perform. I don't condone talking, gesturing, shaking heads
20 in agreement, shaking heads in disagreement, and cheering
21 in any manner when any witness is on the witness stand. If
22 I observe that again, that person will taken into custody
23 of the Lexington County Sheriff's Department and I will
24 then have a hearing on that person as to whether or not
25 they shall be held in contempt. And I can incarcerate an

Minor

- Direct Examination by Ms. Mayes

1 individual without a jury trial summarily for up to six
2 months and fine that person up to \$1500.

3 Please keep that in mind and if you cannot contain
4 your facial gestures, your demeanor, your emotions, your
5 talking, I would recommend, highly recommend that you leave
6 at this time. If you remain, I assume you would comply
7 with the rules and the demeanor of a courtroom. Thank you.
8 Thank you very much.

9 MS. MAYES: Can we approach the Judge real quick?

10 (There was a bench conference out of the hearing of
11 the court reporter.)

12 (The jury entered the courtroom at 4:35 p.m.)

13 THE COURT: All right. Welcome back, ladies and
14 gentlemen of the jury, we're continuing the trial of the
15 case by the direct examination of Minor by the State in
16 its case in chief. If you would please continue to give
17 the parties your complete and undivided attention.

18 Solicitor, you may proceed.

19 MS. MAYES: Yes, sir, Your Honor.

20 BY MS. MAYES:

21 Q Minor, I believe we were last asking about
22 whether or not you went for what's called a forensic
23 interview; do you remember that?

24 A Yes, ma'am, I do.

25 Q Okay. And when you went for the forensic interview

Minor

- Direct Examination by Ms. Mayes

1 and talked to the lady there, had you made any decision
2 about whether or not you were going to tell?

3 A Yes, I made a decision that day and I told my
4 foster mom, Ms. Ivy, that I wasn't going to say nothing,
5 that was I was going to let them figure it out.

6 Q All right. And when you went for the forensic
7 interview, why is that as you say, you weren't going to say
8 nothing?

9 A I mean, one of the reasons was like -- there are
10 two reasons. But one of the reasons were that, I mean
11 there were detectives and the detectives seemed to me I was
12 like well, I mean, they're detectives; they can figure
13 everything out, I mean they can figure this case out and
14 they did. And the other reason was because I still wasn't
15 ready. I was -- I was so scared. I mean, I was hoping
16 they would find out.

17 Q All right. And you say you still wasn't ready. At
18 this point, how far along, if you know, were you with -- in
19 the pregnancy; did you have, were you starting to show your
20 pregnancy yet?

21 A Yes, ma'am, I was.

22 Q Okay. Now, I want to ask you just a little bit
23 more about some of the things that we talked about before
24 and I know before you said that part of what was happening
25 during that timeframe is he put his private part in your

Minor

- Direct Examination by Ms. Mayes

1 private part, but I'm going to need to ask you if you can
2 show us exactly what private part on your body --

3 MR. WILLIAMS: Objection to leading or testifying,
4 one or the other.

5 MS. MAYES: This is a question.

6 THE COURT: I don't think it's --

7 Ask your question, Solicitor, let me hear the
8 question.

9 MS. MAYES: Yes, sir, Your Honor. All right.

10 BY MS. MAYES:

11 Q State's Exhibit 8 -- I'm going to ask you if you
12 can show us exactly what private part on the body you're
13 talking about and if you can look at the front of the girl
14 and the back of the girl, the top of the head, down to the
15 bottom of the feet and you can use this marker to show us
16 where on the body you're referring to?

17 A That was the part --

18 THE COURT: Speak up for me please.

19 BY MS. MAYES:

20 Q I need you to speak up loud enough --

21 A The part that they touched or he touched?

22 Q Yes.

23 A Okay. I would say it was this part (marking).

24 Q Okay. So that's the part of the body that you're
25 referring to?

Minor

- Direct Examination by Ms. Mayes

1 A Yes, ma'am.

2 Q Okay. Now where on his body -- and I'm referring
3 to the defendant, Martin Rodriguez -- where on his body is
4 the private part that you're referring to?

5 A His private.

6 Q His private?

7 A Yes, ma'am.

8 Q And how is it, Minor, that you know it went in your
9 private part?

10 A Because I felt it.

11 Q Okay. Now you also said there was touching. What
12 were some of the ways that you recall, if at all, the
13 defendant, Martin Rodriguez, touching you?

14 A He touched my legs and my sister, , actually
15 saw when he's touched me. He squeezed my hip and legs and,
16 you know --

17 Q All right. Now, the incident that you referred to
18 in the bedroom, you testified already that something
19 happened in your bedroom and other bedrooms, but what
20 happened to your clothing, if you know?

21 A I mean, I would sleep in like boxers, like the girl
22 kind of boxers and like a t-shirt. I'd wake up and like my
23 boxers were gone and I would think, oh, maybe I slept hard
24 and they came off or something like that.

25 Q All right. Who actually took your clothing off?

Minor

- Direct Examination by Ms. Mayes

1 A Martin Rodriguez.

2 Q The time that you talked about in the car, who took
3 your clothing off?

4 A He did. There was nobody else in the car; it was
5 him.

6 Q And the time that you talked about in the living
7 room when your mom walked in, who was touching your pants
8 or pulling your pants?

9 A He was.

10 Q Now, when you went for this forensic interview, you
11 testified that you were not yet ready to tell. Was there a
12 time, Minor, that you were finally ready to tell someone?

13 A Yes, ma'am, there was.

14 Q And who is that person that you told?

15 A I told my Guardian ad Litem, Louis Gossett.

16 Q And you said Guardian ad Litem; is that person a
17 child or an adult?

18 A He's an adult.

19 Q Okay. And when you told him, the Guardian ad
20 Litem, was that while you were still pregnant or after the
21 baby was born?

22 A I was still pregnant.

23 Q Okay. And when you talked to him, can you tell us
24 whether or not you told him who the father of the baby was?

25 A Yes, ma'am, I told him everything.

Minor

- Direct Examination by Ms. Mayes

1 Q Did you tell him who it was?

2 A I did. I said the name; I said who it was, how
3 many times they did it.

4 Q Was that -- did you tell him one time or more than
5 one time?

6 A I said more than one time.

7 Q And who was the person you told him did it?

8 A I said it was Martin Rodriguez.

9 Q And how did you feel once you confided in the
10 Guardian ad Litem?

11 A I felt relieved.

12 Q And did you stay in foster care throughout the time
13 that you were pregnant?

14 A Yes, ma'am, I did.

15 Q Minor, I want to take you forward to the date of

16 . What does that day mean for you?

17 A Well, that's a special day for me. That's the day
18 that the baby was born.

19 Q Let's talk about that. What decision had you made
20 about the baby?

21 A Well, I chose to put him up for adoption.

22 Q All right. And you were how old when he was born?

23 A 12.

24 Q Okay. And you were in foster care. Who was with
25 you at the hospital?

Minor

- Direct Examination by Ms. Mayes

1 A Uh -- Ms. Ivy, Shirley Ivy, Mr. Louis was there,
2 but I mean, for everything --

3 Q When you say Mr. Louis, who are you referring to?

4 A Louis Gossett, my Guardian ad Litem.

5 Q Your Guardian ad Litem?

6 A Yes, ma'am.

7 Q Okay. And what hospital was this?

8 A Lexington Medical Center.

9 Q All right. Now, did you carry the baby full term
10 or was he premature; what can you tell us about that?

11 A He was -- I carried him full term. I had him on my
12 due date.

13 Q Okay. So you had him on your due date, full term?

14 A Yes, ma'am.

15 Q And you mentioned you had made a decision about
16 adoption. Had you already chosen the parents?

17 A Yes, ma'am, I did.

18 Q Okay. And can you tell us whether or not they were
19 at the hospital too?

20 A Yes, ma'am, they were at the hospital too.

21 Q Okay. Did he get a name while he was still there
22 at the hospital at Lexington Medical Center?

23 A Yes, ma'am.

24 Q Okay. What was his name?

25 A Child --

Minor

- Direct Examination by Ms. Mayes

1 Q Okay. Child . Now once he was born and
2 you were at Lexington Medical Center, can you tell us
3 whether or not you saw the police?

4 A Yes, ma'am, I saw the police in that night that I
5 had the baby.

6 Q All right. The same day you had him?

7 A Yes, ma'am.

8 Q And do you remember seeing from the police?

9 A I remember seeing the police and my caseworker.

10 Q From social services?

11 A Yes. Yes, ma'am.

12 Q Okay. Do you remember who from the police were
13 there?

14 A No.

15 Q Okay. Why did the police come to the hospital that
16 day when Child was born?

17 A They had to come get his DNA and my DNA.

18 Q All right. And did you agree for them to take your
19 DNA?

20 A Yes, ma'am, I did.

21 Q Okay. How did they do that?

22 A Well they grabbed like some kind of cotton stick or
23 something like that and they scratched it around my cheeks
24 and they did the same thing to him.

25 Q Okay. And I'm going to show you two documents, did

Minor

- Direct Examination by Ms. Mayes

1 you sign any forms to take your DNA and also the DNA of the
2 baby?

3 A Yes, ma'am, I did.

4 Q Okay. I'm going to show you these documents and
5 ask you whether or not you recognize them?

6 A Yes, that's --

7 Q I need you to speak up.

8 A This is the paper where I signed to -- for them to
9 take the baby's DNA and that's where I signed to -- for
10 them to take my DNA.

11 Q Okay. And is your signature on both of these
12 documents?

13 A Yes, ma'am.

14 Q Okay. And you recognize that as your signature?

15 A Yes, ma'am.

16 Q All right.

17 MS. MAYES: At this time, Your Honor, these would
18 be marked as exhibits for ID at this time. This is going
19 to be State's 9 and 10.

20 THE COURT: All right. State's 9 and 10 for
21 identification purposes.

22 (State's Exhibits Number 9 and Number 10 were
23 marked for identification.)

24 BY MS. MAYES:

25 Q All right. So you mentioned that the adoptive

Minor

- Direct Examination by Ms. Mayes

1 parents were there at the hospital?

2 A Yes, ma'am.

3 Q Did you remain yourself, as a 12 year old, did you
4 remain in foster care even after he was born?

5 A Yes, ma'am.

6 Q Have you ever, Minor, gone back to live with your
7 mother since all this came out, since that day at Daybreak
8 when it was first determined that you were pregnant?

9 A No, ma'am.

10 Q Do you know and have personal knowledge as to
11 whether or not your mom is still in a relationship with
12 Martin Rodriguez?

13 A Yes, ma'am.

14 Q Are they still married?

15 A Yes, ma'am.

16 Q What is your date of birth, Minor?

17 A

18 Q You were born in 2001?

19 A Yes, ma'am.

20 Q I'm going to ask you a question about the
21 defendant, Martin Rodriguez. Does he have an identical
22 twin?

23 A No, ma'am.

24 Q Okay. Minor, do you see the person who did this
25 that you described putting their private part in your

Minor

- Cross-Examination by Mr. Williams

1 private part on more than one occasion in this courtroom?

2 A Yes, ma'am.

3 Q Where is he seated?

4 A He's right there.

5 MS. MAYES: Your Honor, if the record could reflect
6 she has identified the defendant, Martin Rodriguez?

7 THE COURT: So reflected.

8 MS. MAYES: Nothing further from the witness at
9 this time, Your Honor.

10 MR. WILLIAMS: May it please the Court?

11 THE COURT: Thank you, Solicitor.

12 Yes, sir, Mr. Williams.

13 **CROSS-EXAMINATION**

14 BY MR. WILLIAMS:

15 Q Minor, what is your last name?

16 A

17 Q Say that again?

18 A

19 Q ?

20 A Yes.

21 Q And I think you said you were born the
22 , you told her ; where were you
23 born?

24 A I was born in Mexico.

25 Q And you had the name Minor ; is that --

Minor

- Cross-Examination by Mr. Williams

- 1 A It's
- 2 Q ?
- 3 A Yes, sir.
- 4 Q Is your mother's last name?
- 5 A Yes, sir, is my dad's.
- 6 Q So in Mexico, you would take -- you would take the
- 7 two names of your father and your mother?
- 8 A Yes, sir.
- 9 Q And you do that way -- when did you come to the
- 10 United States?
- 11 A I honestly don't remember.
- 12 Q You know how?
- 13 A Excuse me?
- 14 Q Do you know how?
- 15 A No, sir.
- 16 Q Well, your mother, Ms. -- is she -- is she from --
- 17 where is she from?
- 18 A She's from Mexico too.
- 19 THE COURT: Say that again for me.
- 20 THE WITNESS: She's from Mexico.
- 21 THE COURT: Thank you.
- 22 BY MR. WILLIAMS:
- 23 Q And your father, I assume is Mr. Garcia; where is
- 24 he from?
- 25 A He's from Mexico too.

Minor

- Cross-Examination by Mr. Williams

1 Q So all three of y'all came across at the same time
2 I assume?

3 A No, because when I came here, my mom was already
4 here. I don't remember what, I mean, the reason I know
5 that for sure is because when I was in Mexico, she would
6 call me and I would talk to her.

7 Q Okay. So at -- at some point in time, you were
8 able to get over here and did you go live with your mother
9 and father somewhere together?

10 A Yes, we were living in Rolling Meadows.

11 Q Now when I say, when I say literally with your
12 mother and father, obviously I'm not talking about Martin?

13 A Yes, sir.

14 Q Well, did your mother and father, well did they get
15 divorced over here or were they --

16 A They got divorced here.

17 Q In the United States?

18 A Yes, sir.

19 Q But -- but none are citizens, y'all are not
20 citizens, are you?

21 MS. MAYES: Objection, Your Honor.

22 THE COURT: I would sustain that objection. That
23 would not be relevant.

24 BY MR. WILLIAMS:

25 Q When you got divorced, was it determined that your

Minor

- Cross-Examination by Mr. Williams

1 mother would get custody of you?

2 A Yes, my mom had custody of me.

3 Q And how many other children were there of this
4 union?

5 A There was just me and my sister.

6 Q And what your sister's name?

7 A

8 Q And that's the one that is three years younger,
9 right?

10 A Yes, sir.

11 Q So when they got divorced, your daddy moved out?

12 A Yes.

13 Q And you lived there with your sister and your mama?

14 A Yes, sir.

15 Q And then at some point in time, she met Martin and
16 married Martin; is that right?

17 A They were already together when my mom and my dad
18 divorced.

19 Q Okay. And then -- then they got married; is that
20 right?

21 A I guess.

22 Q They're married, right?

23 A Yes.

24 Q Okay. Now, the house that you're referring to that
25 you and your mother and father lived in is the same

Minor

- Cross-Examination by Mr. Williams

1 trailer; is that correct?

2 A Yes, sir.

3 Q So now there is three bedrooms, right?

4 A Yes, sir.

5 Q And you were telling the solicitor that everybody
6 who lived in that trailer, right?

7 A Yes, sir.

8 Q This is back in 2012, 2013, I'm sorry, January of
9 2013?

10 A Yes, sir.

11 Q Who did you say was living in that trailer in 2013?

12 A Me, my mom, my step-dad, my sister, Brother , Uncle ,
13 and my Uncle David would come and stay and leave.

14 Q Well, what about Miguel and Roman?

15 A They weren't -- they were living there for a while.

16 Q So there were two other guys living there too,
17 Miguel and Roman?

18 A Yes, sir.

19 Q Now, what relationship is Miguel to you?

20 A Miguel is my uncle.

21 Q So he would be your mother's brother?

22 A Yes, sir.

23 Q And Roman would be?

24 A My mom's brother too.

25 Q Okay. So those -- those were uncles?

Minor

- Cross-Examination by Mr. Williams

1 A Yes, sir.

2 Q So in looking at these three bedrooms that we were
3 just talking about, your mother and stepfather lived in the
4 master or resided in the master bedroom; where would -- how
5 many children are there?

6 A It was me, my sister, Uncle , and Brother .

7 Q You, your sister, and Uncle and Brother ?

8 A Yes, sir.

9 Q So that's four children?

10 A Yes, sir.

11 Q So you have four children and where, there are
12 only, which bedroom do these four children live in?

13 A We had a bunkbed.

14 Q Okay.

15 A And I was -- I would sleep at the top -- me and my
16 sister would sleep at the bottom and Uncle would sleep at
17 the top.

18 Q So you had three in one bedroom, right?

19 A Yes, sir.

20 Q And the other child?

21 A Brother sleeps with my mom and my step-dad.

22 Q And Brother the little baby, right?

23 A Yes, sir.

24 Q So he can sleep with your mom and step-dad?

25 A Yes, sir.

Minor

- Cross-Examination by Mr. Williams

1 Q And then David had the other bedroom, right?

2 A Yes. And going back to where you said that Miguel
3 was living there. Miguel didn't live there when -- on
4 2013. He wasn't living there at that time.

5 Q Okay.

6 A That was only Roman and Anna. Anna is his
7 girlfriend.

8 Q Okay. All right. So in 2013, you had Roman and
9 his girlfriend who is Anna; and then you had David and you
10 had four children, to include you, and your momma and your
11 stepfather. So where was Roman and Anna staying?

12 A Roman and Anna stayed in the living room. They
13 slept on the couch.

14 Q So you got Roman and Anna here on the -- on the
15 living room. You got David in the back bedroom?

16 A David, can you turn it around; I can't see it.

17 Q I'm sorry.

18 A It's okay. David was in room three.

19 Q So David's in the room closest to the living room?

20 A Yes, sir.

21 Q Okay. And then in bedroom number two is where
22 you -- that's where you had Roman and Anna?

23 A No, Anna and Roman they sleep -- slept in the
24 living room.

25 Q Living room, I'm sorry. Here in bedroom number two

Minor

- Cross-Examination by Mr. Williams

1 is where all the three of the children slept?

2 A Yes, sir.

3 Q Now when was it that you actually had your own
4 room?

5 A It was way before Anna and -- I really don't
6 remember, but I do know that Anna and Roman wasn't living
7 there when I had my own room.

8 Q So that would have been before Roman and Anna lived
9 here and would it also have been before Miguel lived there?

10 A Yes, sir.

11 Q So how many years ago was that?

12 A I don't know.

13 Q Well, if this is -- if 2013 is when you have Roman
14 and Anna and David staying there along with four children
15 and we know that you said that Miguel lived there before
16 that, a year before that?

17 A I don't want to say something and -- I mean isn't
18 true. So I mean I'm just going to say I don't know; I
19 don't remember.

20 Q Okay. So back when you had your own room, how many
21 people were staying there?

22 A It was just myself then and my mom, Brother ,
23 Sister , and Uncle .

24 Q Well now Brother -- Brother , what's his date of
25 birth?

Minor

- Cross-Examination by Mr. Williams

1 A I mean, well not counting Brother back then.

2 Q Because Brother wasn't alive then, right?

3 A I know. Sister and Uncle were. They had their
4 own -- they didn't have their own room, they shared a room.
5 They shared room two. Sister slept on the top bunk and
6 Uncle slept at the bottom. I had room three and that was
7 my room.

8 Q Where did Roman sleep back then?

9 A Roman wasn't living there with us.

10 Q That's when Miguel was there?

11 A No.

12 Q Okay. Are you saying in any of this that you were
13 assaulted by Martin in bedroom number three?

14 A I'm saying that he came into my room through the
15 window and I was asleep so I really don't remember much of
16 what happened, but I do remember him being there and
17 telling me to clean myself up and bringing towels to me and
18 the reason he didn't come to my door was because David was
19 in the kitchen and you can't come through his room all the
20 way to my room without nobody seeing you. So he went
21 through the front door and came in my window.

22 Q Came through the front door; what did you just say?

23 A The front door is right there.

24 Q Here?

25 A Yes.

Minor

- Cross-Examination by Mr. Williams

1 Q Came through the front door?

2 A No, he walked out of the front door and came
3 through my window.

4 Q He walked out of the front door?

5 A Yes.

6 Q Came around the house?

7 A Yes, sir.

8 Q Came up to your window right here?

9 A Yes, sir.

10 Q Climbed in that window?

11 A Yes, sir.

12 Q And when was this?

13 A I don't remember.

14 Q And you say he did this because David was in the
15 living room?

16 A Yes, and there was no other way for him to get to
17 my room without him seeing him.

18 Q Referring to State's Exhibit Number 2, is this a
19 photograph of the -- the mobile home or the trailer that
20 you lived in?

21 A Yes, sir.

22 Q If I could, could I ask you to step -- step down so
23 maybe you can --

24 THE COURT: You may step down. Just keep your
25 voice up when you're away from the court reporter, please.

Minor

- Cross-Examination by Mr. Williams

1 BY MR. WILLIAMS:

2 Q It's kind of -- it's kind of small. If you'd kind
3 of, yeah, you're right, turn around and -- so she can hear
4 what you say. Tell me which room is the middle bedroom?

5 A What do you mean middle bedroom?

6 Q Well, you said bedroom number three was the room
7 that you were in there by yourself?

8 A May I get those?

9 Q Sure, you can use any ones you want?

10 A This -- this is room three right here. This is
11 room three and --

12 THE COURT: Have her turn towards the jury.

13 MR. WILLIAMS: Yeah.

14 BY MR. WILLIAMS:

15 Q Speak up loud.

16 A This is room three -- where it shows a little bit,
17 that's room three. It doesn't show it on there because
18 that's the front side. This is the backside of the house.

19 BY MR. WILLIAMS:

20 Q Okay.

21 THE COURT: What exhibit is that, Mr. Williams?

22 MR. WILLIAMS: She's referring to State's Exhibit
23 Number 4, Your Honor.

24 THE COURT: Thank you.

25 THE WITNESS: That's room three and then on the

Minor

- Cross-Examination by Mr. Williams

1 side it's room two.

2 BY MR. WILLIAMS:

3 Q Okay. So he -- he came in and came through this
4 window right here?

5 A Yes, sir.

6 Q You can have a seat back up there.

7 A Thank you.

8 Q How did he get through the screen?

9 A What screen.

10 Q Let me -- let me -- here, I'll just ask you to look
11 at it. Tell me if you don't see a screen on the window in
12 State's Exhibit Number 4?

13 A There isn't a -- there is a window, but there's no
14 screen. Like --

15 Q There's no screen on that window there that you're
16 referring to as State's Exhibit Number 4?

17 A Can you explain it to me?

18 Q A screen?

19 A Yes, I don't understand.

20 Q All right. A screen is something that goes on the
21 outside of the house that clips in normally on the little
22 ledge and you normally have the window on the inside, I
23 think, yeah, window on the inside and you can lift the
24 window sometimes in the hot summer time and have the screen
25 to keep the bugs out?

Minor

- Cross-Examination by Mr. Williams

1 A No, it didn't have no screen in it. I remember
2 that you can lift the window up. I mean it had a screen
3 for a while, but then it came off.

4 Q Is there a screen in that picture?

5 A I don't know, I'm sorry.

6 Q Now, when was this that this happened?

7 A I don't remember.

8 Q All right. The allegations that you have said
9 about Martin, you said it happened on how many occasions?

10 A What do you mean by occasions?

11 Q How many times did he touch you or how many times
12 did you -- did he have sex with you?

13 A I can't say how -- I mean I don't want to say a
14 number, but it was a lot. It was often.

15 Q And through what time span was this?

16 A It was around fifth grade through sixth grade until
17 they found out when I went to -- on September 11th when I
18 went to Daybreak.

19 Q So it wasn't before fifth grade; it was after sixth
20 grade; it was during that time span?

21 A Yes, sir.

22 Q From January 1 until September the 1st of 2013; is
23 that right?

24 A Yes, sir.

25 Q All right. Would it happen at night or in the

Minor

- Cross-Examination by Mr. Williams

1 daytime?

2 A Both.

3 Q And how was -- were children around, other children
4 around?

5 A When it was nighttime was because he worked and he
6 wasn't home until the night and my mom would be sleeping so
7 she wouldn't know. And David was at his either girlfriends
8 house or he was asleep and my sisters and Brother were --
9 Brother was with my mom and my sister and Uncle were asleep
10 and I was the only one awake. I mean sometimes awake and
11 sometimes asleep.

12 Q So I think you said he pushed your sister around in
13 the same bed that you were in and --

14 A He scooted her to the corner.

15 Q Scooted her to the corner?

16 A The bed is like -- I don't know how to explain it
17 to you, but he would scoot her to the corner and that's
18 what he would do.

19 Q So she didn't wake up?

20 A No.

21 Q And I think you said that one time your sister saw
22 him touching your legs?

23 A Yes, sir, and that was in the car.

24 Q Do you know if she's going to testify or anything?

25 A I don't know, sir.

Minor

- Cross-Examination by Mr. Williams

1 Q And your mother saw something too, right?

2 A Yes, sir, she saw it.

3 Q Do you know if she's going to testify to anything?

4 A I heard that she was on the witness list.

5 Q So she'll be here to testify?

6 MS. MAYES: Objection, Your Honor, calls for
7 speculation.

8 THE COURT: She doesn't know that answer. I'll
9 sustain the objection.

10 BY MR. WILLIAMS:

11 Q So who was -- who were the parties that actually
12 insisted on you going to Daybreak Pregnancy place to be
13 checked out?

14 A It was my mom.

15 Q Well, your stepfather went there too, didn't he?

16 A Yeah, because my mom can't speak English and he --
17 she needed him to tell the doctors or the people there what
18 was going on and what she needed to find out about.

19 Q So the person who is the person who supposedly had
20 this -- had these unlawful touching with you is the one who
21 took you to the pregnancy place to be checked out?

22 A Yes, sir.

23 Q And who was the person who saw the hickeys on your
24 neck?

25 A Well it was -- it was three people or four people

Minor

- Cross-Examination by Mr. Williams

1 that saw them.

2 Q And who are the four people?

3 A It was my mom, my aunt saw them after my mom found
4 out, and my sister -- my mom's sister and then my
5 step-dad's sister.

6 Q Your step-dad's sister?

7 A Yes.

8 Q And what is her name?

9 A Flor.

10 Q Flora?

11 A Flor. F-L-O-R.

12 Q F-L-O-R. And who were you with all day on your
13 brother's birthday party day?

14 A We was all together with the family.

15 Q Were you with -- were you with Flor the night
16 before and with her all that day?

17 A She found out I had them was because we was in the
18 bathroom and I needed them to be covered up and I told her
19 this other guy gave them to me so she would put makeup on
20 them and my mom wouldn't find out.

21 Q Who was the person that you told that Martin had
22 been the person that put hickeys on your neck?

23 A I didn't say that until I actually came into care
24 and that was my Guardian ad Litem, Louis Gossett and the
25 Solicitors.

Minor

- Cross-Examination by Mr. Williams

1 Q You told the Solicitors and your Guardian ad Litem
2 at the same time?

3 A Not at the same time, different times.

4 Q When did you tell the Guardian ad Litem that --
5 that Martin put hickeys on your neck?

6 A It was after I told them what had happened to me
7 and who was the person that was doing what he was doing to
8 me. It was after all that.

9 Q Was it before your child was born in what April of
10 2014?

11 A It was after he was born.

12 Q After he was born?

13 A We -- I had already had the baby.

14 Q So you had already had the baby, then you told your
15 Guardian ad Litem that your stepfather put the hickeys your
16 neck?

17 A Yes, sir.

18 Q And when was the first time that you told your
19 Guardian ad Litem that you had sex with him?

20 A We -- I told him that my stepfather had given me
21 the hickeys on a court hearing. We had a Family Court
22 hearing and we -- it was the day that were going to decide
23 where my final placement was going to be and I had told him
24 who had gave them to me and it was outside in front of the
25 courthouse.

Minor

- Cross-Examination by Mr. Williams

1 Q After -- after the child -- after your child was
2 born?

3 A Yes.

4 Q And is that what -- is that the first time that you
5 ever told anyone that you had had sex with Martin?

6 A No, the first time I told my -- I told somebody
7 that, I mean what my step-dad was doing to me was, I was in
8 school and I was pregnant. I had the baby in my stomach
9 still.

10 Q Well, now you testified on direct that you told
11 your Guardian ad Litem that you had sex. Are you saying
12 that you actually -- with your -- with Martin?

13 A I didn't go to him.

14 Q Okay. You had a meeting with him and you told him
15 that?

16 A No, I called him on the phone.

17 Q You called him on the phone?

18 A Yes.

19 Q And when did you call him on the phone?

20 A While I was in school.

21 Q While you were in school?

22 A Yes, sir.

23 Q And -- and was this after your child had been born?

24 A That -- no, I was pregnant.

25 Q And how pregnant were you?

Minor

- Cross-Examination by Mr. Williams

1 A I don't remember.

2 Q Well, how many -- how much time elapsed after that
3 phone call until you actually gave birth to your child?

4 A I don't know. I called him in the middle of school
5 and the day I called him was another Family Court that they
6 were having.

7 Q So this coincided with another Family Court
8 hearing?

9 A Yes, sir.

10 Q But a different Family Court Hearing than the one
11 you were referring to with the hickeys and everything?

12 A Yes, sir.

13 Q Was it the one right before that?

14 A I don't remember.

15 Q Well, were you supposed to be at the Family Court
16 hearing?

17 A No, I came to the Family Court hearings, but I
18 stayed outside in the car.

19 Q Okay. When you talked to the detectives, you never
20 said that Martin Rodriguez ever touched you
21 inappropriately, had sex with you or anything, did you?

22 A No, sir, I didn't.

23 Q That was back in what, early September; is that
24 right?

25 A I don't -- the time I remember me talking to the

Minor

- Cross-Examination by Mr. Williams

1 detectives was when I came to Daybreak.

2 Q Okay. And when you came to Daybreak, you didn't
3 say Martin had done it?

4 A I gave them hints thinking they would pick up on it
5 and they would ask me questions about it, but I would say I
6 don't know about it.

7 Q Well, you told them that someone touched your
8 belly, didn't you?

9 A Yes, sir.

10 Q And you thought it was your sister?

11 A No.

12 Q What about when your -- did -- did you tell them
13 that someone touched your stomach and your groin area and
14 you thought it was your sister?

15 A No, sir.

16 Q What about when you gave the forensic interview.
17 Do you remember the forensic interview?

18 A Yes, sir, I do.

19 Q And that's a interview where you go to a special
20 place and they videotape it and you're in with some kind of
21 child psychologist; you remember meeting the lady there?

22 A Yes, sir.

23 Q And did you tell her that Martin had done anything
24 then?

25 A No, like I said, I was just giving them hints. I

Minor

- Cross-Examination by Mr. Williams

1 mean I would a little bit, but then they would ask me
2 questions and I would say I don't know and I would change
3 the subject.

4 Q Well, now you were -- you were in foster care at
5 that time, weren't you?

6 A Yes, sir, I was.

7 Q So how many months after -- were you in counseling?

8 A Yes, sir.

9 Q Who was your counselor?

10 A Linda Leach.

11 Q How many meetings did you have with your counselor
12 after the forensic interview?

13 A I don't remember. All I know is that I went there
14 every Thursday.

15 Q Every Thursday and did you ever tell her that you
16 were touched or assaulted?

17 A No, sir, I didn't want to talk about it with
18 nobody.

19 Q This is every Thursday you met with her?

20 A Yes, and the only time I would talk about what --
21 the only time I talked to her about what happened to me was
22 when they subject up and that's when I would tell her some
23 things.

24 Q And you -- you've never told though that it
25 happened, did you?

Minor

- Cross-Examination by Mr. Williams

1 A No. The -- she found out real late. She found out
2 after I told everybody who was the person who did what
3 happened.

4 Q Now the deal with -- with going down to Daybreak.
5 You had told your mother that you had had your period,
6 didn't you?

7 A Yes, sir.

8 Q You lied to her about that didn't you?

9 A Yes, sir.

10 Q Where were you that weekend before you came?

11 A I was at my dad's house.

12 Q Your dad's house?

13 A Yes, sir.

14 Q So how often did you go to your dad's house?

15 A He tried to come pick us up on the weekends.

16 Q So you were with your dad every weekend?

17 A He came to come get my sister. I went with him
18 some of the weekends, but I didn't go with him every single
19 weekend though.

20 Q A lot of weekends?

21 A I didn't -- I would -- I never went that much with
22 him. I maybe went a few times, not much. I didn't like
23 going there.

24 Q Well, when you got through with DSS, did you want
25 to go to your dad's house after that; did you want to go

Minor

- Cross-Examination by Mr. Williams

1 stay with your dad?

2 A I wanted to go stay with my mom, but I knew that
3 couldn't happen and my sister wanted to be home, wanted to
4 left with dad or either mom and that's when I was just like
5 okay, I'm just going to my dad's. I did it for my sister.

6 Q So you did go to stay with your dad?

7 A I just got here this summer.

8 Q Okay. So you mean in June you started staying with
9 your dad?

10 A No, like late summer. I got here late summer.

11 Q Got here late summer; where were you?

12 A I was in Charleston.

13 Q Charleston?

14 A Yes, sir.

15 Q When did you go from Swansea to --

16 A I got moved from Swansea to -- because I wanted to
17 get moved. I got moved from Swansea to Lexington to a
18 foster home. The lady's name is Maria Dayton. From there
19 I got moved to Charleston to an orphanage called Jenkins
20 Institution and from there I just stayed there until it was
21 time for me to go home.

22 Q Until it was time for you to go home?

23 A Until they took -- until they told me you can go
24 back home with your dad.

25 Q Okay.

Minor

- Redirect Examination by Ms. Mayes

1 A Or mom or somewhere.

2 Q So now you're staying with your dad?

3 A Yes, sir.

4 Q Okay. And who all lives at your dad's house?

5 A Just me, my dad and my sister.

6 Q You never -- you never felt like you could tell
7 your mother these things were going on?

8 A No, because I knew she wasn't going to believe me.

9 Q Did you ever try?

10 A No, sir. I was going to tell her, but I didn't.

11 Q And you don't remember any particular dates from
12 January the 1st up until September the 1st that Martin ever
13 touched you inappropriately?

14 A No, sir, I don't remember any dates.

15 MR. WILLIAMS: That's all the questions I have,
16 Your Honor?

17 THE COURT: Redirect, Solicitor?

18 MS. MAYES: Yes, sir, Your Honor.

19 **REDIRECT EXAMINATION**

20 BY MS. MAYES:

21 Q And just to clarify, Minor, I believe your
22 testimony was you don't remember the dates, for example,
23 July 18th, but can you tell us whether or not it occurred
24 during this timeframe spring of fifth grade and summer
25 before sixth grade?

Minor

- Redirect Examination by Ms. Mayes

1 A It did occur in fifth grade; I do know that for
2 sure and for a fact.

3 Q Okay. And what about the summer between fifth
4 grade and sixth grade?

5 A It did. It happened in fifth grade/sixth grade.

6 Q Now, Mr. Williams was asking you about the fact
7 that Martin Rodriguez went with your mom to Daybreak
8 Pregnancy Center when you were determined to be pregnant.
9 How did he act and how did you observe him to be acting
10 when y'all showed up at Daybreak?

11 A I mean, to me he kind of looked nervous and it was
12 actually when I threw up and my mom was just, she was just
13 gone -- I don't know, she was -- she was really nervous
14 because she didn't know what to think when I threw up and
15 when I threw up, I looked at him because I mean, I -- I
16 didn't want to be pregnant. I -- I didn't. I wanted to be
17 home, I wanted it, all of this to be just, I mean, a dream
18 and that's it. But from what I saw him he was acting
19 nervous.

20 Q Okay. And Mr. Williams was asking you about the
21 layout of the house and who slept where and that sort of
22 thing, but let me clarify, this person Uncle David, this
23 person Uncle Miguel, and this person Uncle Roman that he
24 was asking you about; are they related to the defendant,
25 Martin Rodriguez?

Minor

- Redirect Examination by Ms. Mayes

1 A No, ma'am.

2 Q How are they related to you?

3 A They are my uncles, my mom's brothers.

4 Q Okay. So they're all brothers of your mom, but
5 they're not related to Martin Rodriguez?

6 A Yes, ma'am, they're not related to him.

7 Q And David, was he always sleeping at your house
8 during that time frame of January through September, 2013?

9 A He stayed maybe once a week in our house, but he
10 was mainly at his girlfriend's house, Savannah, he spent
11 the night there.

12 Q All right. And what about this Roman and his
13 girlfriend Anna, were they there every single night between
14 January and September of 2013?

15 A They moved there -- they moved in our house maybe
16 around July -- I mean like August or somewhere like that
17 and then they moved. They moved right after Roy left.

18 Q All right. And where did they move to?

19 A Now?

20 Q Well, let me ask you this: When you left in
21 September of 2013, were they still living there, Roman and
22 Anna?

23 A Yes, ma'am.

24 Q Okay. And in January through May of 2013, were
25 they living there then to the best of your knowledge?

Minor

- Redirect Examination by Ms. Mayes

1 A No.

2 Q And were they always in the same room with you?

3 A For a little while, they were in my room; me and
4 Uncle and Sister slept on the top bunk and Anna and Roman
5 slept on the bottom bunk, but then it kind of got, I mean
6 you know how the top bunks is so tiny, that's when I just
7 told my mom, I can't take it and that's when they moved to
8 the living room.

9 Q All right. So during the course of the night,
10 where did they sleep normally?

11 A In the living room. They would put the two couches
12 together and they would sleep in the living room.

13 Q Now Miguel, was he living there up through the time
14 that you went into care in September of 2013?

15 A No. I think, I mean I don't know if this is for
16 sure, but I think that he wasn't even living with us around
17 2012 or '13.

18 Q Okay.

19 A He was living --

20 Q When you went into care after that Summer of 2013,
21 was he there then?

22 A No, ma'am.

23 Q All right. So the people that you've named, that's
24 over the course of several years there at Rolling Meadows?

25 A Yes, ma'am.

Minor

- Redirect Examination by Ms. Mayes

1 Q Now, Mr. Williams was asking you about when you met
2 with the detective there at Daybreak and you met with other
3 people like social services and you said you gave them
4 hints; what were some of the hints you gave them?

5 A Like I would say, you know, someone come into my
6 window and then they would ask me who came through the
7 window and I would say I don't know. Well, if you saw
8 someone come through your window, who was it. I would
9 always say I don't know. I would say it's someone, I saw
10 someone touching me on -- on my hip and he would ask me,
11 well who touched you on the hip and I would say I don't
12 know.

13 Q Do you remember what you told them about Martin?

14 A I remember telling them that he came through my
15 window and stuff like that.

16 Q Okay. Do you know whether or not anyone asked you
17 how the baby got in your stomach?

18 A Yes.

19 Q Did you give them a name?

20 A No.

21 Q Now, Mr. Williams was asking you about the window.
22 Was there always a screen on that window?

23 A There was for a while, but then it came off.

24 Q Do you know how it came off?

25 A When he came in through the window, when he left, I

Minor

- Redirect Examination by Ms. Mayes

1 remember that night when I was cleaning myself up and I was
2 looking at the window. Like when I tried to pull the
3 window back up, it fell.

4 Q And specifically this particular mobile home that
5 you were at there in Rolling Meadows, are there other
6 people nearby in that mobile home park as well?

7 A Can you repeat that?

8 Q The mobile home park, are there other people nearby
9 in that mobile home park as well?

10 A Like do you mean houses other than like --

11 Q Right.

12 A Yes. Yes, ma'am.

13 Q And you mentioned before that when Mr. Williams was
14 asking you specifically about the time of day or night that
15 these events happened and you said both. What do you
16 remember about it happening at night; how was it able to
17 happen at night?

18 A Well my mom was sleeping so she didn't know what
19 was going on. I mean, Martin really didn't have like a
20 time to get out of work. So he just came home when he was
21 done and my mom, she knew that there wasn't a time for him,
22 like there wasn't an exact time for him to get out. So she
23 was just asleep and he would just come, like come to my
24 room and do things or I would -- when he would come home, I
25 would be in the living room laying down asleep there or

Minor

- Redirect Examination by Ms. Mayes

1 watching TV.

2 Q Okay. And I want to ask you about that. When you
3 say when he would come home, do you know how many different
4 jobs he had during that timeframe?

5 A I remember two of them.

6 Q Okay. And --

7 MR. WILLIAMS: Your Honor, objection, that's not
8 proper redirect.

9 THE COURT: Overruled. I'll allow it under 611..
10 Thank you.

11 You may continue, Solicitor.

12 BY MS. MAYES:

13 Q And you say two jobs, what was the job that would
14 allow him to come home as you described, I believe you said
15 during cross-examination, around midnight or after
16 midnight?

17 A It was some like a frozen food place, Southeast
18 Frozen Food place.

19 Q All right.

20 A And it worked at Sanchez Construction site or
21 something like that.

22 Q Okay. Was the Sanchez job normally a morning job
23 or evening job?

24 A A morning job.

25 Q Okay. And the evening was with Southeast Frozen

Minor

- Redirect Examination by Ms. Mayes

1 Foods?

2 A Yes, ma'am.

3 Q So when you say he would get home around after
4 midnight, would anyone else be up?

5 A No, ma'am, it would just be -- I would stay up
6 sometimes and that was it.

7 Q Okay. And was this during school year or during
8 the Summer of 2013?

9 A During the Summer 2013.

10 Q Now, Mr. Williams was asking you specifically about
11 what you had disclosed to your counselor. I believe your
12 response was you didn't want to talk about it. How did it
13 make you feel to talk about it?

14 A It made me feel uncomfortable.

15 Q How so?

16 A I -- it just made me feel uncomfortable. I mean I
17 wanted to talk to somebody that understands that went
18 through it all. I mean what was -- like went through the
19 same thing I was going through at that time and I wanted to
20 talk to someone that understood, not somebody that just --
21 I mean a stranger. I wanted to talk to like my mom or
22 somebody I knew.

23 Q And Mr. Williams was asking you about the multiple
24 hearings at Family Court and where all you have lived and
25 you mentioned several foster homes and an orphanage. Who

Minor

- Redirect Examination by Ms. Mayes

1 got to make those decisions about where you were going to
2 go; was it you?

3 A I made one decision of going where I wanted to go
4 and that was Ms. Staton. I asked to go there and that's
5 where I got put and then I moved.

6 Q Was that a foster home?

7 A Yes, ma'am, that's a foster home.

8 Q Okay. And ultimately who makes a decision about
9 whether or not you get to go to a certain place?

10 A It was my caseworker. I mean usually the
11 caseworker moves you, but I had talked to Ms. Staton and I
12 told her that I wanted to go live with her and stay with
13 her.

14 Q Okay. You're referring to a caseworker, that would
15 be social services?

16 A Yes, ma'am.

17 Q Okay. And he was asking you about Family Court.
18 Why did you have a Family Court hearing?

19 A I -- it's -- it would either final placement or --
20 uh -- where was the next place that my brothers or me were
21 going to go.

22 Q Okay. And when you talk about final placement,
23 you're referring to where you would go to live?

24 A Yes, ma'am.

25 Q And that decision's made by Family Court?

Minor

- Recross-Examination by Mr. Williams

1 A Yes, ma'am.

2 MS. MAYES: Nothing further.

3 MR. WILLIAMS: Just one question.

4 **RECROSS-EXAMINATION**

5 BY MR. WILLIAMS:

6 Q You were asked on redirect, you went through a
7 litany of names about people who left the trailer. You
8 said when Roy left, you referenced an individual by the
9 name of Roy who lived at that trailer and left; who is Roy?

10 A Roy is Martin's brother.

11 Q What is Roy's last name?

12 A Rodriguez.

13 Q All right. And how old is Roy?

14 A I don't know.

15 Q Is he older or younger than Martin?

16 A He's younger.

17 Q Is he older than you?

18 A Yes.

19 Q Is he an adult?

20 A I don't know.

21 Q Okay. Are you an adult?

22 A No.

23 Q Okay.

24 A I wish.

25 Q Is he in school?

1 A I don't know. I don't know a lot about him. The
2 only thing I know is he lived with us.

3 Q And that's Martin's brother?

4 A Yes. Yes, it is his brother.

5 MR. WILLIAMS: That's all I have, Your Honor?

6 THE COURT: Thank you. Thank you very much,

7 Minor you may step down.

8 THE WITNESS: Thank you.

9 THE COURT: All right. Solicitor, do you say you
10 have another -- a short witness you wanted to present this
11 afternoon?

12 MR. CASKEY: We do, Your Honor. We have one
13 witness who won't be available tomorrow. It should be very
14 brief testimony.

15 THE COURT: All right. If our jury is willing,
16 we'll press on for one witness that's not going to be
17 available tomorrow afternoon. You may call your next
18 witness.

19 MR. CASKEY: Thank you, Your Honor. The State
20 calls Louis Gossett.

21 THE COURT: Ladies and gentlemen, because of an
22 Order of the Court, I ordered sequestration of the
23 witnesses with the exception of the arresting officers,
24 victims, such as that. So they're not disrespecting in any
25 manner when they take a few moments to enter the

1 courtroom.)

2 (There was a bench conference out of the hearing of
3 the jury and the court reporter.)

4 THE COURT: All right. Well, Mr. Gossett, based on
5 the bench conference we'll be unable to take your testimony
6 this afternoon.

7 MR. GOSSETT: Okay.

8 THE COURT: All right. Thank you. Thank you very
9 much for being with us and being patient with the Court.
10 If you'll talk with the attorneys and I'll reschedule it.
11 Thank you. Thank you very much.

12 All right. Ladies and gentlemen of the jury panel,
13 perhaps now would be a good time to take our evening
14 recess. I remind you during this recess, you're not to
15 discuss this case with anyone, that includes your fellow
16 jurors, family, friends, or anyone else. Do not read,
17 watch or listen to any news reports about the case, should
18 there be any. Do not use your computer, cellular phone or
19 any other electronic device with communication capabilities
20 or any other method to obtain or disclose information about
21 the case which is prohibited. Information about the case
22 which is prohibited includes, but is not limited to, talk,
23 information about a party, a witness, an attorney, or a
24 court officer, news accounts of the case past or present,
25 should there have been any, information included collected

1 through juror research on any topics raised or other
2 testimony offered by any witness or information collected
3 through juror research on any other topic the juror might
4 think would be helpful in deciding the case.

5 Please remember, do not begin your deliberations
6 until you've heard all the evidence, all the testimony,
7 closing arguments by the attorneys and instruction on the
8 law by the Court.

9 I would ask you to please be back promptly at 9:30
10 in the morning; if you'd please be back promptly at 9:30 in
11 the morning. Any questions?

12 Yes, ma'am.

13 THE JUROR: I have a friend that's an officer at
14 Lexington and I was just going to have lunch with him
15 tomorrow; he's a detective with them; does that interfere
16 with this or no; I don't think he has any relationship with
17 this particular case.

18 THE COURT: Let me -- can I discuss that with that
19 you outside the presence of your fellow jurors after
20 they're excused.

21 Any other questions?

22 All right. If there are no other questions, with
23 the exception of this young lady, you're excused for the
24 evening. I hope y'all have a pleasant evening. I'll see
25 you promptly at 9:30 in the morning.

1 (The jury left the courtroom at 5:35 p.m.)

2 THE COURT: And you may just stand aside over here.

3 Tell me your number and name, please.

4 THE JUROR: Ann Worman.

5 THE COURT: All right. As an initial question,
6 given the fact that you have a friend that is a detective
7 with the Lexington County Sheriff's Department and this
8 case was investigated by the Lexington County Sheriff's
9 Department, could you still be a fair and impartial juror
10 in the trial of this case for both the State and the
11 defendant?

12 THE JUROR: Oh, yes.

13 THE COURT: All right. In an abundance of caution,
14 I'm going to ask then that you would please cancel your
15 lunch plans.

16 THE JUROR: That would be fine and that's why I
17 asked.

18 THE COURT: And perhaps get a rain check or another
19 hot sunny day check. Whichever way you want to look at it.

20 THE JUROR: You know he's a pretty good friend --

21 THE COURT: I would ask you to do that.

22 THE JUROR: -- and since I was here, I thought we'd
23 meet, but it's like I'm going to ask before. So, no,
24 that's fine.

25 THE COURT: Perhaps you could get another term of

1 jury duty and have a different agency.

2 THE JUROR: No.

3 THE COURT: Be that as it may, if you would cancel
4 those plans --

5 THE JUROR: No, that's fine.

6 THE COURT: Thank you. Thank you very much.

7 THE JUROR: That is not a problem. Thank you.

8 THE COURT: Uh-huh (affirmative response).

9 All right. Anything further from the State,
10 Solicitor?

11 MS. MAYES: Nothing from the State at this point,
12 Your Honor.

13 We do have the matter of the defendant's bond and
14 the State's position is that the bond -- he should be taken
15 into custody at this point.

16 THE COURT: All right. Thank you. Thank you,
17 Solicitor. And Mr. Williams?

18 MR. WILLIAMS: Here is the letter from Sinkler
19 Southeast Bonding, who is the bonding company on his bond
20 and, Your Honor, I know -- the Court knows what was
21 discussed at the bench, but actually it was probably my
22 fault that I came up and interrupted the Court because he
23 has a monitoring device on his ankle and he's been telling
24 me for about the last, I don't know, ten minutes, that the
25 monitoring device is running out of juice. I don't know

1 how often he has to charge it, but he -- you know as long
2 as it's charged up obviously there's not a problem, but if
3 he's -- if it runs out, I don't know if it makes noises or
4 people swoop down and scoop him up, but we would suggest to
5 the Court that he is -- he can't run far with the
6 monitoring device on unless obviously he would cut the
7 monitoring device, but that would notify everybody that he
8 was gone. He's voluntarily showed up here during court
9 appearances. I can only think that he would continue to do
10 so.

11 THE COURT: Thank you. Thank you, Mr. Williams.

12 MR. WILLIAMS: Yes, Your Honor.

13 THE COURT: As an initial matter, I apologize to
14 the Solicitor's Office and to Mr. Gossett for the timeline
15 in that regard. I, of course, do not know what a device
16 does that is tracking someone when the battery goes dead if
17 there's some kind of alarm and I did not want that to occur
18 in front of -- in front of the jury panel, number one.

19 Number two, criminal sexual conduct with a minor
20 second degree, what -- what type of sentence does that
21 carry, Solicitor.

22 MS. MAYES: That carries up to twenty years, Your
23 Honor, and then the additional charges up to fifteen. He's
24 looking at thirty-five years in prison. He has every
25 incentive to flee at this point. The monitor can simply be

1 cut off. It -- it is a system that if it's checked on will
2 alert the GPS provided that it's been cut off, but I've had
3 the situation occur before when a person cut it off and
4 they're long gone before he's ever apprehended.

5 THE COURT: All right. Thank you. Thank you very
6 much. Based on the seriousness of the offenses charged,
7 the totality of the circumstances at this time, the bond is
8 ended. He is in custody of the Lexington County Detention
9 Center.

10 Thank you. Thank you very much. Anything further,
11 Mr. Williams or Solicitor.

12 MR. WILLIAMS: No, Your Honor.

13 MS. MAYES: No, sir, Your Honor.

14 THE COURT: Thank you very much. 9:30 in the
15 morning.

16 TUESDAY, AUGUST 25, 2015

17 THE COURT: Anything from the State before we bring
18 in our jury?

19 MS. MAYES: Yes, Your Honor, we do have one item
20 that's been pre-marked; it is State's Exhibit 1. This is a
21 License and Certificate of Marriage. It is certified as a
22 true copy from Probate Judge McCulloch at Richland County.
23 The defense has been provided a copy of this. The State
24 would move to have this admitted pursuant to judicial
25 notice of this document. It has been certified in

1 accordance with the Rules of Evidence, Rule 902(4).

2 THE COURT: What -- what is the Judicial Notice
3 Rule 10 --

4 MS. MAYES: I have 902(4), Your Honor, as well
5 as --

6 THE COURT: That's the authentication rule.

7 MS. MAYES: Yes, sir, Your Honor, as well as 1005.

8 THE COURT: 1005. Do you have any objections, Mr.
9 Williams? I think I'm referring to Rule 201, Judicial
10 Notice, isn't that what you're asking me to do?

11 MS. MAYES: Yes, sir, Your Honor.

12 THE COURT: And then 901 is authentication, 901 or
13 902.

14 MS. MAYES: 902, Your Honor. I have 902,
15 subsection 4.

16 MR. WILLIAMS: No, Your Honor.

17 MS. MAYES: We believe it would be judicial notice
18 pursuant to 201 and that it has been authenticated pursuant
19 to 902, subsection 4 and further admissible under 1005
20 public records.

21 THE COURT: All right. Then you have no
22 objections?

23 MR. WILLIAMS: No, Your Honor.

24 THE COURT: All right. Thank you.

25 Solicitor, do you want me to instruct the jury

1 under 201(g) that the Court shall instruct the jury to
2 accept -- well, I don't guess you have any discretion in
3 that. It says the Court shall instruct the jury to accept
4 as conclusive any fact judicially noticed.

5 MS. MAYES: Yes, sir, Your Honor, and in this case
6 it would be that the marriage date of Martin Rodriguez and
7 Alicia Mata Cortez occurred on November 8th, 2012.

8 (State's Exhibit Number 1 was entered into
9 evidence.)

10 THE COURT: Anything further before we bring in the
11 jury, Solicitor?

12 MS. MAYES: No, sir, Your Honor.

13 THE COURT: Anything from the defense, Mr.
14 Williams?

15 MR. WILLIAMS: No, Your Honor.

16 THE BAILIFF: Your Honor, you ready for the jury.

17 THE COURT: No, sir.

18 (There was a pause in the proceedings.)

19 THE COURT: All right. Yes, Mr. Knight, you may
20 bring us our jury.

21 THE BAILIFF: Yes, sir, Your Honor.

22 (The jury entered the courtroom at 9:39 a.m.)

23 THE COURT: Good morning.

24 THE JURY: Good morning.

25 THE COURT: Welcome back, ladies and gentlemen, I

1 hope y'all had a pleasant evening.

2 This morning the State offered into evidence what
3 has now been marked as State's Exhibit Number 1. It has
4 been accepted into evidence without objections by the
5 defense. I take judicial notice of this fact without
6 requiring the calling of any witnesses based on our rules
7 of evidence.

8 This is the State of South Carolina License and
9 Certificate of Marriage. It is between Martin Alejandro
10 Rodriguez, as his date of birth, ; the bride's
11 name, Alicia Mata Cortez, date of birth . It appears
12 a Marriage License was issued on the 8th day of November,
13 2012 by the Honorable Laney W. McCullough, Probate Judge
14 for Richland County. It appears that the parties were
15 married on the 11th month, the 8th day of 2012 at an
16 address that is indicated it would be Elgin, South Carolina
17 on that same date as the issuance.

18 As to the taking of a matter for judicial notice,
19 the Court shall instruct the jury to accept as conclusive
20 any fact judicially noticed. So you would accept the fact
21 of the marriage between Rodriguez and Ms. Mata Cortez
22 November 8th, 2012. Thank you. Thank you very much.

23 We're continuing the trial of the case by the
24 presentation of evidence and testimony by the State in its
25 case in chief.

Maggie Downing - Direct Examination by Ms. Mayes

1 Solicitor, you may call your next witness.

2 MS. MAYES: Thank you, Your Honor, may it please
3 the Court, the State calls Maggie Downing.

4 MAGGIE DOWNING,
5 having been duly sworn, testified as follows:

6 THE CLERK: Have a seat, ma'am. Once you're
7 seated, state your full name spelling your last for the
8 record please.

9 THE WITNESS: My names is Margaret Ellen Downing.
10 D-O-W-N-I-N-G.

11 **DIRECT EXAMINATION**

12 **BY MS. MAYES:**

13 Q All right. And, Ms. Downing, can you tell us a
14 little bit about yourself including your educational
15 background and training?

16 A I have been business at Crisis Pregnancy Center for
17 seventeen years. I went to University of Arkansas. I was
18 Executive Director at Daybreak Pregnancy Center.

19 Q All right. And specifically about Daybreak
20 Pregnancy Center, what type of organization or agency was
21 that?

22 A It is a non-profit organization.

23 Q And what type of services are offered at Daybreak
24 Pregnancy Center?

25 A Pregnancy tests, ultrasounds, baby formula,

Maggie Downing - Direct Examination by Ms. Mayes

1 maternity clothes, parenting classes, youth programs.

2 Q Now, I want to take you specifically to the time
3 period of September 11th, 2013. Can you tell us whether or
4 not services were offered there at Daybreak Pregnancy
5 Center to a child by the name of Minor ?

6 A Yes, ma'am.

7 Q Did you observe Minor yourself?

8 A Yes, ma'am.

9 Q Were you present the day that she arrived?

10 A Yes, ma'am.

11 Q Ms. Downing, what, if anything, can you tell us
12 about the parties who were present with Minor when
13 she arrived at the Daybreak Pregnancy Center on September
14 11th, 2013?

15 A I believe it was her mother, stepfather and small
16 child.

17 Q And how, if at all, did -- let me go back. You
18 said previously you were Executive Director?

19 A Yes, ma'am.

20 Q How, if at all, did you address or deal with the
21 fact that the victim's mother and stepfather were there
22 present in the building?

23 A The volunteer counselor notified me that the client
24 was a minor and knowing that the parents were in the lobby
25 and that we -- this was going to take some time. We moved

Maggie Downing - Direct Examination by Ms. Mayes

1 the parents to the side of the building to watch videos and
2 so forth so we can help Minor .

3 Q And can you tell us whether or not you were aware
4 that she was 11 years of age?

5 A Yes, I was notified by the volunteer counselor that
6 she was 11 and that her test was positive.

7 Q Her pregnancy test was positive?

8 A Pregnancy test was positive.

9 Q Ms. Downing, what, if any, concerns did that raise
10 having an 11 year old present pregnant?

11 A Well, we consider ourselves mandatory reporters and
12 if she was a minor of 11 years of age, we knew that, and
13 her test was -- pregnancy test was positive, that that
14 would be a case that needed to be reported for statutory
15 rape or child abuse.

16 Q All right. And when you say mandatory reporting,
17 you're referring to a statute?

18 A Yes. If we have a client that we feel that is
19 danger of any kind, we -- we report it and do whatever we
20 can to help the client.

21 Q All right. And can you tell us whether or not that
22 mandatory reporter statute covers child abuse and neglect?

23 A Yes.

24 Q And did you comply with that statute?

25 A Yes, ma'am.

Maggie Downing - Direct Examination by Ms. Mayes

1 Q Who actually reported this incident to law
2 enforcement?

3 A I did.

4 Q And on what day did you do that?

5 A September 11th.

6 Q Okay. So the same date they were there?

7 A Yes, ma'am.

8 Q Now, were you present when law enforcement
9 responded?

10 A Yes, ma'am.

11 Q In addition to law enforcement, are you aware if
12 any other agencies responded?

13 A Yes, DSS was there and I believe FBI came too.

14 Q So the Department of Social Services as well?

15 A Yes.

16 Q What, if any, plans were made for the arrival of
17 DSS authorities and law enforcement?

18 A We had Minor at the other end of the building and
19 so DSS and the officers came in through the other side of
20 the building doorway that was closest to her.

21 Q Ms. Downing, how would you describe Minor
22 demeanor or behavior that day?

23 A She was very scared and timid.

24 Q And did the defendant, Martin Rodriguez, who was
25 her stepfather remain on the premises that day?

Maggie Downing - Cross-Examination by Mr. Williams

1 A Yes, ma'am.

2 Q He was at the building as she was being interviewed
3 by authorities?

4 A Yes, ma'am.

5 Q Did you actually observe Minor attempting to
6 communicate?

7 A I stepped in to talk to her to explain to her the
8 process and that we were going to try and help her.

9 Q And how, if at all, would you describe her ability
10 to communicate that day?

11 A She was very scared. We had difficulty in trying
12 to discuss a graphic act basically with a small child and
13 trying to find out exactly what happened with a child who
14 was so young that doesn't even have the language to
15 describe such things.

16 MS. MAYES: I beg the Court's indulgence?

17 THE COURT: Yes, ma'am.

18 MS. MAYES: Nothing further of this witness, Your
19 Honor.

20 THE COURT: Thank you, Solicitor. Mr. Williams?

21 MR. WILLIAMS: May it please the Court?

22 **CROSS-EXAMINATION**

23 BY MR. WILLIAMS:

24 Q Ms. Downing, obviously when someone reports or has
25 a child that they're concerned about being pregnant or not,

Maggie Downing - Cross-Examination by Mr. Williams

1 your -- your facility helps them by -- by making that
2 determination or helping the child through the pregnancy?

3 A We are there to meet with her one on one to see
4 what her needs are and help her any way we can.

5 Q All right. And you said that her mother and her
6 stepfather both brought her in?

7 A Yes, sir.

8 Q You were actually in the building at the time that
9 it occurred; is that right?

10 A Yes, sir.

11 Q And you made the comment that, that the child
12 appeared to be nervous and you answered that the stepfather
13 was there. Well, he wasn't the only person who was there,
14 was he?

15 A No.

16 Q The mother was there too, right?

17 A Yes.

18 Q And then you had law enforcement there?

19 A Yes, sir.

20 Q You had DSS that was there?

21 A Yes, sir.

22 Q Then you had FBI was there?

23 A I did not call FBI, but apparently one of the other
24 agencies called them in.

25 Q All right. So all of these, I don't -- law

Maggie Downing - Cross-Examination by Mr. Williams

1 enforcement agencies, the mother and the father were all
2 there and the child was nervous?

3 A Before they ever got there, yes.

4 Q Well, was -- when the child showed up, obviously
5 the child's what, 11 years old and she's pregnant?

6 A Yes, sir.

7 Q So the fact that the child was nervous didn't
8 bother you in any in terms of, it's not unusual, is it?

9 A No, sir.

10 Q Just because the child's nervous, it doesn't mean
11 anything other than the fact that the child's nervous
12 because she may or may not be pregnant, right?

13 A Well, I'm sure there could have been several
14 reasons why she was nervous.

15 Q Right. And a lot of times, you have people who
16 come there who are pregnant and they're upset or worried
17 because they're pregnant?

18 A Correct.

19 Q So now when she gets there, who all talks to her
20 about, you know, what happened or -- or -- or how it
21 happened or anything; is that you or is that DSS?

22 A We have a volunteer counselor, Brenda Summer, who
23 was the counselor who talked with her.

24 Q So Brenda Summer is the actual person that works
25 with the agency that sits down there and talks to her,

Maggie Downing - Cross-Examination by Mr. Williams

1 right?

2 A She's a volunteer peer counselor.

3 Q So what was your role in all of this?

4 A I was the executive director and a counselor is
5 instructed to notify me if there's a minor.

6 Q So what did you do?

7 A I find out what county the act happened in and call
8 the law enforcement according to that county.

9 Q So in terms of -- of interacting with the child,
10 Brenda Summer would have been the one who had the
11 investigation with the child and essentially all you did
12 was call law enforcement once you determine where it
13 happened?

14 A Well, I went in and met with Minor also and talked
15 to her for a few minutes.

16 Q And you made the determination that she had
17 problems with communicating in that period of time that you
18 talked to her?

19 A She was very scared and it was difficult in
20 describing exactly what happened for her.

21 Q Okay. Well what grade was she in in school?

22 A I'm not sure what grade 11 year olds are in
23 anymore.

24 Q Do you know whether or not she was doing well in
25 school?

Maggie Downing - Cross-Examination by Mr. Williams

1 A No, sir.

2 Q Did she have a problem using the English language?

3 A Not that I recall.

4 Q Did you feel like you needed any type of
5 interpreter there for her to explain to you what had
6 happened?

7 A No, sir.

8 Q Did you feel that she had any type of disability
9 such as intellectual disability that would prohibit her
10 from telling you what happened?

11 A No, sir.

12 Q So she was nervous and you, you assessed that she
13 had a problem with explaining to you exactly what happened?

14 A Having the vocabulary needed to describe the act.

15 Q Did you record this conference with her?

16 A Brenda Summer does -- keeps a file on each client.

17 Q All right. So when I say record, is this a written
18 notes or is this a recorded notes of the interview?

19 A Written.

20 Q All right. So you don't have a recorded
21 conversation which she explains to you what happened?

22 A No, sir.

23 Q And did you get the child to issue any type of
24 written statement about what happened?

25 A We just have the counselor's notes describing the

Maggie Downing - Cross-Examination by Mr. Williams

1 session.

2 Q All right. So essentially the counselor is the one
3 who dealt with the child?

4 A Yes, sir.

5 Q Did you have any conversations with the FBI?

6 A Yes, sir, we try to work with the law enforcement
7 and ask them to be gentle, it is a minor and ask that they
8 just be very gentle with the young client.

9 Q Who is the FBI agent that you spoke to?

10 A That I don't recall.

11 Q Did you speak to an FBI agent?

12 A Yes, sir.

13 Q Who was the law enforcement officers that you spoke
14 to?

15 A It's been a couple of years ago. I don't recall
16 the name. I'd probably recognize it.

17 Q Now, your position is Director of the Pregnancy
18 Daybreak?

19 A Correct, sir, Executive Director.

20 Q All right. And what type of educational background
21 do you have?

22 A I went to the University of Arkansas; I did not
23 graduate, but I have been in the pregnancy business, crisis
24 pregnancy business for 17 years.

25 Q You don't have any degrees in Child Psychology?

Maggie Downing - Redirect Examination by Ms. Mayes

1 A No, sir.

2 Q You have no formal, I guess, licenses that would
3 enable you to counsel with children?

4 A No, sir.

5 MR. WILLIAMS: That's all the questions I have,
6 Your Honor.

7 THE COURT: Redirect, Solicitor?

8 MS. MAYES: Yes, sir, Your Honor.

9 **REDIRECT EXAMINATION**

10 BY MS. MAYES:

11 Q Ms. Downing, is your description of Minor based on
12 your own observations that day?

13 A Yes, ma'am.

14 MS. MAYES: Nothing further.

15 THE COURT: Recross, Mr. Williams?

16 MR. WILLIAMS: No, Your Honor.

17 MS. MAYES: And, Your Honor, we would ask that Ms.
18 Downing be excused.

19 THE COURT: All right. Thank you. Thank you very
20 much, Ms. Downing, for being with us. You may step down
21 and you may be excused.

22 Solicitor, you may call your next witness.

23 MS. MAYES: The State calls Bonnie Smalley.

24 THE COURT: All right. If you'd come around and be
25 sworn for us.

Bonnie B. Smally - Direct Examination by Ms. Mayes

1 THE CLERK: You can place your records right there,
2 please ma'am, for just a second. Place your left and raise
3 your right.

4 BONNIE B. SMALLEY,
5 having been duly sworn, testified as follows:

6 THE CLERK: Thank you, ma'am. Go ahead and take
7 that and have a seat up there ma'am. Once you're seated
8 speak up loud and clear stating your full name spelling
9 your last please.

10 THE WITNESS: My name is Bonnie B. Smalley..
11 S-M-A-L-L-E-Y.

12 **DIRECT EXAMINATION**

13 **BY MS. MAYES:**

14 Q And, Ms. Smalley, can you give us some information
15 concerning what type of profession you're in?

16 A I'm a Registered Nurse at Lexington Medical Center.

17 Q And can you tell us some information regarding your
18 educational background and training that led you to become
19 a Registered Nurse?

20 A I graduated in 1984 from a school in Florida. I
21 have done OB Nursing for 31 years, been at Lexington for
22 about 3 and a half.

23 Q All right. And you mentioned the term OB, can you
24 tell us in layperson terms what you mean by that?

25 A Obstetrical Nursing. That includes labor and

Bonnie B. Smally - Direct Examination by Ms. Mayes

1 delivery, post-laboring and delivering a patient, taking
2 care of the patient after the delivery and newborn nursery
3 taking care of the babies.

4 Q All right. So patient services related to child
5 birth?

6 A That's correct.

7 Q Can you tell us whether or not you were employed
8 there at Lexington Medical Center in the field of OB
9 medicine and nursing in 2013 and 2014?

10 A Yes, I was.

11 Q Okay. And do you have with you records regarding
12 services rendered to a patient by the name of Minor ?

13 A Yes, I do.

14 Q Okay. And I'm going to refer you specifically to
15 the issue of admittance. On what date was Minor
16 admitted for treatment there?

17 A On April the 10th of 2014.

18 Q Okay. And on what date was she discharged?

19 A April the 12th of 2014.

20 Q Okay. And can you tell us whether or not this was
21 for child birth?

22 A Yes.

23 Q Okay. So being admitted on April 10th and then
24 discharged on April 12th, when you're treating a patient,
25 do you have the opportunity to review the patient's history

Bonnie B. Smally - Direct Examination by Ms. Mayes

1 for the purpose of medical diagnosis and treatment?

2 A Yes, I do.

3 Q And specifically as to Minor , was this a
4 complicated pregnancy or uncomplicated pregnancy?

5 A Uncomplicated.

6 Q All right. And what about the actual child birth,
7 was that complicated or uncomplicated?

8 A Uncomplicated.

9 Q All right. And specifically by that I mean was
10 this a premature birth?

11 A No, it was not.

12 Q Okay. How so?

13 A In the medical records it was noted that the
14 patient was at forty weeks and zero days so she was
15 essentially forty weeks pregnant at the time.

16 Q Okay. Would that be a full term pregnancy?

17 A Yes, it would.

18 Q And there was no surgery or C-section or anything
19 of that nature required?

20 A That's correct.

21 Q And what, if any, notes do you have regarding the
22 actual child birth? And I'm referring specifically to page
23 three of your record.

24 A The patient pushed successfully and a spontaneous
25 delivery of a 7 pound 3.3 ounce viable male infant at 08:38

Bonnie B. Smally - Cross-Examination by Mr. Williams

1 on

2 Q Okay. So 7 pounds 3 ounces was the weight and size
3 of the infant?

4 A That's correct.

5 Q And at this point in time, the patient, Minor
6 , was 12 years of age?

7 A That's correct.

8 MS. MAYES: I beg the Court's indulgence?

9 THE COURT: Yes, ma'am.

10 MS. MAYES: Nothing further?

11 THE COURT: Mr. Williams.

12 MR. WILLIAMS: Just a couple of questions.

13 CROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q Ms. Smalley, you've been in obstetrics for 31
16 years?

17 A That's correct.

18 Q All of it with Lexington County Hospital?

19 A No, sir. I have been in South Carolina for 20
20 years. Before that I lived in Florida and I practiced
21 there.

22 Q As a part and parcel of the delivery of a child, I
23 guess, after you -- after you -- you have a pregnant lady
24 come into the hospital and then you have a delivery of a
25 child I assume you have your medical records there. Do

Bonnie B. Smally - Cross-Examination by Mr. Williams

1 they normally check the blood typing of the person whose
2 delivering the child?

3 A The pregnant lady?

4 Q Yes.

5 A That's -- yes, they do. They do a blood type.

6 Q And do they also check the RH factor, whether or
7 not there is an RH factor or not that you have to be
8 concerned about?

9 A RH factor --

10 Q Yes.

11 A -- on the mother?

12 Q Isn't there -- isn't there a problem sometimes
13 depending on who the father is versus who the mother is
14 whether or not the mother has to take a pill or something
15 like that to cover when the child's born, anything like
16 that?

17 A In a mother that would be negative blood type that
18 would that would happen.

19 Q All right. Do you know -- do you know -- and that
20 would depend on -- on the fact that she is negative or
21 would it depend on who the father is?

22 A The -- if the mother was negative?

23 Q Yes.

24 A No, that would have been her blood type that she
25 would have been born with.

Bonnie B. Smally - Cross-Examination by Mr. Williams

1 Q Right. So what are you -- what would be the
2 concern in reference to the blood typing of the father?

3 A I don't understand the question.

4 Q Why does it matter if a mother has a negative blood
5 type?

6 A Well if the father -- if -- it wouldn't really be
7 the father; it would be what the baby's blood type was
8 after the delivery and the negative mother because in a
9 mother that would have a negative blood type, if the baby
10 has a positive blood type, then they would give Rogan.

11 Q Right. And did -- did the Lexington County
12 Hospital do all the blood typing that is normal in this
13 situation to determine what the blood -- whether or not the
14 mother was negative or positive?

15 A I would have to look and see what the patient's
16 blood type was. I don't recollect that.

17 Q Do you have independent knowledge of the mother in
18 this -- in that file that you possess; do you know who she
19 is?

20 A Yes, I do.

21 Q You waited on her?

22 A I took care of her.

23 Q All right. Do you see her in the courtroom?

24 A Yes.

25 Q And in your communications with the mother, did you

Bonnie B. Smally - Redirect Examination by Ms. Mayes

1 have problems in communicating with her and her
2 communicating with you as to whether she understood you or
3 didn't understand you?

4 A No, sir.

5 Q No problems with that?

6 A No.

7 Q She had no problems explaining to you what was
8 going on; whatever problems she may or may not have had in
9 the hospital, did she have any problems communicating with
10 you?

11 A No, sir.

12 Q Did you find that -- that -- did -- did she appear
13 to understand everything that you were telling her?

14 A Yes, sir.

15 MR. WILLIAMS: That's all the questions I have.

16 THE COURT: Redirect, Solicitor.

17 MS. MAYES: Yes, sir, Your Honor.

18 **REDIRECT EXAMINATION**

19 BY MS. MAYES:

20 Q Nurse Smalley, is there anything that you recall
21 regarding this patient, Minor, in RH negative
22 factor?

23 A No.

24 Q All right. So that's -- that was not a
25 consideration in this case, correct?

Bonnie B. Smally - Recross-Examination by Mr. Williams

1 A That's correct.

2 Q And Mr. Williams was asking you about her ability
3 to communicate during the course of your treatment there at
4 the hospital, were you questioning her about child sexual
5 abuse?

6 A No.

7 Q Thank you.

8 MS. MAYES: Nothing further.

9 THE COURT: Recross, Mr. Williams?

10 **RECROSS-EXAMINATION**

11 BY MR. WILLIAMS:

12 Q Do you recall whether or not you gave Rogan or not?

13 A I do not recall, sir.

14 Q So you really don't know?

15 A I don't, sir.

16 MR. WILLIAMS: That's all the questions I have.

17 THE COURT: Thank you. Thank you very much, Ms.
18 Smalley. You may step down; you may be excused.

19 THE WITNESS: Thank you.

20 THE COURT: Call your next witness, Solicitor.

21 MS. MAYES: The State calls Detective Tricia
22 Stoner.

23 THE COURT: All right. If you'll come around and
24 be sworn for us please.

25 TRICIA STONER,

Tricia Stoner - Direct Examination by Ms. Mayes

1 after having been duly sworn, testified as follows:

2 THE CLERK: Have a seat. Once you're seated state
3 your full name; spell your last for the record please.

4 THE WITNESS: Tricia Stoner. S-T-O-N-E-R.

5 **DIRECT EXAMINATION**

6 BY MS. MAYES:

7 Q Now, Detective Stoner, can you give us some
8 information about yourself concerning your educational
9 background and training?

10 A Yes, ma'am. I've been with the Lexington Sheriff's
11 Department for 15 years. I've worked in the field of child
12 sexual abuse for approximately 6 years. I attended a Child
13 First Training along with training from USC Children's Law
14 Center, all the agency training counsel and the Dickerson
15 Center for Children.

16 Q All right. And, Detective Stoner, tell us a little
17 bit about your job experience there at the Sheriff's
18 Department; how long have you been with them?

19 A 15 years.

20 Q And that's here in Lexington with the Lexington
21 County Sheriff's Department?

22 A Yes, ma'am.

23 Q And how many of those 15 years have you been an
24 investigator or a detective?

25 A 9.

Tricia Stoner - Direct Examination by Ms. Mayes

1 Q And that include a detective in the field of major
2 crimes?

3 A Yes, it does.

4 Q And specifically in the field of major crimes,
5 what, if any, experience do you have in child abuse or
6 sexual assault investigations?

7 A I've investigated those particular cases for
8 approximately 6 years.

9 Q Can you tell us -- and currently you're still an
10 investigator or detective?

11 A Yes, ma'am.

12 Q Can you tell us whether or not you were working in
13 the capacity of child abuse crimes back in the time period
14 of 2013 through 2014?

15 A Yes, ma'am, I was.

16 Q Detective Stoner, how, if at all, did you become
17 involved in the investigation of a case involving an 11
18 year old, Minor ?

19 A I was contacted by one of the major crimes
20 supervisors and we had a 11 year old that had tested
21 positive -- had a positive pregnancy test and was currently
22 at the Daybreak Crisis Pregnancy Center in Columbia and
23 that the incident had occurred at
24 in the West Columbia area of Lexington County.

25 Q And that Charleston Highway address that you just

Tricia Stoner - Direct Examination by Ms. Mayes

1 mentioned, just to clarify, what type of community is that?

2 A It's a mobile home community called Rolling
3 Meadows.

4 Q Okay. So that is Rolling Meadows Mobile Home Park?

5 A Yes, ma'am.

6 Q And pursuant to your investigation, did you
7 determine whether Minor, in fact, resided at that location,
8 Rolling Home -- Rolling Meadows Mobile Home Park?

9 A I did.

10 Q And pursuant to your investigation, what parental
11 figures also resided with her at that address?

12 A Her mother and her stepfather.

13 Q And what is the name of her mother?

14 A Alicia Mata Cortez or Cortez Mata.

15 Q And by stepfather, who are you referring to?

16 A Martin Rodriguez.

17 Q The defendant in this case?

18 A Yes, ma'am.

19 Q Tell us what happened, Detective Stoner, once you
20 arrived there at the Daybreak Pregnancy Center?

21 A When I arrived there, I spoke to some staff
22 workers; a Brenda Summer, I believe was one of them and
23 there was another lady that I spoke with, who informed us
24 that they had -- that she had come in and they had done a
25 pregnancy test on her and it had come back positive, that

Tricia Stoner - Direct Examination by Ms. Mayes

1 her mother and stepfather --

2 MR. WILLIAMS: Objection to hearsay, Your Honor.

3 THE COURT: All right.

4 MS. MAYES: I can rephrase that, Your Honor.

5 THE COURT: Thank you, Solicitor.

6 BY MS. MAYES:

7 Q Without quoting what anyone else said, Detective
8 Stoner, were you aware, were you made aware of the results
9 of this pregnancy test?

10 A I was.

11 Q And arriving there at the scene, what parties do
12 you recall being present?

13 A Her mother, Alicia Cortez and her stepfather,
14 Martin Rodriguez and Alicia and Martin's small child.

15 Q Okay. And the small child was approximately what
16 age?

17 A Approximately a year, just over a year old.

18 Q Okay. And do you recall the name of that child?

19 A Brother

20 Q Okay. And you mentioned that he is the child of
21 what parties?

22 A Alicia and Martin.

23 Q Okay. So the, the child that Minor mother and
24 the defendant had together?

25 A Yes, ma'am.

Tricia Stoner - Direct Examination by Ms. Mayes

1 Q What happened after you arrived and made note of
2 the parties who were present?

3 A I then went and spoke to the victim, Minor

4 Q All right. How would you describe, Detective
5 Stoner, Minor demeanor at that point in time, her
6 behavior?

7 A She was pretty withdrawn and scared. She did not
8 want to answer questions, was very evasive. She would --
9 we would ask her something and she would give us an answer
10 and then when we would ask for more explanation, she would
11 just almost shut down and not want to speak.

12 Q All right. And did she make a full disclosure to
13 you that day? And by full disclosure I mean able to tell
14 you to tell you a complete event of exactly what happened?

15 MR. WILLIAMS: Objection to the -- to the question,
16 Your Honor. May we approach?

17 THE COURT: Yes, sir.

18 (There was a bench conference out of the hearing of
19 the jury and the court reporter.)

20 THE COURT: Thank you, Mr. Williams.

21 Solicitor.

22 BY MS. MAYES:

23 Q Detective Stoner, you indicated that you spoke with
24 Nanci yourself?

25 A Yes, ma'am, myself and Detective Renee Strickland.

Tricia Stoner - Direct Examination by Ms. Mayes

1 Q And was she questioned specifically regarding how
2 she became pregnant?

3 A She was.

4 Q And did she provide information in that regard?

5 A The only thing that she would say was that the
6 baby's --

7 MR. WILLIAMS: Objection to hearsay, Your Honor.

8 BY MS. MAYES:

9 Q Don't repeat what she said to you. All right. Did
10 her statements to you cause you, pursuant to your
11 investigation, to want to talk to any other subject there?

12 A It did.

13 Q And who -- who did it cause you to want to talk to?

14 A Martin Rodriguez.

15 Q Okay. So at this point in time, how would you have
16 classified your investigation regarding Martin Rodriguez?

17 A He was a possible suspect.

18 Q Okay. And based on that, did you communicate with
19 Mr. Rodriguez directly?

20 A I did.

21 Q I'm going to ask you a few questions about that.

22 Where was he seated there at Daybreak Pregnancy Center when
23 you interviewed him?

24 A He was in the waiting room seated on a couch. They
25 had a TV in there; it was very large room and he was

Tricia Stoner - Direct Examination by Ms. Mayes

1 playing with Brother

2 Q Detective Stoner, based upon your communications
3 with him, did Martin Rodriguez speak English?

4 A He did.

5 Q Did he appear to understand your questions to him?

6 A He did.

7 Q Was he able to communicate back to you in English?

8 A He was.

9 Q At that point in time, was he in custody?

10 A He was not.

11 Q Was he under arrest at that point in time?

12 A He was not.

13 Q And based upon that, can you tell us whether or not
14 he freely and voluntarily agreed to speak with you?

15 A He did.

16 Q Was he promised anything in exchange for an
17 interview?

18 A No, ma'am.

19 Q Were any threats made by yourself or other officers
20 in exchange for an interview?

21 A No, ma'am.

22 Q Who else was with you, if anyone, when you
23 interviewed the defendant, Martin Rodriguez?

24 A Detective Renee Strickland.

25 Q And who is she affiliated with?

Tricia Stoner - Direct Examination by Ms. Mayes

1 A She -- at the time she was with the Lexington
2 County Sheriff's Department and she worked in major crimes
3 dealing with sexual -- child sexual abuse with me.

4 Q Okay. So you and Detective Strickland conducted
5 the interview and you were speaking freely with Martin
6 Rodriguez. Did he make a statement?

7 A He did.

8 Q And did you question him about this case?

9 A I did.

10 Q Now as this conversation is going on, Detective
11 Strickland, how, if at all, do you document -- Detective
12 Stoner, how, if at all, do you document what is being
13 stated to you by a subject you're interviewing?

14 A Handwritten notes. I just use a notepad writing
15 what I can.

16 Q Okay. And I'm going to show you a previously
17 marked exhibit and ask you to take a look at that and tell
18 us whether or not you recognize it?

19 A I do.

20 Q How so?

21 A That's my handwriting. Those are the notes I took
22 that day.

23 Q All right. And can you tell us whether or not
24 you're taking the notes contemporaneously as you're
25 speaking with the subject, Martin Rodriguez?

Tricia Stoner - Direct Examination by Ms. Mayes

1 A I am.

2 Q And then eventually, how, if at all, are those
3 notes later documented for the purposes of your
4 supplemental or any police reports?

5 A Later they're typed up and put into our, what we
6 call our records management system.

7 Q Okay. Detective Stoner, as you're speaking with
8 Martin Rodriguez, did he admit or deny having sexual
9 contact with his stepdaughter, Minor ?

10 A He denied that.

11 Q What, if anything, did he relate regarding any
12 event witnesses by Alicia Cortez?

13 A He told us about a time on October 27th --

14 Q Do you have a note as to the actual date --

15 MR. WILLIAMS: Objection, Your Honor, leading.

16 THE COURT: Overruled.

17 THE WITNESS: I wrote the date that he gave me in
18 my notes.

19 BY MS. MAYES:

20 Q Which was?

21 A August 27th.

22 Q Okay. August 27th and he provided that date?

23 A He did.

24 Q Now, up until this point, Detective Stoner, had you
25 been aware at all of any allegedly witnessed event that

Tricia Stoner - Direct Examination by Ms. Mayes

1 occurred between Martin Rodriguez and Minor ?

2 A I had not.

3 Q Okay. And you're getting this for the first time?

4 A Yes.

5 Q So he told you there was an event on August 27th,

6 did you note exactly what he stated to you?

7 A I did.

8 Q What did he state?

9 A When Minor was watching a movie with him, Alicia

10 thought she saw him touch Minor on the hip --

11 Q Let me stop you right there. Alicia thought she

12 saw him --

13 A Correct.

14 Q -- touch Minor ?

15 A Correct.

16 Q On the hip?

17 A Yes, ma'am.

18 Q And what else?

19 A She threw a phone at him.

20 Q And what else?

21 A And told him she didn't want him living with her

22 anymore.

23 Q And what else?

24 A He said what happened was Minor was looking for

25 something in the couch and went to get up and Alicia saw it

Tricia Stoner - Direct Examination by Ms. Mayes

1 and thought he touched her on the waist so she threw the
2 phone at him.

3 Q All right. So that was the explanation that he
4 gave to you for his wife throwing the phone?

5 A It was.

6 Q Okay. Did you question him whether or not he had
7 gone into the child's room at any point during the night?

8 A Yes, I did.

9 Q And what, if anything, did you note in that regard?

10 A He said that he had checked on them in the middle
11 of the night when he has heard a noise from the mattress.

12 Q All right. And by them, he's referring to who, if
13 you noted in that in the course of your investigation or
14 questioning?

15 A Them would have been Sister , Minor , Uncle , and
16 Brother .

17 Q All right. He checked on them in the middle of the
18 night when he heard a noise?

19 A Yes.

20 Q From the mattress?

21 A Yes.

22 Q Detective Stoner, at this point during the
23 investigation having interviewed Minor , did you have reason
24 to ask or request from anyone to provide what's under the
25 suspect standard for a DNA swab?

Tricia Stoner - Direct Examination by Ms. Mayes

- 1 A I did.
- 2 Q Who was that person that you requested it from?
- 3 A Martin Rodriguez.
- 4 Q When did you first make that request of him?
- 5 A On September 11th when I spoke with him at the
- 6 Daybreak Crisis Pregnancy Center.
- 7 Q Now, did he appear to understand -- can you tell us
- 8 whether or not he appeared to understand that request?
- 9 A He appeared to understand, yes.
- 10 Q And the purpose of the DNA swab --
- 11 A Yes.
- 12 Q -- for paternity?
- 13 A Yes.
- 14 Q Can you tell us whether or not he agreed to provide
- 15 one?
- 16 A He did agree.
- 17 Q And what arrangements ultimately were made to
- 18 obtain a DNA or suspect standard buccal swab from the
- 19 defendant, Martin Rodriguez?
- 20 A On September 11th, I asked Mr. Rodriguez if he
- 21 would meet with me the next day so I could obtain that
- 22 standard. The next day, I contacted him and made
- 23 arrangements to meet with him at work since he went to work
- 24 at approximately 6 a.m. We -- I couldn't find his exact
- 25 location since he was doing construction, so he ended up

Tricia Stoner - Direct Examination by Ms. Mayes

1 meeting with me in a farmer's market in Gaston with
2 Detective Strickland.

3 Q All right. Now, I want to go back momentarily to
4 the situation at Daybreak Pregnancy Center. Is it possible
5 estimate on how long y'all were there that day?

6 A Several hours.

7 Q And did the defendant -- can you tell us whether or
8 not the defendant remained there throughout the day?

9 A He did.

10 Q What, if any decision, Detective Stoner, was made
11 by yourself as a law enforcement officer regarding whether
12 or not Minor should go home that night with her mother and
13 the defendant, Martin Rodriguez?

14 A I made the decision that Minor should not go home
15 at that time and that she be taken into emergency
16 protective custody and turned it over to the Department of
17 Social Services.

18 Q What is meant by the term emergency protective
19 custody?

20 A It means if there's no alternative placements with
21 DSS that the child needs to be placed with DSS so they can
22 find a suitable location that is safe for the child.

23 Q Can you tell us whether or not that's a -- a
24 measure you had used previously in cases of child abuse or
25 sexual abuse?

Tricia Stoner - Direct Examination by Ms. Mayes

1 A I've used that several times.

2 Q Based upon your observations that day, Detective
3 Stoner, why, if at all, did you not release the child to
4 her mother?

5 A Because her mother would have been in the home with
6 the suspect and I did not want the child to go back there
7 and possibly be subjected to further abuse.

8 Q So at this point, the Department of Social Services
9 was also present?

10 A Yes.

11 Q And based upon your knowledge of this investigation
12 on that day, September 11th, 2013, where did Minor go?

13 A She went with the caseworker that responded from
14 DSS.

15 Q Into foster care?

16 A Into foster care.

17 Q And at the end of the day was Martin Rodriguez free
18 to go?

19 A Yes, ma'am.

20 Q And you mentioned that arrangements were made for a
21 buccal swab on the following day. Who was with you when
22 that effort was undertaken?

23 A Detective Renee Strickland.

24 Q And where, if at all, did you and Detective
25 Strickland go to meet Mr. Rodriguez for the purpose of

Tricia Stoner - Direct Examination by Ms. Mayes

1 collecting this DNA buccal swab?

2 A It was a location near the farmer's market. I knew
3 the location; it was maybe a tennis complex.

4 Q In what part of Lexington County?

5 A It was the West Columbia area of Lexington County.

6 Q Now, how do you go about obtaining consent from an
7 individual for providing a DNA buccal swab?

8 A We had them sign what is called a Consent to Search
9 Form.

10 Q Okay. And did you use one in this case?

11 A I did.

12 Q Let me show what is previously marked and ask you
13 whether or not you recognize it, previously marked as
14 Court's Exhibit 2?

15 A I do.

16 Q Okay. And how so?

17 A That's my handwriting and I signed it.

18 Q Okay. And what is the date on that document?

19 A September 12th, 2013.

20 Q And can you tell us whether or not this particular
21 document advises Mr. Rodriguez of what he is providing?

22 A It does because I wrote it on there.

23 Q Okay. And what does it advise him he's providing?

24 A A DNA swab.

25 Q Can you tell us whether or not it contains the

Tricia Stoner - Direct Examination by Ms. Mayes

1 signature of Martin Rodriguez?

2 A It does.

3 MS. MAYES: Your Honor, at this time, we would
4 offer this item as State's Exhibit, I believe this is going
5 to be 11 for evidence.

6 MR. WILLIAMS: No objection, Your Honor.

7 THE COURT: State's 11 is in evidence without
8 objection.

9 (State's Exhibit Number 11 was entered into
10 evidence.)

11 BY MS. MAYES:

12 Q Now, once he signs the document, Detective Stoner,
13 what is the method of arrangement for the actual collection
14 of the DNA swab from Mr. Rodriguez?

15 A We have a kit that we use and it's got long Q-tip
16 like swabs in there and they rub them on the inside of the
17 cheek.

18 Q All right. And did you do the collection yourself?

19 A No, I did not.

20 Q Okay. Who did so?

21 A Detective Strickland.

22 Q Okay. I need you to speak up a little bit.

23 A Detective Strickland.

24 Q Let me move this board. All right. Can you tell
25 us whether or not Detective Strickland had any prior

Tricia Stoner - Direct Examination by Ms. Mayes

1 experience with crime scene or the collection of buccal
2 swabs?

3 A Yes, she does. She worked in crime scene in the
4 Lexington County Sheriff's Department and at the South
5 Carolina Law Enforcement Division.

6 Q Now you also had with you a previously sealed and
7 marked item and I'm going to ask you whether or not you
8 recognize what is in this envelope?

9 A I do.

10 Q What is that?

11 A This is the buccal swab collection kit that we use
12 in the department.

13 Q And did you actually observe Detective Strickland
14 collecting that buccal swab from Martin Rodriguez?

15 A Yes, ma'am, I did.

16 Q And how did she do that?

17 A She used the swabs that were contained in the kit.
18 He voluntarily opened his mouth and she swabbed the inside
19 of his mouth on his cheek area.

20 Q Is there any doubt whatsoever that the person she
21 swabbed was Martin Rodriguez?

22 A No, ma'am, they have to provide their
23 identification as well and he provided his driver's
24 license.

25 Q And you recognized him as the same person you had

Tricia Stoner - Direct Examination by Ms. Mayes

1 interviewed the day before?

2 A Yes, ma'am.

3 Q Now, following that collection of a buccal swab
4 from Mr. Rodriguez, was he under arrest at that point?

5 A No, ma'am.

6 Q And how long did you stay on this investigation;
7 did it end that day on September 12th?

8 A No, ma'am, it did not.

9 Q And can you tell us whether or not it continued
10 into the year 2014?

11 A It did.

12 Q How so?

13 A Until the birth of the child.

14 Q All right. And you've heard previous testimony
15 concerning the child birth on at Lexington
16 Medical Center. What involvement did you have in that?

17 A I went with another Crime Scene Investigator and
18 DSS to the hospital. I believe it was on April 11th they
19 collected a DNA swab from the child and from Minor

20 Q All right. Let me show you two documents and ask
21 you whether or not you recognize those; this was previously
22 marked as ID, State's 9 and State's 10?

23 A Yes, ma'am.

24 Q What are those documents?

25 A Those are Consents to Search.

Tricia Stoner - Direct Examination by Ms. Mayes

1 Q And specifically whose signature is on those
2 documents?

3 A Mine and Minor

4 Q Okay. And that includes the buccal swab from what
5 two parties?

6 A From Minor and Child

7 Q Okay. And Child was who?

8 A The child, the baby boy of Minor

9 Q All right. And where were those buccal swabs
10 collected?

11 A At Lexington Medical Center.

12 Q On what date?

13 A

14 Q So the same day the baby was born?

15 A Yes, ma'am.

16 MS. MAYES: Your Honor, at this time, we would
17 offer State's Exhibits 9 and 10 as evidence?

18 MR. WILLIAMS: No objection.

19 THE COURT: State's 9 and 10 is in evidence without
20 objection.

21 (State's Exhibit Number 9 and Number 10 were
22 entered into evidence.)

23 BY MS. MAYES:

24 Q So when the baby was born on , the
25 official samples were taken from both the baby and Minor

Tricia Stoner - Direct Examination by Ms. Mayes

1 and what was done with them, Detective Stoner?

2 A They were entered into evidence and eventually sent
3 to South Carolina Law Enforcement Division for analysis.

4 Q And when you say the South Carolina Law Enforcement
5 Division for analysis, what type of analysis, what -- why
6 are these buccal swabs not tested at Lexington as opposed
7 to being sent to the State Crime Lab?

8 A We don't have the ability to do that at the
9 Sheriff's Department.

10 Q All right. And what services specifically as to a
11 crime lab are available at the State Law Enforcement
12 Division?

13 A There are several different ones; but the DNA
14 testing is the one I used in this case.

15 Q All right. In addition to DNA testing, do you know
16 whether or not SLED offers paternity testing related to
17 DNA?

18 A Yes, ma'am.

19 Q And Detective Stoner, ultimately were all three
20 items submitted for testing?

21 A Yes, they were.

22 Q On what date did you receive the results of the DNA
23 Paternity analysis from the State Law Enforcement Division?

24 A On May 16th, 2014.

25 Q What action, if any, did you take, Detective

Tricia Stoner - Direct Examination by Ms. Mayes

1 Stoner, upon receiving the results of that DNA Paternity
2 result?

3 A I obtained a warrant for criminal sexual conduct in
4 the first degree for Martin Rodriguez.

5 Q And when was the warrant served, Detective Stoner?

6 A On May 20th of 2014.

7 Q And pursuant to your investigation, do you have
8 knowledge as to whether the defendant, Martin Rodriguez,
9 and the victim's mother, Alicia Cortez, were still together
10 on that date?

11 A They were at that time.

12 Q Do you know whether she was present when the
13 warrant was served on him?

14 A She was.

15 Q Detective Stoner, concerning jurisdiction of any --
16 of a sexual assault in this case, that residence,
17 of Rolling Meadows Mobile Home Park, is located in what
18 county?

19 A Lexington County.

20 Q And through your investigation, were you able to
21 determine an estimated or approximate date of conception
22 for this child that was born ?

23 A We believed it was the beginning of July.

24 Q So sometime in July of what year?

25 A I'm sorry, July of 2013.

Tricia Stoner - Cross-Examination by Mr. Williams

1 Q Okay. So the child would have been estimated to
2 have been conceived in July or around July 2013. Can you
3 tell us, pursuant to your investigation, where you
4 determined Minor was living in that time frame?

5 A During that time frame she was living at in
6 Rolling Meadows Mobile Home Park.

7 Q What about the defendant, Martin Rodriguez?

8 A He was also living at that location.

9 Q What is the date of birth of Martin Rodriguez?

10 A

11 Q And what, if any, information do you have
12 concerning the age of the victim during that approximate
13 time frame of July 2013?

14 A She was 11 years old.

15 MS. MAYES: I beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 MS. MAYES: Nothing further of Detective Stoner at
18 this time.

19 THE COURT: Thank you.

20 Mr. Williams?

21 MR. WILLIAMS: May it please the Court.

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q Detective, you made the -- I will take the last
25 question first and that is you made the determination that

Tricia Stoner - Cross-Examination by Mr. Williams

1 she was residing or referring to Minor , she was residing at
2 Rolling Mobile -- Rolling Meadows Mobile Home Park during
3 July of 2013, during that time span?

4 A Yes.

5 Q Was she also staying at other locations?

6 A She would visit her father.

7 Q Okay. And so another location that she would have
8 been staying during this time span would have been at her
9 father's residence, right?

10 A Correct.

11 Q And where did her father reside at?

12 A In Lexington County.

13 Q Do you know where he resided at?

14 A It's Gentle Pines Apartments. I don't know the
15 exact address.

16 Q Did you visit Gentle Pines address to get the
17 address?

18 A I went over there, I -- yes, I know where it is,
19 but I didn't write down the address, but I know -- I drove
20 over there so I knew where it was.

21 Q So you knew where he resided?

22 A I did.

23 Q So you went to that location?

24 A I did.

25 Q All right. And as a part and parcel of your

Tricia Stoner - Cross-Examination by Mr. Williams

1 investigation -- you said that this event you were called
2 in, I guess some sort of -- was it your senior officer that
3 called you in and said to go to Daybreak and that the
4 event -- that the incident probably occurred at Rolling
5 Mobile Home Park or something like that; is that -- because
6 you gave that as an address as the incident?

7 A I was notified by one of the detective sergeants
8 that we had an 11 year old at Daybreak and that the
9 incident location was possibly the Rolling Meadows Mobile
10 Home Park where she resided.

11 Q All right. So you just used that time, you used
12 the word possibly Rolling Meadows Mobile Home Park where
13 she resided; is that correct?

14 A That's correct.

15 Q And the reason that that location was chosen was
16 because that that was the address; that was her permanent
17 address at that time?

18 A Yes.

19 Q Okay. So there was nothing substantial to indicate
20 that any type of assault actually occurred at that address;
21 it could have been anywhere?

22 A Yes.

23 Q Now when you were -- when you were called down to
24 Daybreak, who all was down there; who all was there when
25 you arrived?

Tricia Stoner - Cross-Examination by Mr. Williams

1 A Alicia Cortez and Martin Rodriguez and Minor
2 and Brother along with the staff of the Daybreak
3 Crisis Pregnancy Center.
4 Q Any other Lexington County Officers who were there?
5 A Detective Strickland came with me.
6 Q Okay. Anybody else?
7 A There was some officers. I believe they were with
8 the City of Columbia Police Department.
9 Q City of Columbia Police Department?
10 A Yes.
11 Q Why would the City of Columbia Police Department
12 people be there?
13 A Because the Daybreak Pregnancy Crisis Center was
14 located in, I believe Columbia PD's jurisdiction.
15 Q Okay. And any other law enforcement agencies
16 there?
17 A Not that I was aware of.
18 Q So there was no FBI?
19 A No, not to my knowledge, but us all being in plain
20 clothes could have been mistaken for that.
21 Q Did you know the other officers there?
22 A No, I didn't know them.
23 Q Did you know they were with the City of Columbia or
24 did -- or could they have possibly have been with the FBI?
25 A They introduced themselves as being with the City

Tricia Stoner - Cross-Examination by Mr. Williams

1 of Columbia and one of them provided his information to me.

2 Q And who were those officers?

3 A The only one I got was the one that we used as an
4 interpreter, Emanuel Dejesus.

5 Q Did you need an interpreter?

6 A For Alicia Cortez, I did.

7 Q So you talked to Alicia?

8 A I did.

9 Q With the interpreter?

10 A I did.

11 Q And in your investigation did you determine the
12 number of people that were residing at her home?

13 A Yes.

14 Q And how many people were they?

15 A Possibly six or seven.

16 Q And who were those people?

17 A Alicia Cortez, Martin Rodriguez, Minor ,
18 Sister , Uncle , I don't know his last name, Brother
19 and sometimes an uncle would stay there, but it
20 was -- he stayed mostly with his girlfriend.

21 Q Okay. Did you visit the location?

22 A I did not.

23 Q So you never even went to the location that she
24 lived at?

25 A I know where it is, I've been there several times

Tricia Stoner - Cross-Examination by Mr. Williams

1 before.

2 Q But once -- once you met Minor , you never went to
3 the location where she resided?

4 A No.

5 Q You never went inside --

6 A I'm sorry, I did go to the location one time when I
7 was attempting to make contact with, I believe it was
8 Alicia or Martin, but I never went inside the residence.

9 Q So you don't know, you've never been inside the
10 location to see how the -- the residence is located, right?

11 A Have I been inside this location.

12 Q Right?

13 A No.

14 Q Well now you are the investigating officer on this
15 case, right?

16 A Yes.

17 Q So you -- you knew that some of the allegations
18 involved at least a bedroom or something like that?

19 A Yes.

20 Q You didn't visit that location?

21 A No.

22 Q You didn't do any photographs of the inside of the
23 mobile home?

24 A No.

25 Q You didn't do any testing inside the mobile home?

Tricia Stoner - Cross-Examination by Mr. Williams

- 1 A No.
- 2 Q You didn't check out the windows of the mobile
3 home?
- 4 A I did not.
- 5 Q You didn't check to see whether or not the windows
6 had screens on them?
- 7 A I did not. I had no reason to check for screens.
- 8 Q You didn't have a reason to check the screens?
- 9 A I didn't. A screen was never brought up in an --
10 in the investigation. Nothing about a screen was brought
11 up to me.
- 12 Q Didn't -- didn't have a need to check the windows
13 at the mobile home?
- 14 A The windows maybe, but I did not.
- 15 Q Okay. Now the mother and the stepfather and their
16 child voluntarily brought this child to the Pregnancy
17 Center, right?
- 18 A Yes.
- 19 Q So Martin -- and Martin speaks English, right?
- 20 A Correct.
- 21 Q So was he translating for his wife before you got
22 there or did you have your translator available?
- 23 A I have no idea what happened before my arrival.
- 24 Q All right. What happened after your arrival?
- 25 A Alicia and Martin were not in the same room when I

Tricia Stoner - Cross-Examination by Mr. Williams

1 got there and I spoke to Alicia with Detective Dejesus.

2 Q All right. So the child was in a different
3 location at the -- at the -- at the building, right?

4 A Which child?

5 Q Well, the child that we were concerned about, I
6 guess, Minor ?

7 A Okay. Because there was two children there.

8 Q Were you concerned about the other child?

9 A He was a child, yes, I'm always concerned about
10 children.

11 Q Well, it was -- was that the child that you were
12 coming to check on?

13 A It was not.

14 Q Okay. So you went to check on Minor and when you
15 got there; where was she?

16 A She was in a room.

17 Q She was in a room by herself?

18 A She was with one of the counselors.

19 Q So she was with a trained counselor there?

20 A I don't know if she was trained; I know she was
21 with somebody from the Daybreak Crisis Pregnancy Center.

22 Q Did you check out any credentials on the person
23 that she was talking to?

24 A I did not.

25 Q So she was not around her mother and father?

Tricia Stoner - Cross-Examination by Mr. Williams

1 A She was not.

2 Q Mother and stepfather?

3 A She was not. She knew they were in the building.

4 Q And -- and law enforcement was in the building too,
5 weren't they?

6 A Correct.

7 Q So how long was she in the room by herself or with
8 the counselor?

9 A I don't know.

10 Q Over 30 minutes?

11 A I don't know.

12 Q Over an hour?

13 A I don't know.

14 Q Well, after -- who showed up for DSS?

15 A Mildred Moore.

16 Q And did she show up after you showed up or before
17 you showed up?

18 A I believe she showed up after I did.

19 Q All right. So Mildred Moore would have taken the
20 child to foster care that night, right?

21 A Correct.

22 Q And did you follow the progress of where the child
23 was kept after that time?

24 A Not the entire time, no.

25 Q So you don't know where she was taken after that?

Tricia Stoner - Cross-Examination by Mr. Williams

1 A After that day, I know eventually she ended up with
2 the Ivy's.

3 Q All right. You didn't keep up with the counselors,
4 all the many counselors that she talked to?

5 A I know that she spoke to a Linda Leach, but that's
6 all I know.

7 Q All right. So you didn't -- you didn't go out and
8 talk to Linda Leach and do any of that?

9 A No.

10 Q And what about the forensic exam, did you go to the
11 forensic exam?

12 A The examination or the -- no, I did not go to the
13 examination.

14 Q What is a forensic exam for?

15 A The exam to me is the medical examination.

16 Q Well, when I referenced it, did you think I was
17 referring to the medical exam or did you think --

18 A Yes.

19 Q -- okay. Well, when it's a child whose raising the
20 allegations of some sort of sexual act, there's normally a
21 forensic exam dealing with some specialist who is capable
22 of talking to children; isn't that correct?

23 THE COURT: Rephrase your question. I don't
24 believe that's what it's called, Mr. Williams.

25 BY MR. WILLIAMS:

Tricia Stoner - Cross-Examination by Mr. Williams

1 Q Did you go to any interview where a child
2 psychologist was involved with -- with talking to the
3 alleged child about what occurred or didn't occur?

4 THE COURT: That's my point, it's a forensic
5 interview.

6 BY MR. WILLIAMS:

7 Q Forensic interview?

8 A Yes, I did attend the forensic interview.

9 Q So you went to the forensic interview?

10 A I did.

11 Q And who all was present at the forensic interview?

12 A Myself, Detective Strickland, Mildren Moore may
13 have been present and I believe Shelley Ivy.

14 Q Was Mr. Martin present?

15 A We don't allow them there.

16 Q Was Ms. Martin -- well, was his wife present?

17 A She might have been there.

18 Q The mother was there?

19 A She might have.

20 Q Do you know?

21 A I don't remember. She wasn't in the room I was in.

22 Q Well, now --

23 A She could have been in the waiting room. There's
24 documents that they need to sign.

25 Q The mother?

Tricia Stoner - Cross-Examination by Mr. Williams

1 A Yes.

2 Q So it -- you think that possibly the mother was at
3 the forensic interview?

4 A Could have been, but she wouldn't have been able to
5 observe it, but I don't know.

6 Q Okay. But in no event, Mr. Martin -- Mr. Martin
7 wasn't there, right?

8 A No.

9 Q Do you know whether or not Mr. Martin would have
10 been present when she met with Ms. Leach?

11 A I do not know.

12 Q On how many occasions did she meet with Mr. Leach?

13 A I didn't have that information. I wasn't given
14 that information.

15 Q You don't know?

16 A I don't know.

17 Q Would anyone know other than Ms. Leach?

18 A Ms. Ivy may know.

19 Q Who is Ms. Ivy?

20 A She was her foster mother at the time.

21 Q All right. So she would be the one that would take
22 her to these counseling sessions?

23 A I would guess, yes, but I can't say yes, she was
24 the one.

25 Q Obviously Martin Rodriguez would not be present for

Tricia Stoner - Cross-Examination by Mr. Williams

1 these sessions?

2 A No.

3 Q When you talked about getting a DNA sample, did
4 Martin Rodriguez hesitate in any way to provide a DNA
5 sample?

6 A He did not.

7 Q Wanted to give it to you?

8 A He appeared to want to give it to us. He would
9 joke with us the day we got it and talk with us freely. He
10 met with us because we couldn't find exactly where he was.

11 Q And he was not arrested until when?

12 A May of 2014.

13 Q And when was your first meeting with Minor ?

14 A September 11th, 2013.

15 Q So what, 9 months, 10 months?

16 A Six --

17 Q Did you do anything else on this investigation
18 besides what you've talked about?

19 A Yes.

20 Q Besides talking to her, getting the DNA swabs,
21 arresting Mr. Martin, I mean Martin Rodriguez, you did
22 something other than that?

23 A I attended the forensic interview, I collected that
24 report, communicated with DSS, attended DSS Hearings in
25 Family Court.

Tricia Stoner - Cross-Examination by Mr. Williams

1 Q Okay. How many DSS Hearings did you attend in
2 Family Court?

3 A That I do not know.

4 Q More than ten?

5 A No, I don't think it was more than ten; it was
6 several. DSS could probably tell you how many times they
7 subpoenaed me.

8 Q How many people were involved in these DSS Hearings
9 in Family Court?

10 A Several because there was attorneys involved for
11 everybody.

12 Q Was there a Guardian ad Litem?

13 A There was. He was appointed at the very first
14 Family Court Hearing.

15 Q And when was the very first Family Court Hearing?

16 A It would have been shortly after September 11th,
17 but I don't know the date.

18 Q So Minor would have had contact with the Guardian
19 ad Litem at least from the beginning of September of 2014?

20 A Correct.

21 Q As well as counselors -- child psychologists?

22 A You'd have to ask Ms. Ivy because she knows all
23 that kind of stuff.

24 Q Did you seize any physical evidence?

25 A No, other than DNA swab, sir.

Tricia Stoner - Redirect Examination by Ms. Mayes

1 Q That's it?

2 A That was it.

3 MR. WILLIAMS: That's all the questions I have,
4 Your Honor.

5 THE COURT: Redirect, Solicitor?

6 MS. MAYES: Yes, sir, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MS. MAYES:

9 Q Detective Stoner, regarding physical evidence
10 seized, is there anything in this case more important than
11 the DNA samples?

12 A No, ma'am.

13 Q Now, Mr. Williams was asking you about going to the
14 residence and going inside. Did you have a search warrant
15 at any time to go inside this home?

16 A I did not.

17 Q As a law enforcement officer, are you able to walk
18 in a suspect's home at any time you want?

19 A No, ma'am, exigent circumstances, that's it, but at
20 this time, I did not have exigent circumstances. The
21 incident had occurred several months prior.

22 Q And Mr. Williams was asking you about the parties
23 who were residing in the home. How many of those parties
24 did you mention were children?

25 A Four.

Tricia Stoner - Recross-Examination by Mr. Williams

1 Q And of those four children, who was the oldest of
2 those children?

3 A Minor

4 MS. MAYES: Nothing further.

5 THE COURT: Recross, Mr. Williams?

6 MR. WILLIAMS: Yes, Your Honor.

7 **RECROSS-EXAMINATION**

8 BY MR. WILLIAMS:

9 Q Did you ever go to the location and ask permission
10 to go inside the mobile home?

11 A I did not.

12 Q Nothing prevented you from doing that, did it?

13 A No.

14 Q And you never tried to get a search warrant either,
15 did you?

16 A No.

17 MR. WILLIAMS: That's all I have, Your Honor.

18 THE COURT: Thank you. Thank you very much,
19 Detective, you may step down.

20 All right. Solicitor, you may call your next
21 witness.

22 MS. MAYES: The State calls Detective Renee
23 Strickland.

24 **RENEE STRICKLAND,**

25 having been duly sworn, testified as follows:

Renee Strickland - Direct Examination by Ms. Mayes

1 THE CLERK: Have a seat please, ma'am. Once you're
2 seated, state your full name spelling your last on the
3 record please.

4 THE WITNESS: Renee Strickland,
5 S-T-R-I-C-K-L-A-N-D.

6 **DIRECT EXAMINATION**

7 BY MS. MAYES:

8 Q And, Detective Strickland, can you give us some
9 information concerning your current -- your current
10 employment?

11 A Yes, ma'am. I'm currently employed as a Special
12 Investigator with the South Carolina Office of the Attorney
13 General.

14 Q And prior to joining the Attorney General's Office,
15 can you tell us whether or not you were employed by the
16 Lexington County Sheriff's Department?

17 A I was, yes, ma'am.

18 Q And can you tell us what other agent, what other
19 law enforcement agencies you've worked with prior to
20 working with the Lexington County Sheriff's Department?

21 A I worked with the State Law Enforcement Division
22 and also the City of Cayce.

23 Q All right. Now, Detective Strickland, given your
24 work with both the State Law Enforcement Division and the
25 Lexington County Sheriff's Department, what, if any,

Renee Strickland - Direct Examination by Ms. Mayes

1 training do you have specifically dealing with crime scene
2 investigation or evidence collection.

3 A I was a Crime Scene Investigator and Latent Print
4 Examiner with the State Law Enforcement Division and also
5 Crime Scene Investigator with the Lexington County
6 Sheriff's Department.

7 Q And how long did you do that?

8 A I began doing crime scene work in 2007 when I
9 joined the State Law Enforcement Division and continued to
10 do that work until about 2012.

11 Q And specifically in regards to evidence collection,
12 can you tell us whether or not that includes buccal swab
13 collection?

14 A It does, yes, ma'am.

15 Q What, if any, training do you have specifically in
16 that field and can you tell us what the process and
17 procedure is regarding buccal swab collection of a person?

18 A Yes, ma'am. I have extensive both on the job and
19 training through various classes and seminars which would
20 cover crime scene investigation techniques, specifically
21 buccal swab collection is for the purposes of DNA and
22 you -- the procedure involves swabbing the inside of a
23 person's cheek. Buccal actually means cheek or inside the
24 mouth or cheek cells, which are being analyzed for DNA.

25 Q All right. And how are -- how is the evidence

Renee Strickland - Direct Examination by Ms. Mayes

1 packaged once it is collected?

2 A It's -- it comes in a collection kit that's
3 specifically designed for the collection of a buccal swab
4 and these swabs, after the --

5 MR. WILLIAMS: Excuse me a minute, Your Honor, can
6 I move this; I can't see.

7 THE COURT: Yes, sir, certainly.

8 MR. WILLIAMS: Thank you.

9 THE COURT: Yes, sir.

10 THE WITNESS: Once the sample is taken from the
11 individual, it's placed into an envelope, which is attached
12 to a card that is filled out with the information from the
13 person it was collected from and then the smaller envelope
14 is sealed and then it's also sealed in an outer envelope
15 and at the Sheriff's Department we would open it and seal
16 that in a large envelope, excuse me, and submit it to the
17 evidence department.

18 BY MS. MAYES:

19 Q Now, Detective Strickland, I want to go back and
20 ask you when did you first become involved in this
21 investigation involving 11 year old Minor ?

22 A Yes, ma'am. September 11th.

23 Q And where did you go or respond to in connection
24 with this case?

25 A The Daybreak Crisis Pregnancy Center in the City of

Renee Strickland - Direct Examination by Ms. Mayes

1 Columbia.

2 Q Okay. And we've heard previously from Detective
3 Stoner, can you tell us whether or not you were present
4 when she made contact with the defendant, Martin Rodriguez?

5 A I was, yes, ma'am.

6 Q Can you tell us whether or not you were in present
7 when Mr. Rodriguez participated in an interview with
8 Detective Stoner?

9 A Yes, ma'am, I was present.

10 Q Did yourself or Detective Stoner threaten or force
11 Mr. Rodriguez in any way to obtain a statement?

12 A No, ma'am, we did not.

13 Q Was he promised anything in exchange for a
14 statement?

15 A He was not.

16 Q Can you tell us whether or not he appeared to speak
17 the English language?

18 A He did. We had no problems communicating with him.

19 Q Did it appear that statement was freely and
20 voluntarily given?

21 A Yes, ma'am, it did.

22 Q Was there also communication with him about
23 collection of a DNA sample?

24 A Yes, ma'am.

25 Q Can you tell us whether or not he understood that

Renee Strickland - Direct Examination by Ms. Mayes

1 was for the purpose of DNA analysis and a paternity
2 analysis?

3 A He did. We explained that to him.

4 Q And where did you go to obtain that sample?

5 A We went -- we met him while he was working and the
6 sample was actually collected in the area which is just off
7 the 12th Street Extension at Interstate 77 in that area in
8 the City of Cayce where he was doing some work.

9 Q And on what date?

10 A On the 12th.

11 Q Of what?

12 A September 12th.

13 Q September 12th of what year?

14 A 2013.

15 Q Okay. And as you went back and made contact with
16 him the following day for this DNA sample, can you tell us
17 whether or not that was freely and voluntarily provided?

18 A Yes, it was.

19 Q At any point in time did he refuse the sample?

20 A He did not. He was very compliant and cordial.

21 Q How did you confirm his identification?

22 A Through his social security number and driver's
23 license.

24 Q And when you collect a sample, did he -- can you
25 tell us whether or not he resisted physically in any way to

Renee Strickland - Direct Examination by Ms. Mayes

1 opening his mouth for the cheek sample?

2 A No, ma'am, it would make it extremely difficult to
3 collect if he did so.

4 Q Okay. I'm going to show you a couple of exhibits
5 and ask you whether or not you recognize them beginning
6 with State's Exhibit 11.

7 A Yes, ma'am.

8 Q I'm going to ask you whether or not you recognize
9 this item?

10 A Yes, ma'am, I do.

11 Q How so?

12 A It's the buccal swab collection kit that was
13 submitted to the evidence department that I collected and
14 submitted to the Lexington County Sheriff's Department
15 evidence room.

16 Q All right. And who broke the seal on this
17 particular evidence envelope?

18 A I broke that seal on yesterday.

19 Q Okay. And that was -- can you tell us whether or
20 not that was done in court?

21 A It was.

22 Q In the presence of counsel and the Judge?

23 A Yes, it was.

24 Q And can you tell us what is inside this package
25 having broken the seal yourself?

Renee Strickland - Direct Examination by Ms. Mayes

1 A It's a buccal swab collection kit that actually
2 contains the swabs that were collected and then sent to the
3 State Law Enforcement Division for analysis.

4 Q All right. I'm going to pull this out and ask you
5 to take a look at this. Now what are we looking at here
6 with this red tape, Detective Strickland?

7 A That's evidence tape that was placed there by the
8 State Law Enforcement Division when they resealed the item.

9 Q And what, if any, sealing is on the back of this
10 package?

11 A There's also a piece of tape with initials on it
12 and a date, I'm assuming from the State Law Division, Law
13 Enforcement Division as well.

14 Q Okay. And what is the purpose of this tape or
15 sealing on the outside of the envelope?

16 A To indicate that it had been opened and examined by
17 someone and to reseal it to show that it had not been
18 tampered with.

19 Q Now, what are we looking at here, this particular
20 white envelope and I'm going to ask you how it is you
21 recognize it?

22 A It has my name and it has the agency name and also
23 the case number.

24 Q All right. And who filled out this portion with
25 your name on it?

Renee Strickland - Direct Examination by Ms. Mayes

1 A I did that.

2 Q What, if anything, is on the back for the purpose
3 of sealing?

4 A There's a tamper resistant seal and there's also
5 another piece of tape with initials and a date on it as
6 well.

7 Q All right. And who affixes the tamper resistant
8 seal after collection of a suspect sample?

9 A I do.

10 Q And did you do so in this case?

11 A I did.

12 Q And once it was sealed or what would be the purpose
13 of that seal once you affix it to the envelope?

14 A To insure that it's not tampered with after it's
15 collected before analysis.

16 Q Looking inside the envelope, what are we looking at
17 here in this additional sealed package?

18 A That is the actual, the envelope with the
19 identifying information on the outside that actually
20 contains the swabs that are in a smaller envelope that's
21 attached to the inside of that envelope.

22 Q Does it contain your name or signature at any
23 location?

24 A It does. My signature is on the back, print,
25 signature and date.

Renee Strickland - Direct Examination by Ms. Mayes

1 Q All right. And that date being 9/12/13?

2 A Yes, ma'am.

3 Q And can you tell us whether or not it contains the
4 defendant, Martin Rodriguez's signature?

5 A It does.

6 Q And you witnessed him signing this?

7 A I did, yes.

8 Q And this contains the buccal swab sample you took
9 from his cheek?

10 A It does, yes, ma'am.

11 MS. MAYES: Your Honor, at this time, we would
12 offer this item as evidence. This is the buccal swab
13 suspect kit with packaging?

14 MR. WILLIAMS: No objection, Your Honor.

15 THE COURT: What number is this?

16 THE COURT REPORTER: 12.

17 THE COURT: Without objection you said, Mr.
18 Williams?

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: State's 12 is in evidence without
21 objection.

22 (State's Exhibit Number 12 was entered into
23 evidence.)

24 MS. MAYES: I beg the Court's indulgence?

25 THE COURT: Yes, ma'am.

Renee Strickland - Cross-Examination by Mr. Williams

1 BY MS. MAYES:

2 Q Now, Detective Strickland, once you obtained that
3 sample from the defendant, Martin Rodriguez, and you sealed
4 that package as you have testified to, what action did you
5 take next?

6 A Returned to the Sheriff's Department where the
7 appropriate paperwork was filled out for submission to the
8 evidence department and it was submitted to the evidence
9 department.

10 Q All right. And what do you mean by submitted to
11 the evidence department; what do you do with that?

12 A It's further packaged and -- and given some
13 identifying information simply for -- for the evidence
14 storage system and an evidence voucher is generated in the
15 computer system and then it's placed in an evidence locker
16 for the evidence technicians to then put into the system.

17 Q And you mentioned the evidence locker, does anyone
18 else have access to that evidence locker other than an
19 evidence technician?

20 A No, they do not.

21 MS. MAYES: Nothing further, Your Honor.

22 THE COURT: Thank you, Solicitor. Mr. Williams.

23 MR. WILLIAMS: May it please the Court?

24 **CROSS-EXAMINATION**

25 BY MR. WILLIAMS:

Renee Strickland - Cross-Examination by Mr. Williams

1 Q Ms. Strickland, your participation in this case was
2 basically that as evidence gatherer, am I correct on that?

3 A I was actually a major crimes investigator at the
4 time so I was assisting in the investigation and so that
5 was my role, yes.

6 Q Okay. When you appeared at the Pregnancy Center,
7 you appeared with -- with the other investigator, the other
8 detective, did you do anything after you went to that
9 location besides gather the DNA, the buccal swabs in this
10 case?

11 A I responded to the Crisis Pregnancy Center on the
12 11th and then the following day on the 12th. I collected
13 the buccal swab; and I also attended an interview at the
14 Dickerson Center.

15 Q So you were there for the forensic interview?

16 A I was present, at the Dickerson Center, yes, sir.

17 Q Is that where the forensic interview was?

18 A It was.

19 Q And who all was present at the forensic interview?

20 A I do not recall. Detective Stoner was present.

21 Q Was Minor mother there?

22 A I don't recall.

23 Q What is a forensic interview?

24 A It is a fact finding interview that's designed to
25 address children.

Renee Strickland - Cross-Examination by Mr. Williams

1 Q How many forensic interviews have you been to?

2 A I'm not sure. I'd say maybe fifteen or twenty.

3 Q And those interviews, do they consist where you
4 have someone who's trained to talk to children to ask them
5 questions; is that what normally happens?

6 A Yes, someone -- someone who is a -- who has
7 training and is certified as a forensic interviewer, yes.

8 Q And was there one present at this forensic
9 interview?

10 A Yes.

11 Q And after the forensic interview, did you do
12 anything else?

13 A No, I did not.

14 Q Was the forensic interview videotaped?

15 A Yes, they're all videotaped.

16 Q And you didn't do anything else on this case after
17 that; is that correct?

18 A I did not. I left the Sheriff's Department the
19 following January.

20 Q And where did you go?

21 A I actually left to take care of my mother who was
22 injured and my grandmother who was terminally ill.

23 Q So you had been -- you were without law enforcement
24 for a period of time?

25 A Correct.

Renee Strickland - Cross-Examination by Mr. Williams

1 Q And you're back now?

2 A I am, yes.

3 Q When you were talking about -- I noticed that you
4 used the enunciation of buccal and everyone keeps saying
5 buccal; is it pronounced buccal swabs; we're pronouncing it
6 incorrectly; I assume you are right because you do this
7 stuff?

8 A I pronounce buccal, but I've actually heard it
9 pronounced both ways. It's acceptable either way. I've
10 heard it in other courts pronounced buccal or buccal.

11 Q Is it the same type of instrument that you get when
12 you go -- are you familiar with the National Geographic DNA
13 sampling where you scrape the inside of your cheek and you
14 send it off and they tell you what race you came from and
15 where you migrated from?

16 A No, I'm not familiar with that, no, sir.

17 Q So you've never -- you've never done that to
18 yourself and sent it off to see where you or your parents
19 came from?

20 A No, I have not.

21 Q The buccal swab that you use, is it a plastic item
22 with little forks on it or is it -- or is it like a Q-tip?

23 A It's cotton swab, yes.

24 Q So it's a smooth cotton swab that wipes inside the
25 mouth?

Renee Strickland - Redirect Examination by Ms. Mayes:

1 A Correct.

2 Q Do you ever draw blood to have DNA sampling done?

3 A No, I have not.

4 Q Is that a method to determine DNA sampling?

5 A That's a more invasive method. This is a less
6 invasive method that's widely expected and used in crime
7 scene investigation in DNA collection.

8 Q It's an easier way to get DNA?

9 A Well, it's less invasive than taking someone's
10 blood.

11 Q Okay. So it's easier?

12 A And getting the same result.

13 Q It's easier, right?

14 A You can say that.

15 Q Okay. But in any event, y'all didn't draw any
16 blood from Mr. Rodriguez; you didn't ask him if he wanted
17 to draw blood to have his DNA checked?

18 A I did not and I did not draw any blood, no.

19 MR. WILLIAMS: That's all the questions I have.

20 THE COURT: Redirect, Solicitor?

21 MS. MAYES: Yes, sir, Your Honor.

22 **REDIRECT EXAMINATION**

23 BY MS. MAYES:

24 Q Is the DNA in blood the same as DNA in cheek cells?

25 A It is.

Renee Strickland - Recross-Examination by Mr. Williams

1 MS. MAYES: Nothing further.

2 THE COURT: Recross, Mr. Williams?

3 **RECROSS-EXAMINATION**

4 BY MR. WILLIAMS:

5 Q Have you ever had the opportunity to analyze the
6 difference between cheek cells DNA versus blood DNA?

7 A That would be the job for a DNA analyst, which I am
8 not.

9 Q So you're -- you're a technician if you will?

10 A I'm not a technician, I'm an investigator, a Crime
11 Scene Investigator. An evidence technician is a totally
12 different role.

13 Q You're a police officer that gathers evidence?

14 A I'm a police officer that has very specialized and
15 extensive training in crime scene analysis and evidence
16 gathering, yes.

17 Q Did you go to any area to form any type of crime
18 scene analysis; did you go to this alleged motel --

19 MS. MAYES: Objection, Your Honor, beyond the
20 scope.

21 THE COURT: Overruled under Rule 611. If y'all
22 would read it, that is always my policy.

23 BY MR. WILLIAMS:

24 Q Did you go to the Rolling Meadows Mobile Home Park
25 to gather any evidence?

Renee Strickland - Recross-Examination by Mr. Williams

1 A No, my role in this case was I was a major crimes
2 investigator. I had extensive training in the collection
3 of buccal swabs, which is why I collected the sample in
4 this case and no, I did not do any further crime scene
5 investigation.

6 MR. WILLIAMS: That's all the questions I have,
7 Your Honor.

8 THE COURT: All right. Thank you. Thank you very
9 much, Detective Strickland. You may step down.

10 Why don't we take about a fifteen minute recess.
11 Before we do though, Solicitor, I didn't mean to bark at
12 you. I am sure you are very versed as the other Assistant
13 Solicitor not only in the Rules of Evidence generally as is
14 Mr. Williams, but also in Rule 611 in that regard. So I
15 didn't mean to imply in front of the jury that you,
16 Assistant Solicitor, or Mr. Williams was not more than well
17 versed as I've seen a lot in my time on the bench.

18 Why don't we take about a fifteen minute recess,
19 ladies and gentlemen and do not discuss the case during
20 this brief recess. Thank you. Thank you very much.

21 (The jury left the courtroom at 11:03 p.m.)

22 THE COURT: All right. Anything further,
23 Solicitor.

24 MS. MAYES: Yes, sir, Your Honor, we would ask that
25 the Detective Strickland be released and also --

Renee Strickland - Recross-Examination by Mr. Williams

1 MR. WILLIAMS: No objection, Your Honor.

2 MS. MAYES: -- if we could approach the bench on a
3 scheduling issue.

4 THE COURT: Sure. All right. Sure. Yeah,
5 Detective Strickland, yes, you may be released. Who do you
6 work for over there, Mr. Gambrell?

7 THE WITNESS: Yes, I do.

8 THE COURT: Please, please give him my regards.
9 His paralegal used to be at LLR?

10 THE WITNESS: Ann.

11 THE COURT: Mr. Gambrell, and you don't have to
12 answer this question if you don't want to, but he's about
13 old as me, right?

14 THE WITNESS: With -- I'm sorry.

15 THE COURT: He's about old as me, right? We were
16 classmates. Please give him my regards.

17 THE WITNESS: I will.

18 THE COURT: All right. Thank you. Thank you very
19 much.

20 Yes, sir.

21 MS. MAYES: Judge, we're trying to reschedule the
22 witness that we tried to call yesterday and we think he's
23 about -- we think he's about 20 minutes away.

24 THE COURT: Okay.

25 (A brief recess was observed.)

Louis Gossett - Direct Examination by Mr. Caskey

1 THE COURT: Anything from the State before we bring
2 in our jury, Solicitor?

3 MR. CASKEY: Nothing from the State, Your Honor.

4 THE COURT: Defense?

5 MR. WILLIAMS: Nothing from the defense.

6 (The jury entered the courtroom at 11:31 a.m.)

7 THE COURT: All right. Ladies and gentlemen, we're
8 continuing the trial of the case by the presentation of
9 evidence and testimony by the State in its case in chief.
10 Solicitor, you may call your next witness.

11 MR. CASKEY: Thank you, Your Honor. The State
12 would call Louis Gossett.

13 THE COURT: Mr. Gossett, if you'd come around and
14 be sworn for us please.

15 LOUIS S. GOSSETT,

16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat, sir. Once you're seated,
18 state your full name spelling your last on the record.

19 THE WITNESS: My name is Louis F. Gossett.

20 G-O-S-S-E-T-T.

21 **DIRECT EXAMINATION**

22 BY MR. CASKEY:

23 Q Mr. Gossett, you've got a pretty loud voice, you
24 may not need to lean all the way into that.

25 A Okay.

Louis Gossett - Direct Examination by Mr. Caskey

1 Q Mr. Gossett, what do you do for a living?

2 A I am the president of the South Carolina
3 Manufacturer's Alliance. It's a Trade Association.

4 Q What is your relationship with Minor ?

5 A I'm her Guardian ad Litem.

6 Q And what is a Guardian ad Litem?

7 A I -- I am responsible for looking out for her
8 interests in any matters that have involved her last two
9 years.

10 Q Did you choose to become her Guardian ad Litem?

11 A No, I did not. Actually they did ask me if I
12 wanted the case or not when I was called by the Clerk's
13 Office on the appointment. I was appointed and they asked
14 me if I wanted the case and they explained to me what it
15 was and I said yes.

16 Q As you say what it was; what do you mean by that?

17 A Well, they called me and the gentlemen who was on
18 the phone said that this was, I've done a lot of guardian
19 work before and so he called and said that they had a
20 case --

21 MR. WILLIAMS: Objection to hearsay.

22 THE COURT: Yes, sir, that would be hearsay,
23 Solicitor.

24 MR. CASKEY: Your Honor, I can rephrase the
25 question.

Louis Gossett - Direct Examination by Mr. Caskey

1 THE COURT: Thank you.

2 BY MR. CASKEY:

3 Q How did you become involved in this case?

4 A I got a call from the court.

5 Q Okay.

6 A The Clerk's Office.

7 Q What was your understanding of the circumstances
8 that led to your appointment?

9 A My understanding was -- is that there was a little
10 girl who was 11 years old who may or may not be pregnant at
11 the time and had been removed from the home and needed
12 representation.

13 Q Okay. When did you first see Minor ?

14 A I first actually saw her at the forensic interview.

15 Q Do you recall when that was?

16 A It was the first half of September, maybe the
17 middle of September of 2013.

18 Q Where was that forensic interview?

19 A It's -- I think it's called the Dickerson Center.
20 It's in West Columbia across the river from where I work in
21 downtown Columbia.

22 Q Were you able to talk with her that day?

23 A I don't think I did, no, because I was in a
24 separate room watching through closed circuit, her
25 interview.

Louis Gossett - Direct Examination by Mr. Caskey

1 Q All right. What initial encounters do you remember
2 with Minor ; what was your first encounter with Minor when
3 you had a good chance to talk to her?

4 A I met her very shortly after that. We arranged
5 with the foster parents for me to meet with her and talk to
6 her about her circumstances and about the case in general
7 and that was literally within a couple of days of the
8 forensic interview.

9 Q Afterwards?

10 A Right.

11 Q Okay.

12 A After.

13 Q All right. Do you recall what you told Minor at
14 that time?

15 A I explained to her who I was and what I did and
16 that I was only looking out for her interests and no one
17 else's, that this case would be about her and what was in
18 her best interest in making sure she was safe and secure
19 and that was my job and I emphasized to her that it didn't
20 matter what anybody else thought, did, said, the only
21 person that I cared about in this case was her.

22 Q Do you recall talking with her in early October?

23 A Yes.

24 Q What was that conversation?

25 A That happened on October 4th, it was a Friday and

Louis Gossett - Direct Examination by Mr. Caskey

1 it was after six o'clock. It was unusual. I remember it
2 vividly because I was supposed to take my youngest
3 somewhere and wound up instead in Swansea where her foster
4 parents lived meeting with her and DSS and we had a good
5 meeting with DSS. They left and then I stayed with her to
6 talk to her about how she was doing, about the foster
7 parents. It was about 6:30, seven o'clock on that Friday
8 night now and -- and where things stood with her.

9 Q What did you tell her that night?

10 A That's easy. The most important thing I told her
11 was there was -- I could tell that she was very reluctant
12 to talk about her circumstances and to talk about what had
13 happened to her and I told her at the time and was very
14 clear with her on several points. One, at some point she
15 was going to have to tell who did this to her and I could
16 tell she was very, very worried about that, very nervous,
17 very afraid. So I came up with an idea while I was talking
18 to her on the porch and I told her, I said well here's the
19 deal then. If you're reluctant about telling others, you
20 can tell me. I'd already explained to her once again that
21 whatever she told me was between me and her, that I was
22 there to look out for her interests and nobody else's. So
23 I told her, I said let's make a deal. When you're ready,
24 you tell me and I told her one other thing along those
25 lines. I said and here's the second part, I won't tell

Louis Gossett - Direct Examination by Mr. Caskey

1 anybody else until you tell me that that's okay.

2 Q What was the date of that conversation?

3 A October, it was Friday, October 4th. It was
4 Friday, I'm pretty sure it was October 4th. October 4th or
5 5th and I'm pretty sure it was October 4th.

6 Q What year?

7 A '13.

8 Q Okay. And up until that point, had Minor disclosed
9 to you any information?

10 A No, not at all. I had only been representing her
11 for about two or three weeks at that point.

12 Q Well, let's move forward then. Did Minor ever call
13 you?

14 A Oh yes. She called me a lot.

15 Q Did she -- did she ever disclose to you sexual
16 crimes against her?

17 A Yes, she did.

18 Q Did she disclose the locations that it had
19 happened?

20 A Yes.

21 Q What were those locations?

22 MR. WILLIAMS: Objection, Your Honor, it calls for
23 hearsay.

24 MR. CASKEY: Your Honor, we're going to have a
25 matter of law we need to address.

Louis Gossett - Direct Examination by Mr. Caskey

1 THE COURT: All right. Thank you, Solicitor.

2 Mr. Foreman, Madam Forelady, ladies and gentlemen
3 of the jury, if you'd please step to your jury room. Do
4 not discuss the case during this brief recess. Thank you.
5 Thank you very much.

6 (The jury left the courtroom at 11:40 a.m.)

7 THE COURT: All right. Solicitor?

8 MR. CASKEY: My question is to solicit information
9 regarding the victim of the sexual crimes, information
10 about the time and place where those actually occurred and
11 pursuant to the Rules of Evidence 801(d)(1), subsection d,
12 those are specifically excluded from the definition
13 hearsay, time and place, Your Honor.

14 THE COURT: Is this -- is it State v. Alton,
15 testimony of progeny of Alton or you're just, I don't even
16 know if he's objecting based on hearsay. What's the basis
17 of your objection, Mr. Williams?

18 MR. WILLIAMS: Your Honor, my basis -- my basis
19 would have been hearsay. I guess probably the safest
20 thing, Your Honor, would be if we could have an in-camera
21 questioning of this witness because I may or may not have
22 an objection. If he doesn't -- well it depends on what he
23 says, I guess, Your Honor. We're in a gray area that might
24 be kind of bad if it goes out in front of the jury before
25 you get to at least hear it.

Louis Gossett - Direct Examination by Mr. Caskey

1 MR. CASKEY: Your Honor, I don't intend to ask the
2 witness to identify the individual who perpetrated these
3 acts. I recognize that is clearly inadmissible.

4 THE COURT: So this is 801 --

5 MR. CASKEY: D --

6 THE COURT: D --

7 MR. CASKEY: 1(d).

8 THE COURT: D(1)(d)?

9 MR. CASKEY: Yes, sir.

10 THE COURT: The statement is not hearsay if it is
11 consistent with the declarant's testimony in a criminal
12 sexual conduct case or attempted sexual conduct case where
13 the declarant is the alleged victim and the State is
14 limited to the time and place of the incident. And you're
15 indicating to me, Solicitor, all you intend to bring out is
16 the time and the place of the incident.

17 MR. CASKEY: Yes, sir, and to be clear with the
18 Court, when we talk about time, that includes the time
19 frame.

20 THE COURT: Yes, sir.

21 MR. CASKEY: Your Honor, I do intend to ask the
22 witness if she told the defendant, excuse me, told the
23 witness who it was but not ask the identity of that person.

24 THE COURT: All right. Ask the questions
25 in-camera, Solicitor. I think one was on the table as to

Louis Gossett - Direct Examination - In-Camera by Mr. Caskey

1 the location.

2 MR. CASKEY: Yes, sir, Your Honor.

3 THE COURT: All right.

4 DIRECT EXAMINATION - IN-CAMERA

5 BY MR. CASKEY:

6 Q Mr. Gossett, did Minor tell you where these attacks
7 had happened?

8 A She told me where some of them happened, I assume.
9 I know that she told me where at least some of them
10 happened.

11 Q Okay. What was that location?

12 A Her bedroom in the home.

13 Q Where did you understand that home to be?

14 A Uh --

15 Q Her ordinary home where she regularly lived?

16 A Right. Right. Where she and her sister shared a
17 room.

18 Q Did she tell you when these attacks happened?

19 A It was June and July of '13 in particular. We
20 didn't talk about everything that may have happened. What
21 I specifically talked to her about was when and where and I
22 got enough information about that and I talked to her about
23 specifically what happened and that was difficult to say
24 the least and then she was able to tell me.

25 Q Was it your understanding Minor knew the identity

Louis Gossett - Direct Examination - In-Camera by Mr. Caskey

1 of her attacker?

2 A Absolutely.

3 MR. CASKEY: I don't have any further questions,
4 Your Honor?

5 THE COURT: Mr. Williams?

6 MR. WILLIAMS: Your Honor, I'm not really sure that
7 I can follow the questions he's going to ask in front of
8 the jury, but based on the responses, I -- I think what he
9 said was if he goes -- if the solicitor approaches it that
10 way then we would object obviously to the leading when he
11 says then you would assume it would be in her home. This
12 witness hasn't testified. I don't believe as to where and
13 when. Now, maybe if he fine tuned some, but it didn't
14 appear that the question was going to be proper in front of
15 the jury without the solicitor leading.

16 THE COURT: All right. I think that goes to the
17 weight and not the admissibility. The question is as far
18 as location. Mr. Gossett's response is whatever his
19 response is going to be to that question. Did she tell you
20 where these occurred; at the home. Whatever he testifies
21 to, I think that goes to the weight of the testimony, not
22 it's admissibility under 801(d)(d). Also I think that's
23 the same as far as the timeframe of June or July of 2013.

24 Do you have any other objections, Mr. Williams?

25 MR. WILLIAMS: No, Your Honor.

Louis Gossett - Direct Examination - In-Camera by Mr. Caskey

1 THE COURT: Any other -- I think the last question
2 though, Solicitor, was it your understanding that
3 Minor knew the identity of the perpetrator is not
4 admissible. I think that is bolstering her testimony,
5 bolstering the witnesses testimony and that doesn't fit
6 within that specific ruling. She's already testified to it
7 and I don't think it's admissible under that rule because
8 it says time and place. So is -- it's -- it's asking Mr.
9 Gossett did she know who the perpetrator was and in effect,
10 he knows that because she told him and he believes it. I
11 take it he believes it. But I think that's, that's
12 bolstering --

13 MR. CASKEY: Thank you, Your Honor.

14 THE COURT: -- testimony. And I, I don't make that
15 decision lightly, but I recently re-read State v. Anderson,
16 which came out 10 days ago and I know it's a different
17 issue about experts and all, not saying Mr. Gossett is not
18 an expert, that's not why he's being offered.

19 MR. CASKEY: Yes, sir, I'll stay away from that.

20 THE COURT: The only thing I was an expert at was
21 finding experts and that was about it, but -- but it's --
22 with that being said, I think that location and time.

23 Anything further, Solicitor.

24 MR. CASKEY: Your Honor, I just -- my only concern
25 is the defense be precluded from implying that the witness

Louis Gossett - Direct Examination by Mr. Caskey

1 or that the victim had not acknowledged who the attacker
2 was or that he didn't know --

3 THE COURT: He knows that, yes, sir. If the door
4 is not opened, it's knocked down. I mean that's --

5 MR. CASKEY: I just want to be clear that that's
6 where we stood, Your Honor.

7 THE COURT: I never -- I never have been clear
8 about where we stand on these issues quite honestly,
9 Solicitor, but you know, by negative inference, he can't
10 say is that all she told you. I mean I'm not going to tell
11 you how to try your case or Mr. Williams or Solicitor Mayes
12 how to try y'all's case whatsoever. I'm just -- I'm just
13 going to rule on the evidence.

14 MR. CASKEY: Yes, sir.

15 THE COURT: And I just don't think that question is
16 admissible under 801(d)(d).

17 All right. Anything before we bring our jury in.

18 MR. CASKEY: Nothing further from the State.

19 MR. WILLIAMS: No, sir.

20 (The jury entered the courtroom at 11:50 a.m.)

21 THE COURT: All right. Thank you. Thank you, Mr.
22 Williams.

23 You may continue.

24 MR. CASKEY: Thank you, Your Honor.

25 **DIRECT EXAMINATION**

Louis Gossett - Direct Examination by Mr. Caskey

1 BY MR. CASKEY:

2 Q Mr. Gossett, we had left off with the question,
3 where did Minor tell you those attacks occurred?

4 A Her home.

5 Q And where -- do you know where Minor lived in the
6 Summer of 2013?

7 A It was over here in this area. I went into the
8 neighborhood a couple of times to look around and see what
9 it was like, not with her or with anyone else, but I had
10 the address. It was kind of the Red Bank area I guess, in
11 that general vicinity.

12 Q What kind of homes are there in that community?

13 A Mostly mobile homes.

14 Q Okay. You said the attacks --

15 A And apartments. There were both in the areas I
16 went to.

17 Q Okay. And where did you say the attacks were then?

18 A Her home.

19 Q Specifically anywhere in the home?

20 A Where she lived in the bedroom.

21 Q And what was the timeframe for those attacks?

22 A I remember distinctly her saying June --

23 MR. WILLIAMS: Objection.

24 THE WITNESS: I'm sorry.

25 THE COURT: Overruled. You may answer the

Louis Gossett - Direct Examination by Mr. Caskey

1 question.

2 THE WITNESS: June, it was certain, but it was a
3 period of time. It wasn't just once or twice.

4 BY MR. CASKEY:

5 Q Is it your understanding there was one attack?

6 A No, I understood there were more.

7 Q Do you know who Alicia Mata is? Alicia Mata
8 Cortez?

9 A That's her mother.

10 Q Had you gotten to know Minor over the course of
11 your service as her Guardian ad Litem?

12 A Very well.

13 Q And would you describe the relationship between
14 Minor and her mother?

15 MR. WILLIAMS: Objection, Your Honor, no
16 foundation. That's speculation.

17 THE COURT: Step up here just a moment please.

18 (There was a bench conference out of the hearing of
19 the jury and the court reporter.)

20 THE COURT: Thank you. Thank you, Solicitor.

21 Re-ask the question.

22 MR. CASKEY: Yes, sir.

23 BY MR. CASKEY:

24 Q Mr. Gossett, how would you describe the
25 relationship between Minor and her mother?

Louis Gossett - Direct Examination by Mr. Caskey

1 A I have represented Minor for almost two years now.
2 I have had an extensive opportunity to observe that
3 relationship. It has been a roller coaster, to say the
4 least. It has been very, very difficult for Minor on quite
5 a few occasions. Initially it seemed liked it was a good
6 relationship, but it turned decidedly over the next 8
7 months and I think I -- I can't -- I observed that it was
8 not a healthy relationship.

9 MR. WILLIAMS: Objection, Your Honor. Move to
10 strike.

11 THE COURT: I'd overrule the objection and deny the
12 motion to strike.

13 BY MR. CASKEY:

14 Q Mr. Gossett, what did you do with the information
15 that Minor provided to you?

16 A Two stages in terms of the information. I had
17 specifically told Minor when she first told me that if I
18 did not get her permission that I wouldn't tell anyone
19 else. So that took a while. We were here I believe in
20 Family Court dealing with her circumstances and her
21 placement, I think it was December. I already had had that
22 first conversation with her and I let law enforcement and
23 DSS know that I knew that she had had that conversation
24 with me. I didn't tell them who and that came later when I
25 had permission from Minor to tell.

Louis Gossett - Cross-Examination by Mr. Williams

1 Q Just so I'm clear. Your conversation that we're
2 talking about, that was in what timeframe?

3 A It was no later, her birthday is and
4 I had gotten her a present and met her and her foster
5 parents at an exit near Irmo where I live, gave her the
6 present. We didn't have that conversation then, it was
7 after, but it was within just a few days.

8 Q Okay. Was she still pregnant -- was she still
9 pregnant?

10 A Oh, yes and that was the first week in December.
11 She delivered the baby I believe April 10th.

12 Q Thank you. I don't have any further questions.

13 THE COURT: Mr. Williams?

14 **CROSS-EXAMINATION**

15 **BY MR. WILLIAMS:**

16 Q Mr. Gossett, as a volunteer for the Guardian ad
17 Litem Program, I think you said you are President of a
18 Trade Alliance; is that right?

19 A Yes.

20 Q And so what -- what would be your employment, if
21 someone had to label you what you do for a living?

22 A Kids always ask that question. I am the President
23 of the Trade Association. We represent South Carolina
24 Manufacturer's Alliance. It's over a hundred years old.
25 It was originally the Textile Manufacturer's Association

Louis Gossett - Cross-Examination by Mr. Williams

1 diversified in 1995 so we represent all of the
2 manufacturer's in the state and all of their members, but
3 most of the big manufacturer's you're familiar with are
4 members.

5 Q And where did you go to college?

6 A Furman.

7 Q And what was your degree?

8 A Bachelor of Arts and Political Science.

9 Q And did you have any further education?

10 A University of Georgia Law School.

11 Q So you're an attorney?

12 A Yes, sir.

13 Q And are you a member of the South Carolina Bar?

14 A Yes, sir.

15 Q And how long have you an attorney?

16 A I was sworn in in Georgia in 1990 and South
17 Carolina in 1991.

18 Q Okay. And you practice law?

19 A I have one client that when I went to work for SCMA
20 I had worked with this client for a while. They were very
21 upset that I would be leaving and so I talked to the Board
22 and only deal manufacturing and they agreed to let me keep
23 that client.

24 Q All right. So your client is the Manufacturing
25 Alliance?

Louis Gossett - Cross-Examination by Mr. Williams

1 A No, sir, it's not my client. I don't -- I don't
2 represent the Manufacturing Alliance; I'm the President.

3 Q Okay. So you set up an alliance, if you will,
4 which you draw an income from that alliance, I guess; you
5 don't represent them?

6 A No, sir, I didn't -- I didn't set them up. They'd
7 been around since about 1900.

8 Q Okay.

9 A A little before my time, but I -- I actually run
10 the place.

11 Q Okay. So you've never -- you've never taken any, I
12 guess, courses or degrees dealing with child psychology,
13 counseling or anything like that?

14 A No, sir, I've been doing guardian work since 1991.

15 Q Okay.

16 A I've had a ton of cases.

17 Q Okay. But you haven't received any formal
18 education dealing with counseling?

19 A No, sir.

20 Q And you made the comment that they had an
21 unhealthy -- an unhealthy, referring to Minor her mama, an
22 unhealthy relationship?

23 A That's my observation.

24 Q As a parent?

25 A As a parent, as her guardian, just anybody watching

Louis Gossett - Cross-Examination by Mr. Williams

1 it. I saw things that I didn't like at all.

2 Q Again, you have no degrees dealing with child
3 psychology or anything like that?

4 A I have four children and I've got a pretty good
5 track record of dealing with guardian clients and with my
6 own kids and you don't say those kinds of things to a
7 child.

8 Q Did you ever do divorce work?

9 A No, sir.

10 Q Never did any Family Court work?

11 A I get appointed to Family Court cases as a member
12 of the bar over here and I've represented parents in -- in
13 divorce cases. My first guardian case was actually
14 representing three young boys who I had to make
15 recommendations as to which parent they would wind up with.

16 Q You've never done divorces for clients where child
17 custody was involved; the only work you've ever done was as
18 a guardian; is that right?

19 A I never represented them in the divorce
20 proceedings. I have, so, no, sir. The parents I've
21 represented were all custody issues.

22 Q You represented the parents or the children?

23 A I've done both.

24 Q Okay.

25 A I've done both. You know you get appointed to

Louis Gossett - Cross-Examination by Mr. Williams

1 cases over here and mostly I'd rather have the guardian
2 cases. Parents aren't always -- I don't always agree with
3 them, but looking out for the kids is a different story.

4 Q So you always -- you tend -- there's no specialty
5 that -- are you a member of a Guardian ad Litem specialty
6 or something like that?

7 A No, sir.

8 Q You haven't gone to any Guardian ad Litem schools
9 that teach you how to be a Guardian ad Litem?

10 A No, that became a lot more formal in the last few
11 years and I haven't done it. I've done a lot of cases
12 where you have that. The only time that I -- the only time
13 in my career that I didn't was four years when I was in
14 State Government.

15 Q So there is -- there is a specialty or school that
16 teaches people how to be guardians?

17 A I believe there is. Again, it's something that
18 they tried to be more formal about and give additional
19 training, particularly for non-lawyers and, in fact, that's
20 another place where I've been appointed. I've been
21 appointed to represent guardians because I think they
22 changed that at some point in the last 20-something years
23 where they decided that guardians might need lawyers too
24 occasionally.

25 Q So you haven't taken that class which is offered?

Louis Gossett - Redirect Examination by Mr. Caskey

1 A No, sir.

2 Q Is that put on by the South Carolina Bar?

3 A I couldn't tell you that. That's how little I know
4 about that -- that's how little I know about that class.

5 MR. WILLIAMS: That's all the questions I have,
6 Your Honor.

7 THE COURT: Redirect, Solicitor?

8 **REDIRECT EXAMINATION**

9 BY MR. CASKEY:

10 Q Mr. Gossett, you had prior experience as a
11 guardian?

12 A Extensive, yes, sir.

13 Q When did Minor expose to you the sexual
14 attacks?

15 A It was that first week in December of 2013.

16 Q Okay. No further questions.

17 THE COURT: Recross, Mr. Williams?

18 MR. WILLIAMS: None, Your Honor.

19 THE COURT: Thank you.

20 MR. CASKEY: Your Honor, we would --

21 THE COURT: Yes, sir.

22 MR. CASKEY: -- I was just saying we would ask that
23 the witness be excused.

24 THE COURT: Thank you. Thank you for being with us
25 today, Mr. Gossett. You may step down and you may be

Doug Novak - Direct Examination by Ms. Mayes

1 excused.

2 All right. Solicitor, you may call your next
3 witness.

4 MS. MAYES: The State would call Doug Novak.

5 DOUG NOVAK,

6 having been duly sworn, testified as follows:

7 THE CLERK: Have a seat. Once you're seated, state
8 your full name spelling your last on the record please.

9 THE WITNESS: Doug Novak. N-O-V-A-K.

10 **DIRECT EXAMINATION**

11 BY MS. MAYES:

12 Q And Sergeant Novak, would you tell us what position
13 you hold at the Lexington County Sheriff's Department.

14 A I'm currently over the Forensic Service Division,
15 which includes evidence room, CSI and the chemistry lab.

16 Q All right. And specifically at the Sheriff's
17 Department, what procedures, if any, are in place regarding
18 chain of custody and protection and security of evidence?

19 A The evidence room is very secure. To get in, if
20 the deputy comes in with evidence and it's closed, they
21 come in, they log it into the computer by a voucher system;
22 they secure it into a locked locker; once they push the
23 locker locked, they cannot enter it; only three of us have
24 access to the keys to get into it the next morning. So if
25 it goes into the locker, they secure it and we unlock it

Doug Novak - Direct Examination by Ms. Mayes

1 the next morning.

2 Q Who were the three people who had keys that you
3 mentioned?

4 A Myself, Candy Kyzer, and Beth Holliman.

5 Q And are Candy Kyzer and Beth Holliman, what is
6 their job description there?

7 A They're called Evidence Custodians. They are --
8 they check in, release, send items to the testing and
9 complete the chain of custody paperwork.

10 Q All right. I'm going to show you an item which is
11 marked as State's Exhibit 12 already in evidence and
12 specifically this item, agency case number 1306395
13 containing the buccal swabs of Martin Rodriguez. Do you
14 have information regarding this evidence?

15 A Yes, ma'am.

16 Q All right. Can you tell us whether or not that was
17 submitted to your evidence room; and if so, how?

18 A It was -- yes, it was submitted. It was placed
19 into the locker and then I entered it into evidence the
20 next day. It was submitted on September 12th, 2013 and on
21 December 13th, 2013, I entered it into evidence.

22 Q All right. And who was the officer who submitted
23 it into that locker?

24 A Renee Strickland.

25 Q Renee Strickland and who retrieved it from the

Doug Novak - Cross-Examination by Mr. Williams

1 locker to place it into evidence?

2 A I did.

3 Q All right. And once it was placed into evidence,
4 what can you tell us about where it was -- where it
5 remained until it was submitted to the State Law
6 Enforcement Division for analysis?

7 A When it's checked in, we place it in what we
8 consider a box and it goes into a climate controlled room.
9 Since it's DNA related, it's got to be climate controlled
10 and it was put in there until it was sent over SLED to be
11 tested.

12 MS. MAYES: Nothing further from this witness.

13 THE COURT: Mr. Williams?

14 MR. WILLIAMS: May it please the Court?

15 CROSS-EXAMINATION

16 BY MR. WILLIAMS:

17 Q Detective Novak?

18 A Sergeant.

19 Q Sergeant, okay. Sergeant you said that it had to
20 be climate -- it's a climate-controlled area?

21 A Yes, ma'am -- yes, sir.

22 Q What -- are you talking about temperature, humidity
23 or both?

24 A I'm not sure about the humidity part, but I know
25 it's temperature.

Doug Novak - Cross-Examination by Mr. Williams

1 Q All right. And what temperature do you have to
2 keep that DNA at?

3 A I don't know the exact temperature it stays at.

4 Q Do you know what the exact temperature is in that
5 area?

6 A In that area, we keep at 68 degrees.

7 Q Okay. And you said that you retrieved that sample
8 the day after it was reportedly deposited; is that correct?

9 A It was placed in the locker on September 12th, 2013
10 and the next morning I got it out of the locker.

11 Q And the way you know that it was deposited on that
12 date is that there was a notation on the piece of paper
13 saying it was deposited the day before because you weren't
14 working at that time?

15 A Correct.

16 Q So you come in in the morning, you -- you check to
17 see to see whatever is in the area and you put it wherever
18 it needs to go, right?

19 A Correct.

20 Q Where was this box that they dropped it in?

21 A The box?

22 Q Yes.

23 A The locker, it's -- outside there's a lobby for the
24 evidence room and there's a box that it can be secured by
25 lock and it sits in the lobby, what we consider the lobby.

Doug Novak - Cross-Examination by Mr. Williams

1 Q So outside of the evidence room there's a --
2 there's a box, a locker; describe it if you will please?

3 A There's a gray box.

4 Q Okay.

5 A Probably 3 x 4.

6 Q Okay.

7 A With a padlock on it.

8 Q Like a mailbox?

9 A No.

10 Q Smaller than a mailbox?

11 A 3 x 4 feet.

12 Q Like a stand up mailbox?

13 A Yes, sir.

14 Q And it sits outside the evidence room?

15 A It's not outside the evidence room, it's in the
16 lobby of the evidence room.

17 Q It's in the lobby of the evidence room?

18 A Yes.

19 Q And does it sit adjacent to some sort of partition
20 or something like that?

21 A There is a partition where our offices are behind
22 the partition.

23 Q Behind that partition is a secured area; is that
24 correct?

25 A Yes.

Doug Novak - Cross-Examination by Mr. Williams

1 Q So what happens is when you come to work in the
2 morning, you go into that box, you pull out these items and
3 then you open the door and go inside the secured area?

4 A Right.

5 Q And then at that point in time, you open it up?

6 A Open up the -- I'm not sure what your question is.

7 Q Is it in a larger -- is it in a larger envelope or
8 is it in a regular size -- do you open up anything or can
9 you tell exactly what it is by looking at the outside?

10 A What happens is if it was put in the box in the
11 locker, this would be what was put in the locker.

12 Q Okay.

13 A If I pull it, I wouldn't do anything else to it;
14 look at it, make sure it's sealed properly and put into
15 evidence.

16 Q So you see the white, referring to State's -- you
17 see the white envelope, if you will?

18 A Yes, sir.

19 Q It's not in another envelope?

20 A Sir?

21 Q It's not in another envelope?

22 A The buccal swabs are in -- when the DNA swabs are
23 collected, they come in to a brown envelope also and
24 they're put inside and sealed.

25 Q All right. I'm talking about when you came in that

Doug Novak - Cross-Examination by Mr. Williams

1 morning, what was the envelope that you found when you came
2 in?

3 A It would have been the envelope that's sitting
4 here.

5 Q The white one or the brown one?

6 A I don't recall which one it would have been.

7 Q You've got to envelopes there, right?

8 A Yes, sir.

9 Q Well, was one envelope inside the other envelope or
10 were they -- are they different?

11 A No they're not different. I mean they're
12 different, but I don't recall which way it was done.

13 Q Well, I'm guessing then this envelopes bigger than
14 this envelope, right?

15 A Yes, sir.

16 Q So more than likely it was in the white envelope
17 and then it went in the brown envelope?

18 A Normally when it is collected, the white one is
19 collected and they seal -- they seal the white one.

20 Q Okay.

21 A And they affix the tag on the back. So it's sealed
22 and marked with their initials on it.

23 Q Okay.

24 A We don't open the evidence. We don't open up
25 anything that's concealed. We just make sure the sign --

Doug Novak - Cross-Examination by Mr. Williams

1 the envelopes are sealed and -- and labeled correctly with
2 their initials.

3 Q Okay.

4 A I cannot tell you, not from memory, if this one was
5 inside that one or not or if it was outside. I don't know.

6 Q What is -- you don't know what this brown
7 envelope's for?

8 A Usually the brown one is sent when they're sending
9 it out to another agency or to somewhere else.

10 Q But you don't recall whether or not the white
11 envelope was in the brown envelope?

12 A No, sir.

13 Q Okay. Well, whatever envelope you picked up,
14 you -- you took it to the -- another area where it had to
15 be stored after you took it out of that evidence log, the
16 box or whatever?

17 A Yes.

18 Q Where did you take it?

19 A I take it out of the box, I sign it in and then it
20 gets forwarded then to Bin C48.

21 Q And what is Bin C48?

22 A It's a box that goes into the climate controlled
23 room.

24 Q So is this a secured area also?

25 A Yes, sir.

Doug Novak - Cross-Examination by Mr. Williams

1 Q So that's when it actually goes into the climate
2 controlled area when you take it out and put it in this box
3 and then you put it in the climate controlled area?

4 A I've got to log it in first and get a control
5 number, which is here. This is how we keep track of our
6 things in evidence; it has a bar code on it and once I get
7 it logged in, it goes to the climate controlled room and
8 it's stored until the next -- until requested to go to SLED
9 or whatever happens with it.

10 Q But you don't know if it was in the white envelope
11 or the brown envelope?

12 A I don't recall.

13 Q Do you put your initials on anything?

14 A No, sir.

15 Q So there's nothing here to indicate that you
16 actually touched any of this?

17 A When it comes in it's -- it's time stamped on their
18 vouchers that shows that I collect -- that I checked it in
19 at -- on September 13th, 2013 at 10:04 in the morning.
20 That's all done by computer. I can't force that in; I
21 can't do anything with that.

22 Q Could you have written on the envelope that you --
23 that you --

24 A We don't write on the envelopes.

25 Q Okay. That's all I have.

Doug Novak - Redirect Examination by Ms. Mayes

1 THE COURT: Redirect, Solicitor.

2 MS. MAYES: Yes, sir, Your Honor.

3 **REDIRECT EXAMINATION**

4 BY MS. MAYES:

5 Q Just to clarify, Sergeant Novak, what voucher are
6 you referring to that tells you that you placed it into
7 evidence on the morning of September 13th, 2013?

8 A It's called a property evidence copy, Lexington
9 County Sheriff's Department and it actually prints out who
10 the owner of the evidence was or who it was taken from at
11 this time and it shows the date and time, where it was
12 collected from, what type of case it was, the case number,
13 the case officer, the receiving officer, whoever was
14 submitting into evidence and it also says down on the
15 bottom received by, which would have been myself and the
16 date and time.

17 Q All right. And this white envelope that contains
18 the buccal swab, can you tell us whether or not it's sealed
19 when it is received?

20 A It is sealed when it's received with a -- it's
21 usually you can't see it now because it's been opened and
22 been tested. The line goes across the top, it's signed --
23 it's sealed there with initials on it, which you can kind
24 of see there there's initials on it.

25 Q All right. And is there a subject name and case

Doug Novak - Redirect Examination by Ms. Mayes

1 number on the envelope as well?

2 A It shows the officers who collected it, the agency
3 name, the case number and it -- who it was taken from.

4 Q All right. Now when evidence is submitted to the
5 State Law Enforcement Division for analysis, what extra
6 type of packaging is used to track that item as it makes
7 its way through?

8 A We sign it out through the evidence -- through the
9 computer system and it shows through the chain of custody
10 for it goes to, date and time and when it goes and then it
11 comes back to us.

12 Q All right. And are those packages sealed as well?

13 A Yes, they are.

14 Q Can you tell us whether or not, Sergeant Novak, as
15 a matter of procedure, you check packaging and evidence
16 when it's submitted regarding case number?

17 A I'm sorry?

18 Q You check packages regarding case number?

19 A Yes.

20 Q Do you check packages regarding name?

21 A Names, yes.

22 Q Do you check packages regarding whether or not it
23 is sealed?

24 A Yes.

25 Q And can you tell us whether or not that envelope

Roger Gilland - Direct Examination by Mr. Caskey

1 and the evidence you received in this case remained sealed
2 when you placed it in the evidence room?

3 A It was sealed when I placed it or when I placed it
4 into evidence.

5 Q Nothing further.

6 MR. WILLIAMS: No questions, Your Honor.

7 THE COURT: Thank you. Thank you, Sergeant, you
8 may step down.

9 All right. You may call your next witness.

10 MR. CASKEY: Thank you, Your Honor. The State
11 would call Roger Gilland.

12 ROGER GILLAND,
13 having bee duly sworn, testified as follows:

14 THE CLERK: Have a seat, sir. Once you're seated,
15 state your full name spelling your last on the record,
16 please.

17 THE WITNESS: Roger Gilland. G-I-L-L-A-N-D.

18 **DIRECT EXAMINATION**

19 BY MR. CASKEY:

20 Q Sergeant Gilland, what is your current rank and
21 what's your job?

22 A Currently I'm with the Warrant Division at
23 Lexington County Sheriff's Department. We serve civil
24 papers, warrants, do hospital security as well as transport
25 mental patients.

Roger Gilland - Direct Examination by Mr. Caskey

1 Q Where were you assigned or where were you working
2 in 2013?

3 A Lexington County Sheriff's Department with the
4 Crime Scene Unit.

5 Q Okay. What was your job duty with them?

6 A I would respond to a crime scene, process the scene
7 for evidence, collect the evidence, document, store, and
8 turn evidence into the evidence custodians for storage.
9 Some evidence I would process myself for things such as
10 fingerprints and many other duties like that.

11 Q Okay. If you would, please tell the jury a little
12 bit about your background and education as it pertains to
13 law enforcement?

14 A Okay. I've got an Associate Degree in Criminal
15 Justice. I've got a Bachelor's of Science Degree in
16 Forensic Crime Scene Investigation. I've been to the
17 academy, graduated the academy. I've had numerous classes
18 and seminars in crime scene related training.

19 Q Does that training include DNA evidence collection?

20 A Yes.

21 Q So does that specifically include buccal swabs?

22 A Yes.

23 Q Where were you assigned in 2000 -- April of 2014?

24 A I was assigned to the Crime Scene Unit.

25 Q Okay. How did you come to be involved in the case

Roger Gilland - Direct Examination by Mr. Caskey

1 of the State v. Martin Rodriguez?

2 A I received a call to respond to Lexington Medical
3 Center with Investigator Stoner in reference to collecting
4 a buccal swab from a victim as well as a newborn child.

5 Q Do you recall the day you responded to Lexington
6 Medical?

7 A It was April 11th.

8 Q Again in what year?

9 A 2014.

10 Q Okay. If you would please, what did you do there
11 when you arrived?

12 A When I arrived, I made contact with Investigator
13 Stoner and I believe there was a DSS Social Worker there as
14 well. I also made contact with the mother, who was a
15 juvenile child. Once there, I obtained a Consent to Search
16 from the mother for her and the child to collect a buccal
17 swab.

18 Q Okay. Let me ask you about that. What do you mean
19 by had to complete a Consent to Search?

20 A It's where I ask them for their permission to
21 freely and voluntarily provide with a buccal swab for DNA
22 purposes.

23 Q How were you able to identify those individuals?

24 A The mother and the child both had wristbands on.
25 The medical staff also verified who they were along with

Roger Gilland - Direct Examination by Mr. Caskey

1 their medical wristbands.

2 Q I'm handing you what's been marked as State's
3 Exhibits 9 and 10. Do you recognize those?

4 A Yes, I do.

5 Q What do you recognize?

6 A This is a Consent to Search Form. It's actually
7 two Consent to Search Forms; one of them for Minor and
8 the other one for Child , which is the newborn
9 child and the mother.

10 Q Who did you -- were you present to watch these
11 forms be completed?

12 A Yes, I was.

13 Q Who did you see write on these documents?

14 A This was Detective Stoner.

15 Q Now, after you had obtained these consents,
16 Consents to Search, what did you do?

17 A Once I obtained the Consent to Searches, I prepared
18 the buccal swab kits. We had sealed packs that had buccal
19 swabs in them and as well as a sanitized pair of gloves are
20 made for collecting DNA. I prepared a kit. I removed
21 everything from the package. The buccal swabs were
22 basically long Q-tips that are sealed in their own separate
23 package. I put the gloves on. Once I put the gloves on, I
24 identified the mother by her medical band as well as
25 medical staff verifying that was the mother and the child

Roger Gilland - Direct Examination by Mr. Caskey

1 and also the victim on this form.

2 I then opened the buccal swabs, which is the
3 Q-tips, once I opened the Q-tips, I swabbed the inside of
4 the left and right cheek. The swabs then get placed into a
5 small packet, like a box made for buccal swabs that are
6 made to allow the swabs to dry without any contamination.
7 Once it's placed in that, the swabs are sealed and they're
8 sealed into a package with an evidence seal.

9 Q Okay. I want to talk about those packages in just
10 a second, but do you recall specifically where you were
11 when you performed this swab?

12 A I was in the -- the room that the mother was in at
13 LMC. I don't recall the particular room number.

14 Q And was the infant child in that same room?

15 A No, it was not. It was in the newborn nursery.

16 Q Was the newborn nursery where you performed the
17 buccal swab on the baby?

18 A It is.

19 Q Okay. If you would please just hand me what you've
20 got here.

21 THE COURT REPORTER: These are State's 13 and 14,
22 Your Honor, for identification.

23 BY MR. CASKEY:

24 Q Sergeant Gilland, I'm handing you what's been
25 marked as State's Number 13. Do you recognize that?

Roger Gilland - Direct Examination by Mr. Caskey

1 A Yes, I do. This is the buccal swab and the kit and
2 envelope that I collected from the mother, Minor at
3 Lexington Medical Center.

4 Q How do you recognize that?

5 A This is my handwriting on the package and I also
6 remember doing this myself.

7 Q Do you recognize anything else on the document?

8 A Yes, it's got a case number related to this case.

9 Q Okay. And when did you say that you collected
10 this?

11 A On

12 Q All right, sir.

13 A At approximately 1:15.

14 MR. CASKEY: Your Honor, at this time, we'd move
15 State's Number 13 into evidence?

16 MR. WILLIAMS: I'd like to see it, please.

17 THE COURT: Yes, sir.

18 MR. WILLIAMS: Your Honor, I don't think the proper
19 foundation has been laid for it.

20 THE COURT: All right. 13 for identification
21 purposes only.

22 (State's Exhibit Number 13 was entered for
23 identification only.)

24 BY MR. CASKEY:

25 Q Well, let me have you take a look at this. I'm

Roger Gilland - Direct Examination by Mr. Caskey

1 handing you what's been marked as State's Exhibit Number
2 14; do you recognize that?

3 A Yes, this is the buccal swab collected from
4 Child , which is the newborn child.

5 Q Okay. And how do you recognize that?

6 A This is, again, it has my handwriting as well as
7 the case number related to it. I remember collecting the
8 sample and placing the sample in this package and sealing
9 this package.

10 Q Okay. And when was that collected?

11 A On April the 11th, 2014.

12 Q And where was it collected?

13 A At Lexington Medical Center in the newborn nursery.

14 Q Thank you. Now these were the items that you
15 collected from the mother, Minor , and the baby
16 infant, Child , right?

17 A Yes.

18 Q Okay.

19 MR. CASKEY: Your Honor, at this time, we'd move
20 State's Number 13 and 14 into evidence.

21 MR. WILLIAMS: Same objection, Your Honor.

22 THE COURT: Step up here, Mr. Williams.

23 (There was a bench conference out of the hearing of
24 the jury and the court reporter.)

25 THE COURT: All right. Thank you. Solicitor, the

Roger Gilland - Direct Examination by Mr. Caskey

1 State's 13 and 14 identification purposes only.

2 (State's Exhibit Number 14 was entered for
3 identification purposes only.)

4 BY MR. CASKEY:

5 Q State's Number 13 is what?

6 A This is the buccal swab for Minor that I
7 collected.

8 Q And 14 is?

9 A The buccal swab from Child that I
10 collected from him.

11 Q And you recognize those white envelopes beside
12 there, right?

13 A Yes.

14 Q What do you do with those envelopes?

15 A Once they were collected and sealed, I transported
16 them back to headquarters and logged them into evidence.
17 Once I logged them into the system, I hand delivered them
18 to the evidence custodian, who at the time was Glenn Ross.

19 Q Where was that transfer?

20 A At the evidence facility itself at headquarters.

21 Q And Glenn Ross is who?

22 A He is a Crime Scene Investigator. At the time he
23 was on light duty and was performing duties in the evidence
24 area as an evidence custodian.

25 Q Okay. And afterwards, what did you do in this

Glenn Ross - Direct Examination by Mr. Caskey

1 case?

2 A I believe that's my involvement in this case.

3 Q Did you generate any reports?

4 A Yes.

5 MR. CASKEY: No further questions.

6 MR. WILLIAMS: No questions, Your Honor.

7 THE COURT: Thank you. Thank you very much, Deputy
8 Gilland. You may step down and you may be excused. Thank
9 you for being with us.

10 All right. Solicitor, you may call your next
11 witness.

12 MR. CASKEY: Your Honor, at this time, the State
13 would call Glenn Ross.

14 GLENN ROSS,
15 having been duly sworn, testified as follows:

16 THE CLERK: Have a seat, sir. Once you're seated,
17 state your full name spelling your last on the record,
18 please?

19 THE WITNESS: Glenn Ross. R-O-S-S.

20 DIRECT EXAMINATION

21 BY MR. CASKEY:

22 Q Investigator Ross, where are you currently
23 employed?

24 A Lexington County Sheriff's Department.

25 Q In what capacity?

Glenn Ross - Direct Examination by Mr. Caskey

- 1 A Crime Scene Investigation.
- 2 Q Where were you employed in April of 2014?
- 3 A Lexington County Sheriff's Department.
- 4 Q What did you do at that time?
- 5 A I was assigned to the evidence room. I had tore my
6 right bicep, had an injury and had to have surgery to have
7 it repaired so I was on light duty working in evidence.
- 8 Q What were your duties and responsibilities at that
9 time?
- 10 A Accepting evidence that's turned in by different
11 personnel, deputies, and assign it to a location in the
12 evidence warehouse.
- 13 Q Did you receive evidence in this case, State v.
14 Martin Rodriguez?
- 15 A Yes, sir, I did.
- 16 Q What was that evidence?
- 17 A Buccal swabs, buccal or buccal, whichever way you
18 want to say it.
- 19 Q When did you receive it?
- 20 A It was on 4/11/14, I believe that's right.
- 21 Q And how did you receive it?
- 22 A It was handed to me by Investigator Gilland.
- 23 Q And who's Investigator Gilland?
- 24 A He's a Crime Scene Investigator that worked with me
25 in the unit.

Glenn Ross - Direct Examination by Mr. Caskey

1 Q I'm going to hand you what's been marked for
2 identification purposes as State's Number 13 and State's
3 Number 14. Do you recognize those?

4 A Yes, sir..

5 Q How do you recognize those?

6 A Well, they're sealed and they have Roger's name
7 with the case number on it for a specific case.

8 Q Okay. What is that specific case?

9 A It's 13016395.

10 Q And what case does that correspond to?

11 A The case that we're talking about right now in
12 reference to Rodriguez.

13 Q Is there anything else you can identify on these
14 packages?

15 A Just the number that the computer prints out in
16 reference to the property voucher that we assign it a
17 property number and it's attached to it also.

18 Q What is a property voucher?

19 A It's in the program. It's a voucher to show that
20 you have turned in the evidence.

21 Q And how are those records kept?

22 A In the computer.

23 Q Is it automated?

24 A It is a program, yes, sir.

25 Q Thank you, sir. When did you say this -- that you

Beth Holliman - Direct Examination by Mr. Caskey

1 collected this evidence?

2 A It would be on 4/11/14.

3 Q And what did you do with it once it was handed to
4 you?

5 A Assigned it to a location of C-62 in the warehouse.

6 Q Is that inside the evidence room?

7 A Yes, one of the locations, yes, sir.

8 Q Thank you. No further questions.

9 MR. WILLIAMS: No questions, Your Honor.

10 THE COURT: Thank you. Thank you very much,
11 Sergeant, for being with us today. You may step down.

12 All right. Solicitor, you may call your next
13 witness.

14 MR. CASKEY: Thank you, Your Honor. The State
15 would call Beth Holliman.

16 BETH HOLLIMAN,

17 having been duly sworn, testified as follows:

18 THE CLERK: Have a seat please, ma'am. Once you're
19 seated state your full name spelling your last, please.

20 THE WITNESS: Margaret Elizabeth Holliman.

21 H-O-L-L-I-M-A-N.

22 **DIRECT EXAMINATION**

23 **BY MR. CASKEY:**

24 Q Ms. Holliman, what do you do?

25 A I'm Evidence Custodian at the Lexington County

Beth Holliman - Direct Examination by Mr. Caskey

1 Sheriff's Department.

2 Q How long have you been employed in that position?

3 A I've been employed with the Sheriff's Department
4 since October 2002. I've been in evidence since January of
5 2005.

6 Q And what are your job duties as an Evidence
7 Custodian?

8 A Primarily I'm responsible for the care, custody and
9 control of all of the evidence that's turned into the
10 Sheriff's Department, with facilitating going to the labs
11 for processing. We also facilitate it being released back
12 to its owner.

13 Q As to the case of the State v. Martin Rodriguez,
14 what was your involvement in this case?

15 A I did take some buccal swabs over to the South
16 Carolina Law Enforcement Division commonly known as SLED.

17 Q Okay. And how do you know that?

18 A We keep electronic records of everything that we do
19 in our office.

20 Q Do you have those records with you today --

21 A I do.

22 Q To refresh your memory --

23 A Yes.

24 Q All right. I'm going to hand you two items that
25 have been marked for identification purposes as State's

Beth Holliman - Direct Examination by Mr. Caskey

1 Exhibit's 13 and 14. Just take a minute and look at those.

2 A Okay.

3 Q What do those appear to be?

4 A They are sealed SLED packages that contain a buccal
5 swab.

6 Q How do you recognize those, I'm sorry?

7 A My initials at the top of the envelope and I signed
8 it here as well.

9 Q Let me have you look here at State's Number 12 as
10 well. Do you recognize that?

11 A Yes, I do.

12 Q How do you recognize that?

13 A It also has my initials and signature on it.

14 Q All right. And is there anything else that you
15 recognize on these?

16 A These are bar code labels that are generated by the
17 evidence custodians. Each item in our evidence room is bar
18 coded. It has a key number and also a control number.

19 Those are interchangeable terms key and control. That's a
20 property room number. Each item in evidence is given its
21 own individual key and property room number.

22 Q And do those items appear to be the items that you
23 dealt with in this case?

24 A They do.

25 Q Again, what was your role in that -- in this case?

Beth Holliman - Direct Examination by Mr. Caskey

1 A I took them over to SLED for testing.

2 Q Very briefly, could you describe what happened when
3 you took them over to SLED?

4 A Our policy at the Sheriff's Department is when an
5 item needs to go to SLED for testing, the investigator or
6 crime scene person advises us that it needs to go. We then
7 take it out of our evidence room, which is a concealed, I'm
8 sorry, a controlled environment. It's only accessible by
9 the evidence custodians with a key and a prox card. We
10 take it from that location where the computer says it is,
11 we take it from there to SLED and leave it with their
12 Evidence Control Technicians.

13 The package that we take over is sealed. SLED then
14 takes it and puts it in one of their bags; heat seals it in
15 front of us. We check the seal, sign the seal and initial
16 it and then it gets sent to their evidence control process.

17 Q And did you do that in this case with these items?

18 A Yes, I did.

19 Q Who was it at SLED that you went through this
20 process with?

21 A Doris Yarborough. She is one of their Evidence
22 Control Technicians.

23 Q All right. And throughout the transport process to
24 where you retrieved it at Lexington County Sheriff's
25 Department Evidence Room until you transferred it to Ms.

Beth Holliman - Cross-Examination by Mr. Williams

1 Yarborough, were these items in your sole care, custody and
2 control?

3 A They were.

4 Q Did these items appear to you to be sealed?

5 A Yes, they were.

6 Q And just so we're clear, how do you go about
7 packaging and sealing these items when you submit them to
8 SLED?

9 A SLED takes our sealed package, places it in a bag
10 that has their identification label on it, they seal it
11 with a heat sealer, we watch them do that, then we check
12 the seal, initial and date the seal and fill out the front
13 portion of that bag where we actually sign saying that we
14 sealed it.

15 Q And last question, for what purpose did you
16 transport it to SLED?

17 A For testing.

18 Q What sort of testing?

19 A I believe it was sent for DNA testing.

20 Q Thank you. No further questions.

21 MR. WILLIAMS: May it please the Court.

22 THE COURT: Yes, sir.

23 **CROSS-EXAMINATION**

24 **BY MR. WILLIAMS:**

25 Q Ms. Holliman, what was the date that you first came

Beth Holliman - Cross-Examination by Mr. Williams

1 in contact with the two items that you have been questioned
2 about?

3 A Which items specifically, sir?

4 Q The items reportedly have a buccal swab or buccal
5 swab in them?

6 A Yes, sir, there's multiple buccal swabs.

7 Q All right. Well, on the date of April the 11th or
8 April the 12th, did you receive any buccal swabs on the
9 date of April the 12th perhaps or April the 11th?

10 A To be sent to SLED?

11 Q Yes.

12 A You'd have to show me which buccal swab you're
13 referring to, sir, I'm sorry.

14 Q Well, referring to what has been marked State's
15 Exhibit Number 14 for ID purposes, did you receive that
16 item?

17 A Initially receive this item or take it to SLED?

18 Q Either way?

19 A I did take this item to SLED, yes.

20 Q When did you first have contact with that item?

21 A I sent this item to SLED on April the 21st, 2014.

22 Q Do you know where -- let's see. Let me ask you to
23 look at -- let me ask you to look at State's Exhibit Number
24 13 for identification purposes only; when did you receive
25 that item?

Beth Holliman - Cross-Examination by Mr. Williams

1 A This is an item that I also took over on April
2 21st, 2014.

3 Q Is that the first contact you had with the two
4 items?

5 A I believe so, yes.

6 Q And I believe you said that you handed those items
7 to Doris Yarborough?

8 A That's correct.

9 Q And did you have any other connection with
10 receiving those items back?

11 A I was only responsible for taking them to SLED.

12 Q So once it went to SLED, you had no further contact
13 with those two items?

14 A I did not receive them back from SLED after testing
15 if that's what you're asking.

16 Q So you didn't get them back?

17 A I did not, no.

18 MS. MAYES: Objection, Your Honor, may we approach?

19 THE COURT: Yes, ma'am.

20 (There was a bench conference out of the hearing of
21 the jury and the court reporter.)

22 THE COURT: All right. So you withdraw the
23 question, Mr. Williams?

24 MR. WILLIAMS: I do, Your Honor.

25 THE COURT: All right. Thank you. Any further

Beth Holliman - Cross-Examination by Mr. Williams

1 questions?

2 BY MR. WILLIAMS:

3 Q Did you sign anything at SLED when you delivered it
4 to SLED?

5 A We do sign paperwork with SLED, yes.

6 Q And then the person who receives it from you would
7 sign something acknowledging that they received it?

8 A Their signature is on the paperwork, yes, sir.

9 Q And did you receive those items from area 62, C-62?

10 A That is one of our locations, yes.

11 Q Is that the area where you received those items?

12 A These two, yes, sir, that is correct.

13 THE COURT: And there was two questions there.

14 What area was it?

15 THE WITNESS: It's climate controlled room and our
16 box label is 62..

17 THE COURT: The area is what -- what was that
18 response?

19 THE WITNESS: C-62.

20 THE COURT: C-Charlie, 62?

21 THE WITNESS: Yes, that's correct.

22 THE COURT: I just didn't understand.

23 BY MR. WILLIAMS:

24 Q And that's a particular area in the evidence room?

25 A That is correct.

Beth Holliman - Redirect Examination by Mr. Caskey

1 Q That's all the questions I have.

2 THE COURT: Redirect, Solicitor?

3 MR. CASKEY: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. CASKEY:

6 Q Ms. Holliman, you had testified you took those two
7 items. Are these the only items you took over to SLED?

8 A No, we took three items to SLED.

9 Q Okay. And I hand you State's Number 12. Did you
10 take that item as well?

11 A Yes, I did.

12 Q When did you take that?

13 A April the 21st, 2014.

14 Q Okay. And just so we're clear for the record, do
15 these items have property numbers on them?

16 A They do.

17 Q What are those numbers; if you would, when you read
18 them, identify them by their Exhibit Number first?

19 A Sure. State's Exhibit 12 is Lexington County
20 Sheriff's Department property room number 72813. State's
21 14 is property room number 76796 and State's 13 is 76795.

22 Q You took all three of those items over to SLED
23 using the process that you've just described?

24 A Yes, I did.

25 Q Okay. And you retrieved those items from where?

Beth Holliman - Recross-Examination by Mr. Williams

1 A From our climate controlled room.

2 Q And that's where?

3 A In the evidence room at the Sheriff's Department.

4 Q Thank you, ma'am. Ms. Holliman, if you could, on
5 these vouchers, can you clarify the names of the parties
6 involved with each of -- that are associated with each of
7 these?

8 A Sure. 76795 states that it's a buccal swab from
9 Minor. 76796 states that it's a buccal swab
10 collected from newborn, Child. The spelling on
11 the last name is. I can't find the other
12 buccal swab, I'm sorry. 72813 just states it's a DNA swab,
13 it doesn't give me an individual's name.

14 Q Okay. Thank you, ma'am.

15 MR. CASKEY: No further questions, Your Honor.

16 THE COURT: Recross?

17 MR. WILLIAMS: Yes, Your Honor.

18 **RECROSS-EXAMINATION**

19 **BY MR. WILLIAMS:**

20 Q You said one did not give an individual's name on
21 the DNA swab?

22 A It just says DNA swab.

23 Q And are you referring to State's Exhibit Number 12?

24 A That is correct.

25 MR. WILLIAMS: That's all the questions I have,

1 Your Honor.

2 THE COURT: Thank you. Thank you very much. You
3 may step down.

4 All right. Madam Forelady, ladies and gentlemen of
5 the jury, perhaps now would be a good time to take our
6 luncheon recess. I remind you during this recess do not
7 discuss this case with others including your fellow jurors,
8 lunch mates, family, friends, or anyone else. Do not read
9 watch or listen to any news accounts about the case. Do
10 not do any independent research or any research on the
11 internet.

12 I would ask you to please be back promptly at 2:30;
13 if you'd please be back promptly at 2:30. I have another
14 matter to take up at 2 o'clock. That's why I'm breaking
15 now and giving you a few extra -- a few extra minutes for
16 the City of Lexington traffic. Enjoy yourself. I hope
17 y'all have a pleasant lunch. Thank you.

18 (The jury left the courtroom at 12:49 p.m.)

19 THE COURT: For purposes of this case, we'll be in
20 recess until 2:30.

21 MS. MAYES: Thank you, Your Honor.

22 (A recess for lunch was observed.)

23 THE COURT: All right. Anything from the State
24 before we bring in our jury, Solicitor?

25 MS. MAYES: No, sir, Your Honor.

1 THE COURT: Defense?

2 MR. WILLIAMS: Nothing from the defendant, Your
3 Honor.

4 (The jury entered the courtroom at 2:47 p.m.)

5 MS. MAYES: Your Honor, may we approach?

6 (There was a bench conference out of the hearing of
7 the jury and the court reporter.)

8 THE COURT: All right. Welcome back, ladies and
9 gentlemen of the jury panel, I apologize for the delay. I
10 would advise you it had nothing to do with the parties.
11 They were not -- they were not on time; they were early. I
12 had another matter scheduled at 2 o'clock that I had to
13 address and it took a little longer than I thought it
14 would. Be that as it may, I will certainly attempt to
15 manage your time more efficiently. Your time is very
16 important to -- to the Court and to the parties. I hope
17 y'all had a pleasant lunch and with all that being said,
18 we're continuing the trial of the case.

19 MR. WILLIAMS: Your Honor, I do have a matter I'd
20 like to place on the record at this point in time.

21 THE COURT: All right. Do you want --

22 MR. WILLIAMS: In reference to what we're getting
23 ready to do.

24 THE COURT: All right. Do you want me to have the
25 jury step back out?

1 MR. WILLIAMS: If we could, Your Honor.

2 THE COURT: All right. Step back out please,
3 ladies and gentlemen.

4 (The jury left the courtroom at 2:48 p.m.)

5 THE COURT: All right. Yes, Mr. Williams.

6 MR. WILLIAMS: Your Honor, it's my understanding
7 that the solicitor is attempting to recall a witness who
8 testified prior to the lunch break, Ms. Holliman, in
9 reference to a statement that she made during her direct
10 testimony that she did not see the name on a DNA swab
11 sample. Your Honor, the objection we have, not necessarily
12 is only to form, but the witness is under sequestration, so
13 the question that revolves in my mind is whether or not
14 someone had a conversation with Ms. Holliman that would
15 allow her now to come back and change her testimony.

16 So that would be a basis of an objection for her
17 now to come forward and testify. She had her turn on
18 direct examination, cross-examination, redirect and
19 recross. So for her to take the stand when she's under
20 sequestration and attempt to change her testimony after
21 she's consulted -- well, we don't know that she's
22 consulted. I guess she could have determined it by
23 herself, but I'm assuming there was some conversation with
24 the solicitor because the solicitor wants to reintroduce
25 her as a potential witness and we would object to that.

1 MS. MAYES: Yes, sir, Your Honor, she was the last
2 witness who testified in this case. She was questioned
3 regarding a form or property report. Her testimony was
4 that she did not see the name, Martin Rodriguez on it.
5 Following her leave from the stand, we showed her the form
6 and asked her if she saw his name on it; she stated that
7 she did and it was an oversight, but she missed it
8 previously and the witness will explain that and we are
9 recalling this witness, Your Honor, pursuant to Rule 611
10 and we do ask for the Court's permission to recall this
11 witness to acknowledge that the defendant's name is
12 associated with that property number and the DNA swab.

13 MR. WILLIAMS: And, Your Honor, we would reaffirm
14 that this would constitute a violation of the sequestration
15 order because the -- the entire purpose of sequestration is
16 to prohibit other individuals from hearing their testimony.

17 THE COURT: That would not include counsel. She is
18 not conferring with other witnesses on this, it's counsel
19 who has questioned a witness just like we do any witness
20 who is under sequestration. We can still talk to a witness
21 about their testimony.

22 MR. WILLIAMS: Your Honor, I'm not sure I agree
23 with what the solicitor has indicated as being the rule. I
24 think once they have been called, I don't believe that
25 they're allowed to talk to them again until after their

1 testimony is done.

2 MS. MAYES: I don't know of any prohibition, Your
3 Honor, that would prevent counsel from speaking with a
4 witness regarding their testimony as long as it does not
5 involve the testimony of other witnesses.

6 THE COURT: Was that State's 12?

7 MR. WILLIAMS: It was, Your Honor.

8 THE COURT: May I --

9 MS. MAYES: I have it right here, Your Honor.

10 THE COURT: All right.

11 MR. WILLIAMS: I believe it is in evidence, Your
12 Honor.

13 THE COURT: It is. I think it is. State's 12.

14 MR. WILLIAMS: I think it is too.

15 THE COURT: Without objection, I believe.

16 MR. WILLIAMS: Without objection, Your Honor.

17 THE COURT: Give me just a moment please.

18 This was Ms. Holliman.

19 MS. MAYES: Yes, sir, Your Honor. The last witness
20 who testified.

21 THE COURT: And the question was -- what was the
22 question Mr. Williams asked; what was the question you
23 asked Mr. Williams.

24 MS. MAYES: Yes, sir, Your Honor, it was actually a
25 State's question.

1 MR. WILLIAMS: Yeah, the State asked her whether or
2 not anybody's name was on the sample and she remarked, no
3 and then I stood up after she asked the question and I
4 asked, did you say that nobody's name was on it and she
5 said no.

6 MS. MAYES: It was actually the question --

7 THE COURT: I don't recall the testimony on that in
8 that manner.

9 MS. MAYES: I'm sorry.

10 THE COURT: I don't recall the testimony being
11 presented initially in that manner. I recall it being
12 shuffled through 12, 13, and 14 without any identifying
13 State's witness, excuse me, State's Exhibit numbers and she
14 was reading off some other numbers that I had no idea. I
15 don't know if she was reading off PR number; hand me 13.

16 MS. MAYES: That is correct, Your Honor. She
17 was -- she was --

18 MR. WILLIAMS: Your Honor, I asked her directly
19 about 12 and we can play it back. I asked her directly
20 about 12.

21 THE COURT: After -- after -- I don't disagree with
22 that and I'm saying I don't think that was the --

23 MS. MAYES: The question posed, Your Honor, was
24 about a voucher, a PR voucher and she stated that the name
25 was not on the voucher when in fact it is.

1 THE COURT: Was not on the what?

2 MS. MAYES: On the voucher. It is a property
3 report, the property report she had.

4 THE COURT: What is the voucher?

5 MS. MAYES: That's just -- that's the word I
6 believe or the way that the question was phrased, but it
7 was referring to the property report number 72813, which
8 would be State's Exhibit 12.

9 THE COURT: And that's not my question. What is
10 the voucher; what voucher was introduced into evidence?

11 MS. MAYES: It's not in evidence.

12 THE COURT: So why are we recalling a witness; why
13 are you, the State, recalling a witness to talk about a
14 document that is not in evidence.

15 MS. MAYES: I understand, Your Honor.

16 THE COURT: I'm just -- I'm just trying to track
17 it; I'm not saying, I haven't ruled yet. I'm just trying
18 to track it. Because State's 12 --

19 MS. MAYES: That's correct, Your Honor. There was
20 a question about whether there is a way to track the
21 property number that's on State's Exhibit 12. We believe
22 it is on a white label on the outside of that plastic baggy
23 which bears the signature of Ms. Holliman and that number
24 72813 is tracked back to a voucher and then she said she
25 did not have a name on the voucher, but --

1 THE COURT: And the voucher is not in evidence?

2 MS. MAYES: That's correct, Your Honor.

3 THE COURT: But do you have a copy of the voucher?

4 MS. MAYES: Yes, sir, Your Honor.

5 THE COURT: Would you mark it for me please as a
6 Court's Exhibit and let me see it.

7 MS. MAYES: Yes, Your Honor.

8 THE COURT: And, Solicitor, her testimony and Mr.
9 Williams also, was the only time the term voucher was used
10 by any of the chain of custody witnesses; do you agree?

11 MS. MAYES: I agree, Your Honor.

12 THE COURT: Do you remember any different -- is
13 your's any different, Mr. Williams?

14 MR. WILLIAMS: Your Honor, I was -- when I handed
15 it to her, I recall me handing her State's Exhibit Number
16 12 and asking her whether or not there's a name on the
17 information on State's Exhibit Number 12 and she said no
18 and we can play it back, Your Honor.

19 THE COURT: Well, I'm just trying to track it in my
20 mind right now.

21 MR. WILLIAMS: Which is not the same statement
22 that's being made about this voucher.

23 MS. MAYES: And again if the witness gave that
24 response concerning Exhibit Number 12 that would be in
25 error as well, although I don't think she was looking at

1 the outer packaging or the actual white envelope containing
2 the buccal swab.

3 THE COURT: So -- so this document marked Court's
4 Exhibit Number 3 is -- was handed to her and identified as
5 a voucher.

6 MS. MAYES: Your Honor, I believe she would have
7 had a copy with her -- with her materials.

8 THE COURT: So she was referring to something --

9 MR. WILLIAMS: Your Honor, I don't agree with that
10 at all. I don't think they handed a voucher to her at all.
11 I have no idea what the Solicitor's talking about. The
12 only thing I asked about was State's Exhibit Number 12.

13 MR. CASKEY: Your Honor, if the Court will hear me,
14 I know it's Ms. Mayes motion --

15 MR. WILLIAMS: And, Your Honor, I would object to
16 having two counsel argue the same motion.

17 THE COURT: I -- I don't -- I don't object to
18 in-camera.

19 MR. CASKEY: Your Honor, I believe my question
20 to --

21 THE COURT: Let me say I don't object -- I'd
22 overrule your objection if it's camera, I'll be delighted
23 to hear whoever wishes to speak.

24 MR. CASKEY: Thank you, Your Honor. I had asked
25 Ms. Holliman to tell the Court what the property numbers

1 were, property report numbers associated with those items
2 were and that's the 72813 I think the number is, those
3 numbers that are on the white labels. I then asked her
4 what names were associated with those items. She read --
5 she read the property report numbers from her vouchers and
6 then when I asked her the second question, whether or not
7 or what the names were associated with those, she was
8 referring to a property -- those vouchers and not to the
9 evidence items themselves and I believe that's what we're
10 attempting to clarify.

11 MR. WILLIAMS: And we would take the position that
12 that's something that the jury weighs. If they want to get
13 in closing argument about what she really meant, that's a
14 different question.

15 THE COURT: So as to -- let me make sure I'm
16 tracking. As to 12, 13, and 14, when Ms. Holliman was
17 asked the question, in answering the question, she was not
18 referring to the evidence, 12, 13 and 14, she was concerned
19 with some form that she had up here that wasn't even in
20 evidence?

21 MR. CASKEY: That's correct, Your Honor.

22 THE COURT: And that thereafter it had never been
23 offered into evidence?

24 MR. CASKEY: Yes, sir.

25 THE COURT: And -- and as far as the what's now

1 marked Court's Exhibit Number 3, Lexington County Sheriff's
2 Department Property Report Evidence Room copy, I don't see
3 on Court's 3 the PR number 72813; I don't, maybe I'm just
4 missing it, but I don't -- I don't see how it relates back
5 to State's 12. By the testimony and State's 12 is in
6 evidence without objection and when you look at State's 12
7 it's an envelope inside of it; there are two envelopes
8 inside. The white envelope inside has subject's name,
9 Martin Rodriguez. The brown envelope has a case number on
10 it, L14-4963-3 and on the back it's got a fix kit shipping
11 seal here and then the initials JLB 4/30/14. How does she
12 relate -- maybe I need to hear her in-camera.

13 I guess first off I think it is when there's a
14 sequestration order, I think the attorneys can talk to
15 witnesses. I don't think an attorney can talk to Officer B
16 and tell Officer B what Officer A testified to. I don't --
17 I don't think you can do that, but you can prepare, you can
18 continue to prepare your witnesses. There's not a
19 prohibition against continuing to talk to the witnesses.

20 As far as talking with Ms. Holliman afterwards,
21 if -- if it does appear an oversight, I think the solicitor
22 can speak with that witness in an attempt to ferret out so
23 to speak what the true status of the evidence is and show
24 that document and -- and therefore, I don't think it is a
25 violation of the motion to sequester. I rely on State v.

1 Tisdale. In that case Tisdale was a motion for a mistrial
2 based on violation of a sequestration order, but it
3 involved the eyewitness identification of the defendant and
4 the defendant's clothing that -- and the witness happened
5 to be in the courtroom at the time of the solicitor's
6 opening and the description of the clothing came out and
7 the witness had never before remembered that and then
8 testified to it.

9 That motion to mistry was denied. Mr. Williams
10 motion is only a motion to not allow the State to recall
11 Ms. Holliman. I'm just still a little perplexed myself how
12 Court Exhibit 3 independently relates to -- I -- I do see
13 it. Property, it takes me a while. Property Report. I
14 would, in defending myself, point out that on State's 12
15 it's PR Number and on the Court's 3, it's not PR Number,
16 it's Property Report Number, so it's more fully and
17 completely spelled out.

18 All right. I would -- I'm going to allow you to
19 recall the witness, Mr. Caskey, and of course I will allow
20 Mr. Williams full and complete cross-examination, not
21 limited to the scope of that testimony which may be
22 elicited upon recall.

23 Anything further, Mr. Williams?

24 MR. WILLIAMS: No, Your Honor.

25 THE COURT: Anything additional from the State?

Beth Holliman - Direct Examination by Mr. Caskey

1 MS. MAYES: No, sir, Your Honor.

2 THE COURT: All right. Here's 12, 13 and 14 and
3 here is Court's 3.

4 THE COURT REPORTER: Thank you.

5 All right. Bring us our jury please.

6 THE BAILIFF: Yes, Your Honor.

7 (The jury entered the courtroom at 3:11 p.m.)

8 THE COURT: Thank you. Thank you very much, ladies
9 and gentlemen, for your patience with the Court. If you
10 would please continue to give the parties your complete and
11 undivided attention?

12 Solicitor, you may call your witness.

13 MR. CASKEY: Thank you, Your Honor. The State
14 calls Beth Holliman.

15 THE CLERK: Still under oath, Your Honor?

16 Still under oath, Your Honor?

17 THE COURT: Oh, yes, I'm sorry. I thought you were
18 talking with her, Madam Clerk. I apologize. Y'all are
19 usually a little more disciplined than me about that.

20 Thank you. Thank you very much.

21 **DIRECT EXAMINATION**

22 BY MR. CASKEY:

23 Q Ms. Holliman, just before lunch when you were
24 talking about property that was in evidence, specifically
25 with property with -- our evidence with property, ID Number

Beth Holliman - Direct Examination by Mr. Caskey

1 72813, do you recall that testimony?

2 A I do.

3 Q Okay. I'm going to hand you what's marked as
4 State's Exhibit Number 12. Take a look at that package and
5 do you see a property number on that piece of evidence?

6 A Yes, it's 72813.

7 Q And where is that on the bag? If you'd just hold
8 it up.

9 A It's on the sticker in the upper left-hand corner.

10 Q Okay. And what does that number indicate?

11 A It's a property room number.

12 Q And what's the purpose of that?

13 A It's an individual number that's unique to each
14 item of evidence that we have.

15 Q Okay. If you would just open that up. And on the
16 white label or the white envelope itself -- could I hand
17 that to you please. What name is associated with this
18 item?

19 A Martin Rodriguez.

20 Q And this is on the actual evidence kit, buccal swab
21 kit?

22 A It is on the buccal swab on the order.

23 Q Okay. Thank you. No further questions.

24 THE COURT: Thank you, Solicitor.

25 Mr. Williams?

Beth Holliman - Cross-Examination by Mr. Williams

CROSS-EXAMINATION

1
2 BY MR. WILLIAMS:

3 Q When you were being cross-examined prior to lunch
4 and you clearly testified that nobody's name was on Exhibit
5 12; isn't that true?

6 A I was looking at the sticker, sir.

7 Q Who pointed out the fact that Mr. Martinez name was
8 reflected on any item in Exhibit 12?

9 A The solicitor.

10 Q The solicitor told you that it was?

11 A That's to only clarify that.

12 Q You said she pointed it out to you?

13 A No, sir, we clarified it after I testified.

14 Q How did that occur?

15 A I looked at my paperwork and saw it on there and it
16 was that I had made a mistake.

17 Q So the solicitor didn't point it out to you?

18 A No, they did not.

19 Q And the white envelope that you referenced, was it
20 in this -- was it sealed as it is right now when you
21 received it?

22 A We receive sealed packages, yes, sir.

23 Q And the reason you said that -- that there was no
24 name on it is because?

25 A I was reading off of the label, the white label I

Beth Holliman - Cross-Examination by Mr. Williams

1 affixed to it where it just says DNA swab.

2 Q But clearly you were asked about the DNA sample,
3 weren't you?

4 A Yes, I didn't open the package itself.

5 Q Well, the package was already open, wasn't it?

6 A I didn't pull the items out, sir. I was looking
7 specifically at PR numbers and the label itself.

8 Q So it's easy to make a mistake when you deal with
9 stuff like that?

10 A Mistakes happen. We are humans.

11 Q Right. And they happen in the lab too, don't they?

12 A I don't know. I don't work in the lab, sir.

13 MR. WILLIAMS: That's all the questions I have,
14 Your Honor?

15 THE COURT: Redirect?

16 MR. CASKEY: Nothing further from the State, Your
17 Honor.

18 THE COURT: Thank you. Thank you very much, Ms.
19 Holliman. You may step down.

20 Solicitor, you may call your next witness.

21 MS. MAYES: The State calls Maria Nunez.

22 THE CLERK: Right up here, please, ma'am. You can
23 lay your papers right here for a second. Place your left
24 and raise your right.

25 MARIA NUNEZ,

Maria Nunez - Direct Examination by Ms. Mayes

1 having been duly sworn, testified as follows:

2 THE CLERK: You can take your papers with you,
3 ma'am. Have a seat. Once you're seated, speak up loud and
4 clear stating your full name, spelling your last, please.

5 THE WITNESS: Maria L. Nunez. Last name is
6 N-U-N-E-Z.

DIRECT EXAMINATION

8 BY MS. MAYES:

9 Q All right. And, Ms. Nunez, where are you employed?

10 A I'm employed at Southeast Frozen Food.

11 Q All right. And where is Southeast Frozen Food
12 located?

13 A It's in Gadsden.

14 Q And tell us a little bit more exactly where --

15 A It's exactly -- it's at 220 Frontage Road, Gadsden.

16 Q Frontage Road in the Gadsden area of Lexington
17 County?

18 A That's correct.

19 Q Now, Ms. Nunez, how long have you been employed at
20 Southeast Frozen Foods?

21 A I've been there for almost 7 years.

22 Q Okay. And what exactly is your job title there at
23 the company?

24 A I'm an Assistant -- Assistant Administrator.

25 Q And as such, can you tell us whether or not records

Maria Nunez - Direct Examination by Ms. Mayes

1 of employees such as shifts, dates and -- dates of
2 employment, things of that nature, can you tell us whether
3 or not such records are maintained in the ordinary course
4 of business?

5 A Yes, ma'am, it does.

6 Q And as such, can you tell us whether you are
7 familiar with such records or a person with knowledge of
8 such records?

9 A Yes, I do.

10 Q Can you tell us whether or not you have reviewed
11 records concerning the defendant, Martin Rodriguez?

12 A Yes, I did.

13 Q Can you tell us whether or not Martin Rodriguez has
14 been employed previously at Southeastern Frozen Foods?

15 A Yes, he was.

16 Q Can you tell us whether or not Martin Rodriguez was
17 employed at that company during the year 2013?

18 A Yes, he was.

19 Q Now, do you have with you on today, Ms. Nunez, such
20 certain records concerning specifically shifts or dates or
21 employment for Martin Rodriguez?

22 A Yes, I do, it's right here.

23 MS. MAYES: I beg the Court's indulgence?

24 THE COURT: Yes, ma'am.

25 BY MS. MAYES:

Maria Nunez - Direct Examination by Ms. Mayes

1 Q Can you see this exhibit, Ms. Nunez, from where you
2 are seated?

3 A Yes.

4 Q Okay. If you have trouble seeing it --

5 THE COURT: You can see all the way over there?

6 THE WITNESS: Yes.

7 THE COURT: Okay. That's great.

8 BY MS. MAYES:

9 Q If you have trouble, just let me know.

10 THE COURT: Can you bring it a little closer,
11 Solicitor.

12 MS. MAYES: Yes, I can.

13 BY MS. MAYES:

14 Q All right. I want to ask you specifically about
15 June of 2013. Can you tell us whether or not Martin
16 Rodriguez was employed at the company during that time
17 period?

18 A Yes, he was.

19 Q And what shift was he working?

20 A He was working second shift.

21 Q Second shift. Can you tell us whether or not he
22 was employed there in July of 2013?

23 A Yes, he was.

24 Q And what shift did he work?

25 A Second.

Maria Nunez - Direct Examination by Ms. Mayes

1 Q And what about the time period of August of 2013?

2 A Yes, he was.

3 Q And for August what shift was he working?

4 A Second shift.

5 Q Okay. So throughout the entire summer months of
6 2013, he worked the second shift. What time period does a
7 second shift worker arrive to begin work there?

8 A They start between 5:30 and 6.

9 Q Okay. So between 5:30 and 6 and is that a.m. or
10 p.m.?

11 A p.m.

12 Q Just to clarify. So we're talking about between
13 5:30 and 6 p.m. and about how long on average does a second
14 shift last on any given day?

15 A Approximately about seven hours.

16 Q Okay. So it's about seven hours. So if it's an
17 average or normal shift, then someone going in at 5:30 to 6
18 and working seven hours would get off at approximately
19 12:30 a.m. to 1 a.m.?

20 A Yes, ma'am.

21 Q And according to your records and your information,
22 he worked that second shift throughout that time period of
23 the Summer of 2013?

24 A That's correct.

25 MS. MAYES: I beg the Court's indulgence?

Maria Nunez - Cross-Examination by Mr. Williams

1 THE COURT: Yes, ma'am.

2 MS. MAYES: Nothing further of the witness.

3 MR. WILLIAMS: May it please the Court?

4 THE COURT: Mr. Williams, of course.

5 CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q May I see the records that you have that you were
8 testifying from?

9 A Yes, sir.

10 Q These documents are what, essentially check --
11 check information and I guess like pay stubs, pay history?

12 A Yes, sir.

13 Q What on that -- what in those exhibits tells you
14 that he was working the second shift?

15 A Really what it says is that how many hours he
16 worked, how many overtime hours he worked.

17 Q So what in that -- what in that -- in those notes
18 that you brought with you, tells you that he was actually
19 working the second shift?

20 A It has his name and his ID number.

21 Q Okay. So what in those documents tells you that he
22 was working the second shift?

23 A It says, well it really doesn't have a bunch of
24 information, but it's -- his hours are clocking in and
25 clocking out at this time. So nobody will clock him in or

Maria Nunez - Cross-Examination by Mr. Williams

1 clock him out unless he's not there.

2 Q So what information that you have with you shows
3 you that he clocked in at any times and clocked out at any
4 times?

5 A There are money; they are how much we paid him.
6 That would be the only -- the only information we got right
7 here. He will not get any pay stubs or will not get any
8 information unless he was there and he clocked in and
9 clocked out.

10 Q Okay. We know he worked there?

11 A Uh-huh (affirmative response).

12 Q We know that?

13 A Yes, sir.

14 Q Because you got pay stubs that says that he worked
15 there. What information tells you on those documents when
16 he worked?

17 A I would say none, because it doesn't have a time
18 clocking in and clocking out.

19 Q I'm sorry?

20 A I would say none, because it doesn't have a time
21 clocking in and clocking out.

22 Q Right. So he could be working first shift insofar
23 as those documents are concerned?

24 A Well, he was hired to work second shift. He never
25 worked first shift.

Maria Nunez - Cross-Examination by Mr. Williams

1 Q So what you're testifying from is not from these
2 documents which you brought to Court, it's coming from
3 where?

4 A It's coming because I've been there for 7 years. I
5 know everybody that works in that facility.

6 Q Okay.

7 A And I've been in that position an Administrative
8 Assistant for almost 4 years.

9 Q So you're testifying from what you can recall as to
10 when he worked; is that right?

11 A That's correct.

12 Q Do you have records, time clocks, clock in
13 information at your store?

14 A Yes, we do.

15 Q So you have access to documents that would show you
16 exactly when he clocked in and when he clocked out?

17 A Yes, sir.

18 Q Did you bring any of that here today?

19 A No, I did not.

20 Q How many people work -- what is the name of this
21 company that you work for?

22 A Southeast Frozen Food.

23 Q All right. How many employees do you have there?

24 A Approximately about 150.

25 Q 150 employees?

Maria Nunez - Cross-Examination by Mr. Williams

1 A Yes, sir.

2 Q How many employees work the second shift?

3 A Right now we about -- probably about 20-25
4 employees.

5 Q And how many -- just for second shift?

6 A Second shift.

7 Q How many employees work the first shift?

8 A First shift we have probably about, I can say
9 almost 80.

10 Q Okay. And how many employees do you have for the
11 third shift?

12 A On third shift we have about 15.

13 Q Well, now if you add those numbers up, you get --

14 A More or less.

15 Q -- 130 right?

16 A I'm not adding.

17 Q Right. So that's 20 different from 150, right?

18 A Yes, sir, but in the complete facility we have
19 transportation that is also part of our employees.

20 Q So when do they work?

21 A Transportation?

22 Q All the time?

23 A Yeah, they have to deliver the food to the
24 groceries otherwise we wouldn't have any.

25 Q So do they have a specific period of time that they

Maria Nunez - Cross-Examination by Mr. Williams

1 work?

2 A The drivers, no, sir. It all depends on what route
3 they're doing.

4 Q Okay. So do they clock in and clock out?

5 A No, sir, they go by different hours schedule.

6 Q And when was Mr. -- when was Martin Rodriguez hired
7 at that facility?

8 A He was hired 2012.

9 Q 2012?

10 A Yes, sir.

11 Q So --

12 A At the end of 2012 beginning 2013.

13 Q And when was he hired in 2012?

14 A I don't have that exact date on top of my head
15 right now.

16 Q Do you have the exact month on the top of your
17 head? Could it have been the Summer of 2012?

18 A I really I don't remember that far.

19 Q Did he work the first shift in 2012?

20 A No, sir, he was hired for second shift only.

21 Q So he's never worked any other shift other than the
22 second shift?

23 A That's completely right.

24 Q All right. And how many people work the second
25 shift?

Maria Nunez - Cross-Examination by Mr. Williams

1 A Right now like I said 20-24 at the most.

2 Q And do you know what days he worked on second
3 shift?

4 A We have a schedule of six days.

5 Q Do you know what days that Martin Rodriguez worked
6 on second shift?

7 A He was supposed to work every six days.

8 Q Do you know what days he worked?

9 A If he was absent not unless I have my time cards
10 with me, I can't tell you what days he worked and what day
11 he wasn't working.

12 Q But you don't have those with you?

13 A No, sir, I don't.

14 Q The only information you have with you is his pay
15 stubs, basically?

16 A Yes, sir.

17 Q Do you have his employment application?

18 A It's in -- I think the attorney has it.

19 Q The attorney has it; you talking about the
20 solicitor?

21 A Yeah, yes.

22 Q Would that include what -- what, I guess what shift
23 he was hired for?

24 A No, not if the application says what shift they're
25 hired for. We just -- they ask and we offer them the job

Heather Smith - Direct Examination by Ms. Mayes

1 and they accept or not and if they want to work the first,
2 second, or third shift.

3 Q But you said he was hired for the second shift?

4 A He was hired for second because that's what we
5 offered him and he accepted it.

6 Q But you don't have that documented anywhere?

7 A No, sir, I don't.

8 MR. WILLIAMS: That's all the questions I have,
9 Your Honor.

10 THE COURT: Redirect, Solicitor.

11 MS. MAYES: No, sir, Your Honor. We do ask that
12 the witness be excused.

13 THE COURT: Thank you. Thank you, Solicitor.

14 Thank you, Ms. Nunez. Thank you for being with us.
15 You may step down and you may be excused.

16 MS. MAYES: The State calls Heather Smith.

17 HEATHER MARIE SMITH,

18 having been duly sworn, testified as follows:

19 THE CLERK: Have a seat please, ma'am. Once you're
20 seated. State your full name, spelling your last for the
21 record, please.

22 THE WITNESS: Heather Marie Smith. S-M-I-T-H.

23 **DIRECT EXAMINATION**

24 BY MS. MAYES:

25 Q Ms. Smith, can you give us some information about

Heather Smith - Direct Examination by Ms. Mayes

1 yourself, beginning with your educational background and
2 training?

3 A Yes. I have a Master's Degree in Counseling from
4 the University of South Carolina School of Medicine. I
5 have a Bachelor's Degree in Psychology from the University
6 of South Carolina and I'm a Licensed Professional Counselor
7 in the State of South Carolina.

8 Q All right. And how long have you worked in the
9 field of counseling?

10 A For approximately 15 years.

11 Q Now what type of patients do you see?

12 A I work full time at the Richland County Child
13 Advocacy Center and the Assessment and Resource Center. I
14 work mainly there providing forensic interviewing as part
15 of investigation for children that have possibility been
16 maltreated. I also provide treatment services for children
17 and family with evidence in trauma focus therapy and also I
18 operate a private practice where I focus on child and
19 family therapy.

20 Q All right. And specifically how long have you been
21 working with child victim of abuse including sexual abuse?

22 A For 12 years.

23 Q And throughout that time, Ms. Smith, have you had
24 the opportunity to testify previously as an expert in the
25 field of child abuse assessment or treatment?

Heather Smith - Direct Examination by Ms. Mayes

1 A Yes, I have.

2 Q Is it possible for you to estimate how many such
3 times you've testified as an expert regarding child abuse
4 related issues?

5 A I've testified as an expert in General Sessions
6 Court, which is Criminal Court, Family Court and Court's
7 Martial approximately 20-25 times.

8 Q And can you tell us whether such testimony has
9 included the discussion of the dynamics of sexual abuse
10 including delayed reporting?

11 A Yes, it has.

12 Q Now, what do you go through in terms of becoming a
13 Licensed Counselor who actually works with child abuse
14 victims; what are the certification requirements, if any?

15 A For licensure as a Licensed Professional Counselor
16 in South Carolina, you must have a Master's Degree with an
17 emphasis on Psychopathology, Psychiatric diagnosis and
18 treatment. Also you must take an exam and then you must be
19 supervised in clinical practice for two years following
20 successful completion of your exam.

21 Q And the clinical practice, does that include
22 one-on-one therapy with victims of sexual abuse?

23 A It -- one-on-one therapy and also group therapy and
24 being clinically supervised by a supervisor of professional
25 counseling.

Heather Smith - Direct Examination by Ms. Mayes

1 Q Is it possible for you to estimate how many such
2 children you have provided clinical services to one on one
3 in therapy who are victims of child sexual abuse?

4 A It's been at least a thousand.

5 Q And, Ms. Smith, have you had the opportunity to
6 receive regular training as well as do you research
7 associated with the field of child abuse?

8 A Yes, as part of your licensure, you must maintain
9 continuing education and then also as part of the forensic
10 interviewing field, you must also have ongoing training to
11 complete forensic interviewing of children and then it's
12 always best practice to stay up to date on evidence based
13 treatment services for children and families.

14 Q All right. And can you tell us whether that
15 training and research includes the literature related to
16 topics such as delayed reporting of child sexual abuse?

17 A Yes.

18 Q Can you tell us whether or not it relates to the
19 dynamics including family dynamics for child sexual abuse?

20 A That's a part of the training, yes.

21 MS. MAYES: Your Honor, at this time, the State
22 would offer Heather Smith as an expert in the field of
23 Child Abuse Assessment, Child Sexual Abuse Assessment and
24 Treatment.

25 THE COURT: Mr. Williams?

Heather Smith - Voir Dire Examination by Mr. Williams

1 MR. WILLIAMS: If I could ask her some questions,
2 Your Honor.

3 THE COURT: Oh, yes, sir, you may.

4 VOIR DIRE EXAMINATION

5 BY MR. WILLIAMS:

6 Q Ma'am, your degrees, you have a B.A. in Psychology
7 from the University of South Carolina; is that correct?

8 A That's correct.

9 Q And you have B.A. on Anthropology from USC also?

10 A That's correct.

11 Q What is Anthropology?

12 A It's the study of cultures.

13 Q And you got your master's where?

14 A At the University of South Carolina School of
15 Medicine.

16 Q And what is that Master's in?

17 A Rehabilitation Counseling.

18 Q So that is not the same thing as child abuse and
19 access, whatever you just -- the child abuse situation,
20 rehabilitation encompasses a number of things, doesn't it?

21 A It's a counseling master's with a track for
22 professional licensure in South Carolina and it encompasses
23 what we would -- what we call psychiatric rehabilitation.
24 So that's the diagnosis and treatment of mental health
25 disorders.

Heather Smith - Voir Dire Examination by Mr. Williams

1 Q So that would be for individuals who have mental
2 health disorders?

3 A Correct.

4 Q As a matter of fact, you actually haven't had a
5 private practice that you worked in known as post-trauma
6 resources?

7 A Yes.

8 Q And that deals with individuals who were involved
9 maybe in wrecks and they have problems or physical injuries
10 that may -- negligence actions that may be involved and you
11 assess their treatment?

12 A But my specialty is with children and families and
13 so my focus is on children and families who have experience
14 trauma.

15 Q Well, you also -- do you do presentations for
16 various groups and things of that nature?

17 A I do.

18 Q And would one of them have been forensic
19 interviewing and court preparation for the South Carolina
20 Solicitor's Association?

21 A Yes, I did that some years ago.

22 Q So you work closely with the solicitor's, various
23 solicitor's in the State of South Carolina in helping them
24 on preparing for sexual abuse cases?

25 A I've only provided training for one conference,

Heather Smith - Voir Dire Examination by Mr. Williams

1 Solicitor's Conference, but I routinely testify for defense
2 cases as well.

3 Q Did you receive any certification or is there a
4 certification that deals with what you do other than the
5 certification as a Clinical Psychologist; is that what you
6 are?

7 A No, I am Master's Level Licensed Professional
8 Counselor.

9 Q Licensed Professional Counselor in what?

10 A In the State of South Carolina. It's a license.

11 Q And how many Licensed Professional Counselors are
12 there in the State of South Carolina?

13 A Many.

14 Q And they deal with such problems such as marriage
15 counseling and things like that?

16 A No, those are -- those are -- that's specifically
17 why marriage and family counselors; there's a license for
18 that. Licensed Professional Counselors are trained to
19 provide treatment services, diagnostics, assessment, mental
20 health evaluation, and then recommendations for treatment
21 as well as the actual treatment.

22 Q For people who have mental illness?

23 A For people who have any concern that would need
24 therapy. Any type of concern where psychotherapy is
25 needed. That could be relationship, that could be

Heather Smith - Voir Dire Examination by Mr. Williams

1 experiencing any type of a trauma, which is my specialty,
2 what I focus on, it could be a family therapy post-divorce,
3 it could be child maltreatment.

4 Q You said that's your specialty. Do you receive a
5 special degree because of that?

6 A I have focused my internship training post-graduate
7 and then subsequently since I've been licensed, I've
8 focused on children and families who have experienced some
9 type of trauma and then my work for the Child Advocacy
10 Center focuses on specifically child abuse, child
11 maltreatment so that could be physical abuse, sexual abuse,
12 witness to domestic violence, violent crime, that type of
13 thing.

14 Q Did you perform any forensic evaluation on anyone
15 involved in this case?

16 A No, I did not.

17 Q So you don't know the individual who was involved
18 in this case?

19 A No, I'm testifying as an expert witness.

20 Q And you've had no -- no testing of that individual?

21 A No.

22 Q And you haven't counseled with that person?

23 A No, I have not.

24 MR. WILLIAMS: We would not stipulate that she is
25 an expert?

Heather Smith - Voir Dire Examination by Mr. Williams

1 THE COURT: All right. Thank you.

2 I'm going to find this witness qualified as an
3 expert in the field of child abuse assessment and treatment
4 and child sex abuse assessment and treatment. I will give
5 my legal reasoning for that outside of the presence of the
6 jury.

7 Ladies and gentlemen of the jury panel, normally
8 when a witness testifies, a witness must testify as to
9 either what they saw, heard, or sensed by smell or
10 something of that nature. However, there is an exception
11 for witnesses that we call expert witnesses. A person by
12 training, education, experience, or the like in a
13 particular art, science, profession, calling or craft may
14 testify in that particular area if the Court qualifies them
15 that way and may also give their opinions not only in that
16 area, but the basis for holding those opinions. This
17 witness, Heather Smith, will be qualified as an expert in
18 child abuse assessment and treatment and child sexual abuse
19 assessment and treatment and may testify in those areas,
20 may give opinions in those areas, may give the basis of
21 those opinions in those areas.

22 Just because an individual is qualified as an
23 expert, is of no moment for you, the jury, because you are
24 the finders of the facts in the case. You give that
25 testimony the weight and the value that you determine it

Heather Smith - Direct Examination by Ms. Mayes

1 should be given, both the opinions and the basis of the
2 opinions. You may accept it, you are free not to accept
3 it, you may accept part of it, you may accept none of it.
4 It is entirely up to you as the finders of the facts in
5 this case.

6 With that being said, Solicitor, you may continue.

7 MS. MAYES: Yes, sir, Your Honor.

8 **DIRECT EXAMINATION**

9 BY MS. MAYES:

10 Q Ms. Smith, I do want to follow up on one thing that
11 Mr. Williams was asking you about. He was asking you about
12 treating therapy patients with mental health related
13 issues. What are the primary issues that children usually
14 face?

15 A So typically the biggest issue that children that I
16 work with face, and their families, are anxiety. So
17 anxiety that could be caused by something bad happening, a
18 traumatic event and associated with anxiety come a lot of
19 symptoms: Trouble sleeping, problems in school, problems
20 concentrating. There's a variety of symptoms that come
21 with anxiety, but anxiety is really kind of the umbrella.

22 Q And can you tell us whether or not includes victims
23 of child sexual abuse?

24 A Yes, it does.

25 Q Now, Ms. Smith, I want to start by asking you if

Heather Smith - Direct Examination by Ms. Mayes

1 you can tell us what is meant among child abuse
2 professionals by the term delayed reporting or delayed
3 disclosure of abuse?

4 A So that term is what we use to describe the
5 phenomenon of when a child does not tell right away when
6 they've been abused and sometimes it's hard for adults to
7 understand that because as an adult, you would run and --
8 and tell someone right away if someone were hurting you,
9 abusing you, particularly if someone were sexually
10 assaulting you. Adults are much better able to do that
11 than children are and so oftentimes when children are
12 sexually abused, they do not go and tell right away and
13 sometimes it lasts, the abuse will last a long time and
14 there are certain motivational factors that cause children
15 not to go out and tell right away.

16 Q Ms. Smith, what are some of those motivational
17 factors that you just mentioned that might prevent a child
18 from reporting sexual abuse immediately?

19 A So the research and in my clinical practice and
20 what I've seen is that typically the top two motivational
21 factors are when the perpetrator of sexual abuse is a
22 family member, someone who is in a parent role, someone who
23 has caregiving capacity over the child, who the child loves
24 and trusts. That's often the first motivational factor of
25 why they won't run out and tell right away.

Heather Smith - Direct Examination by Ms. Mayes

1 And then the second one is when a non-offending
2 caregiver, so the caregiver who is not the actual
3 perpetrator of sexual abuse does not support or believe
4 that that has happened to their child. Those two
5 motivational factors are the top two of why children don't
6 tell. There are others though.

7 Q How common in your training and experience, how
8 common is delayed reporting among victims of child sexual
9 abuse?

10 A Research has shown that the percentages fluctuate.
11 The consensus in the field currently is that it's about 45
12 to 55 percent of children don't go out and tell right away.

13 Q Now, what if the child actually lives in the same
14 home with the perpetrator, how, if at all, may that play a
15 role in a child's decision to not report?

16 A So again, the closer the proximity of the
17 perpetrator is to the child the less likely the child will
18 be to report and there's lots of reasons for that; one
19 could be fear of the perpetrator, they could be afraid that
20 it's going to create family separation and they might have
21 to go to foster care. Children -- for the child, the
22 family unit is the core. You know, they don't really -- as
23 adults, we have a wide variety of community, family,
24 external support. For children the family unit is their
25 core and so when abuse happens within a family and the --

Heather. Smith - Direct Examination by Ms. Mayes

1 the perpetrator resides in the home, it's -- there --
2 there's many -- pressures on a child not to tell because
3 what could happen; they could get foster care, someone
4 could get in trouble, dangerous things could happen
5 particularly if there are siblings, if there are brothers
6 and sisters.

7 Then you also, depending on where the child falls
8 in the birth placement, would -- would feel like he needed
9 to protect your siblings or feel like you needed to, you
10 know, be the protector of any younger children in the home.
11 So the family unit and whether or not the perpetrator
12 resides is a big factor in the child choosing to tell.

13 Q Based upon your own clinical experience working
14 with children as well as the research, how long may this
15 phenomena -- phenomenon of secrecy be maintained by a child
16 concerning sexual abuse?

17 A So it could last anywhere from six weeks, you know,
18 six days, all the way to for, you know, until they're
19 adults. Some -- some -- some adults never disclose that
20 they were sexually abused as children. There's really not
21 a particular time, a common time frame, so it really
22 depends on how the system intervenes when the child goes --
23 does decide to tell. It's how the system intervenes and
24 more importantly, how their caregivers, how their parents,
25 how their support system intervenes and is it done

Heather Smith - Direct Examination by Ms. Mayes

1 appropriately or are they not believed; is it kind of
2 brushed under a rug or is it actually taken seriously and
3 acted upon. And so that really determines how long a child
4 might wait.

5 Q And on that same topic, why is it significant, if
6 at all, to have the support of a mother or other family
7 member who is offering support for the child disclosing?

8 A So research really shows us that maternal support
9 is the biggest predictor of a caregiver providing that
10 support that's needed when a child is -- makes the steps to
11 try and tell about something that's happened, sexual abuse.
12 And so when the maternal support is not there, children
13 really tend not to want to tell, they tend to keep the
14 secret to protect the family and more importantly, to make
15 sure that their mother is okay.

16 Q Now you mentioned that you also have training in
17 the field of forensic interviewing?

18 A Yes.

19 Q Does that include initial fact finding or initial
20 attempt to try and ascertain from a child what has
21 occurred?

22 A Yes, typically with forensic interviewing, it's a
23 fact finding interview for an investigating agency; that
24 could be the police or that could be the Department of
25 Social Services Child Protection and typically when you do

Heather Smith - Direct Examination by Ms. Mayes

1 a forensic interview, there's been some type of concern.
2 There's some reason that it's referred through the Child
3 Advocacy Center for a forensic interview.

4 Q So based upon your training and experience
5 specifically in that initial interviewing process, can you
6 tell us whether or not you necessarily expect a child to
7 make a full disclosure initially?

8 A So based on the factors that I just described, a
9 lot of it depends on that. So it depends on how did the,
10 what we call the initial outcry or the first time a child
11 told someone. Typically it's not going to be in a forensic
12 interview to or even to the police or to DSS or to a
13 teacher. Typically it's to somebody in the family and
14 depending on how that response goes, children are maybe
15 more likely to come in to a forensic interview ready to
16 talk about it; ready to tell.

17 If that support is not there, then children
18 oftentimes will come, it's a -- we have a certain
19 terminology that we use when we see a child that comes into
20 a forensic interview and they're not quite ready to tell
21 everything that's happened, this is very common. Children
22 sometimes, oftentimes, will come in and -- and be in what
23 we call a tentative state of disclosure where they may tell
24 a little bit or a partial event and not give a lot of
25 detail and they're kind of in a tentative phase of

Heather Smith - Direct Examination by Ms. Mayes

1 disclosure is kind of where we see them testing the waters
2 to see, well what's going to happen once I tell and then
3 depending sometimes on what happens, they may decide to
4 tell more or less or in some cases, take back what they
5 said initially. So we call that recantation. They may say
6 well, I didn't mean to say that.

7 Q All right. So how common is this tentative or
8 partial disclosure of abuse that you've mentioned where a
9 child may not give full details?

10 A I think it's -- I would call it a -- it would again
11 fall into that -- that range of 50 to 60 percent of
12 children are -- would come insensitive and then really they
13 can move in a forensic interview from tentative to ready to
14 tell everything based on what the motivational factors that
15 I talked about earlier and the forensic interviewer does,
16 you know, builds rapport, conducts the interview, makes the
17 child feel comfortable.

18 Q Can you tell us whether or not that is supported in
19 the literature as well?

20 A Yes, it is.

21 Q Now, Ms. Smith, what is meant by the -- the phrase
22 I'm going to use, which is the disclosure is a process?

23 A So what that refers to is that children may -- so,
24 you know if you think about a child discloses the abuse or
25 tells about the abuse, particularly sexual abuse. It's

Heather Smith - Direct Examination by Ms. Mayes

1 embarrassing, it's a secret, it's not happening in public
2 with eyewitnesses, so they have a lot of hesitancy already
3 about telling and then they tell someone, it gets reported
4 to the police, to the Department of Social Services, things
5 happen. They could be removed, someone could be removed
6 from the home, that sometimes happens and usually it's
7 negative things that happen and then they're referred for a
8 forensic interview and so there's a lot of barriers and
9 pressures that are put on children and then when we get
10 them in a forensic interview, oftentimes they're not ready
11 to tell everything right -- right away. We may have to
12 sometimes, if we know that a child is in a tentative state
13 of disclosure, we may have them come back and see them on
14 another day to help address maybe some systems issues that
15 are not working to help the child feel more comfortable.

16 But again, sometimes children just cannot tell and
17 it may take a while. It may be years. See the process of
18 disclosure is really how the child moves through. Some
19 children will deny. Some children you'll get them in an
20 interview and they will deny, deny, deny even with medical
21 evidence such as sexually transmitted disease, they will
22 deny that anything has happened. When we know that the
23 child has had some type of sexual contact and so
24 oftentimes, you know, knowing that, knowing that, knowing
25 the phases of disclosure and that a child may not come in

Heather Smith - Direct Examination by Ms. Mayes

1 right away and tell everything, helps you be a better
2 interviewer, helps me, you know, know what dynamics I'm
3 looking at.

4 Q All right. Now, Ms. Smith, you mentioned
5 previously that Minor , the victim in this case, is
6 not your patient?

7 A No.

8 Q And you did not conduct a forensic interview with
9 her?

10 A I did not.

11 Q Do you have any direct role or relationship or bias
12 in this case concerning the victim, Minor ?

13 A I do not. I do not have any interest or bias in
14 the case.

15 Q And based upon your training and experience, Ms.
16 Smith, is the delayed reporting by a child common or
17 uncommon when the perpetrator is a family member such as a
18 stepfather living in the home?

19 A It's common.

20 MS. MAYES: I beg the Court's indulgence.

21 Nothing further.

22 THE COURT: Thank you, Solicitor.

23 Mr. Williams?

24 MR. WILLIAMS: May it please the Court?

25 THE COURT: Yes, sir.

Heather Smith - Cross-Examination by Mr. Williams

CROSS-EXAMINATION

1
2 BY MR. WILLIAMS:

3 Q I just want to make -- you don't know Minor ,
4 right?

5 A I do not.

6 Q You've never interviewed Minor ?

7 A I have not.

8 Q You haven't looked at the child's school records?

9 A I have not.

10 Q You have not looked at the child's medical records?

11 A No.

12 Q You've not looked at the video forensic evaluation
13 that was done by another person who is a forensic
14 evaluator?

15 A I have not seen that.

16 Q You know nothing about her history in terms of
17 where she's lived and where she's living now and who all
18 she's lived with?

19 A I do not know anything.

20 Q You know absolutely nothing about the counselors
21 that she has seen?

22 A No.

23 Q Correct me if I'm wrong, but the purpose of a
24 forensic interview is to have someone set with someone
25 whose qualified to pull the truth out of the individual

Heather Smith - Cross-Examination by Mr. Williams

1 that they're talking to?

2 A The purpose of a forensic interview is just part of
3 an investigation. It's fact finding, trying to gather as
4 much factual information from the child in order for
5 investigators to then follow up and investigate.

6 Q And if the child doesn't say that she was assaulted
7 by a particular person, do you end it there?

8 A Actually one of the reasons that we have multiple
9 disciplinary teams which are teams of investigators,
10 forensic interviewers, therapists, Guardian ad Litems,
11 which are just a support for the child, is so that you can
12 plan. You know, you can plan on how to address whether or
13 not two interviews need to be done or three; should it be
14 done after treatment; should there be some treatment and
15 then interviews. And so it doesn't just end at the
16 forensic interview.

17 Q So if the forensic interviewer concludes her
18 interview and -- and she's not -- there's no allegations,
19 no confirmation as to who the alleged perpetrator might be,
20 do you end it when they go through several months of
21 counseling and that information is never revealed?

22 A In terms of ending the forensic interview?

23 Q No, I'm talking about ending this investigative
24 efforts that are going on?

25 A It really just depends; it's unique to each case

Heather Smith - Cross-Examination by Mr. Williams

1 and there's so many different parts of an investigation.

2 I, as the forensic interviewer and the specialist who does
3 that role would make that decision.

4 Q At what point in time do you stop asking the
5 alleged victim about who the perpetrator would have been?

6 A So in a forensic interviewing role, you would not
7 let that go on for months and months. In terms of
8 counseling and psychotherapy and getting the therapy,
9 sometimes children and families are involved in counseling
10 for a year, you know and sometimes it could be a little
11 over a year; it could be less than a year. It really just
12 depends on what the child needs and what the family unit
13 needs.

14 Q When do you make the determination that the family
15 needs are over; that the family needs have been met?

16 A Typically when the child and family have learned
17 proper skills to help reduce anxiety to kinds of address
18 any of the symptoms that would come out in therapy and then
19 it's very plausible that if say something were to be
20 disclosed in therapy, you could refer back to the law
21 enforcement or the Department of Social Services and -- and
22 sometimes we do follow ups with children, forensic
23 interviewing follow ups months down the road if that
24 happens in therapy.

25 Q So there are symptoms which present themselves

Heather Smith - Cross-Examination by Mr. Williams

1 which just as a doctor would be treating a physically ill
2 person, there are symptoms which present themselves that
3 you're able to give a name to and continue with whatever
4 type of therapy that you're using?

5 A Yes, in therapy you want to do a mental health
6 assessment and you want to assess how is the child doing,
7 what are the symptoms that are present and then how to
8 address those so that the child can be healthy.

9 Q So what symptoms are you looking for when you do
10 this evaluation?

11 A Again, it's there's a variety of symptoms. We tend
12 to class them into what we call externalizing versus
13 internalizing. Externalizing symptoms are symptoms where
14 children may act out, they may do horribly in school, they
15 may have a lot of anger, aggression, more external symptoms
16 and then there are internal symptoms. Those are a little
17 bit harder to see sometimes because the children might not
18 talk about they're feeling and thinking but those seem to
19 be depression, anxiety, those that are more internal.

20 Q So you would expect a child who -- who is not, I
21 guess coming forth which is the subject of this delayed
22 disclosure to be exhibiting either overt acting out, things
23 that everybody can see or there would be internalizing
24 their problems and that there would be depression and
25 anxiety that you could tell that they were anxious and

Heather Smith - Cross-Examination by Mr. Williams

1 depressed over, correct?

2 A Well, delayed disclosure and denial are different.
3 So if delayed disclosure implies that at some point there's
4 a disclosure.

5 Q Right.

6 A Denial is saying no, nothing happened over time,
7 which, you know, is denial. So it's different than delayed
8 disclosure.

9 Q So there would be an observable behavior that you
10 could focus on to make a determination that someone was
11 suffering from some sort of trauma?

12 A I have had clients who, in my work, don't
13 demonstrate any observable symptoms, but that also is
14 because trauma, post-traumatic stress, what we call
15 para-traumatic stress, that's before it becomes full blown
16 post-traumatic stress disorder, oftentimes one of the
17 classic symptoms of that is avoidance and so children will
18 avoid telling people, but they're thinking what they're
19 feeling because they're afraid of what could happen.

20 Q So there would be an observable behavior, meaning
21 if you were communicating with an individual and they
22 refused to talk to you that would be an avoidable trait
23 that you would notice, right?

24 A If they're refusing to talk to me and maybe I knew
25 that there were eyewitness, if I knew that there was

Heather Smith - Redirect Examination by Ms. Mayes

1 something that someone knew about or the child made a
2 disclosure to someone and yet just didn't want to talk
3 about it with me in therapy, that would signal avoidance to
4 me. But you know you don't -- therapy is not necessarily
5 indicated for children that deny and there is no disclosure
6 of abuse. Therapy wouldn't be indicated for that.

7 Q Do you have any evidence that anyone involved in
8 this case has any type of hidden anxiety or depression or
9 has been acting out or has any type of trait that would
10 indicate that they were subject to delayed disclosure?

11 A I don't know anything about the case.

12 MR. WILLIAMS: That's all I have, Your Honor.

13 THE COURT: Thank you, Mr. Williams.

14 Solicitor?

15 MS. MAYES: Yes, sir, Your Honor.

16 **REDIRECT EXAMINATION**

17 BY MS. MAYES:

18 Q Ms. Smith, from the standpoint of an expert, a
19 witness, what is the significance of having no prior
20 information about the case, no relationship or bias to the
21 case?

22 A Well, you don't have a vested interest in the
23 outcome. You know, I as an expert in this capacity, the
24 role is to educate, to help educate on behaviors that most
25 people that don't work in our field wouldn't know about and

Heather Smith - Redirect Examination by Ms. Mayes

1 so it's a way to -- to help explain what we call
2 counterintuitive behaviors so those behaviors that you
3 don't expect and why would a child not tell right away if
4 they were being hurt or abused is a counterintuitive
5 behavior. You would expect children to go and tell. So my
6 role is to describe, based on my clinical experience and
7 the -- and the -- the extensive research with children who
8 have been and do disclose and have been sexually abused,
9 what that looks like.

10 Q Can you tell us whether or not your testimony on
11 these matters are based upon recognized principals accepted
12 upon child abuse professionals?

13 A Yes.

14 Q Now what is avoidance, you mentioned that during
15 your cross-examination with Mr. Williams. What is meant by
16 that term avoidance?

17 A Avoidance is a behavior that typical people who
18 have experienced traumatic events. It's a very common way
19 to handle it and I think common sense, we've all had bad
20 things happen to us. You sometimes don't want to think
21 about it, don't want to remember it, don't want to deal
22 with it. You know, sometimes you don't want to remember
23 anything to do with it so you just deny it or avoid talking
24 about it so oftentimes children and families even who are
25 suffering from avoidance will say I can't talk about that;

Heather Smith - Redirect Examination by Ms. Mayes

1 please don't ask me questions; I don't want to talk about
2 it to the point that they get very agitated and when you
3 try to talk about it, it doesn't mean that you just stop.
4 As a clinical professional, I don't want to just not go
5 there because then I'm not helping them with their
6 symptoms.

7 It's just it alerts me to know that I need to do
8 some work on the avoidance before we can get to the
9 symptoms.

10 Q Can you tell us whether or not that includes
11 avoidance of experiences such as sexual assault?

12 A Yes.

13 Q Can you tell us whether or not that includes
14 avoiding discussions of sexual abuse with adults?

15 A Yes.

16 Q Now one of the things that Mr. Williams was asking
17 you about on cross-examination was how long it may take a
18 child to disclose to a counselor; do you recall your
19 response to that?

20 A It varies.

21 Q Okay. And over the course of time, if the child
22 has a trusted adult in their life, may you expect the
23 process of disclosure if the child can find a trusted
24 adult?

25 A Yes, actually research supports that. You know,

Heather Smith - Redirect Examination by Ms. Mayes

1 children who do receive some type of psychotherapy are
2 better able to -- to trust, to build that trust. In a
3 forensic interview setting where you're initially, you
4 know, being interviewed because of law enforcement or the
5 Department of Social Services has requested it, oftentimes
6 they're there and present for the interview. That can be a
7 very scary environment. So with psychotherapy and when
8 you're doing therapy with children later, you're able to
9 build that trust it takes and it does take some time to do
10 and so we do expect and hope that children will be able if
11 something has happened to tell.

12 Q Can that trust or would a trusted adult include a
13 child abuse professional such as a Guardian ad Litem?

14 A Yes.

15 Q Nothing further.

16 MR. WILLIAMS: I have no questions.

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

19 MS. MAYES: We would ask that Ms. Smith be excused.

20 THE COURT: You may be excused.

21 All right. Mr. Foreman, excuse me. Madam

22 Forelady, ladies and gentlemen of the jury, let's take
23 about a 15 minute recess. Do not discuss the case during
24 this brief recess. Thank you. Thank you very much. You
25 may go with your bailiff.

1 (The jury left the courtroom at 4:07 p.m.)

2 THE COURT: All right. As to the last witness, Ms.
3 Smith, her testimony was such that she has a Psychology
4 Degree, a Master's Degree, she's been in the field for 12
5 years, she's been qualified as an expert in this field in
6 both General Sessions, Family Court and Court Martial's,
7 having testified 20-25 times. She stays up to date on the
8 literature. She has presented at seminars. She also has a
9 private practice having testified in the past. The
10 qualifications of an expert are left up to the sound
11 decision -- sound discretion of the trial judge and which
12 was acquired by reason of experience of both knowledge and
13 skill, in a profession that she is better qualified than
14 the jury to form an opinion on that particular subject of
15 his or her testimony.

16 I find that although there could be defects in
17 specific educational or educational experiences, that would
18 of course go to the weight rather than the admissibility of
19 the expert's testimony. Further I would find in a recent
20 case of State v. Anderson, she would be a more appropriate
21 expert to testify in this case than would have been an
22 expert that had interaction with Minor based on
23 the recent Court's decision in State v. Mack.

24 With that being said, that is my reasoning for
25 having qualified her. Also look at State v. Goode,

1 G-O-O-D-E, and State v. Meyers in the qualifications of the
2 expert.

3 All right. Court will be in recess for 15 minutes.

4 (A brief recess was observed.)

5 THE COURT: Anything from the State before we bring
6 in our jury?

7 MR. CASKEY: Nothing from the State, Your Honor.

8 THE COURT: Defense?

9 MR. WILLIAMS: Nothing from the defendant, Your
10 Honor.

11 THE COURT: All right.

12 (The jury entered the courtroom at 4:35 p.m.)

13 THE COURT: All right. Solicitor, you may call
14 your next witness.

15 MR. CASKEY: Thank you, Your Honor. The State
16 calls Jennifer Bartman.

17 THE COURT: All right. If you would come around
18 and be sworn for us please.

19 JENNIFER BARTMAN,
20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat, ma'am. Once you're
22 seated, state your full name, spelling your last on the
23 record, please.

24 THE WITNESS: My name is Jennifer Bartman.
25 B-A-R-T-M-A-N.

Jennifer Bartman - Direct Examination by Mr. Caskey

DIRECT EXAMINATION

BY MR. CASKEY:

Q Ms. Bartman, where are you employed?

A I'm employed with the South Carolina Law Enforcement Division, commonly known as SLED.

Q And what do you do there?

A I work in the DNA Casework Department.

Q Do you have a title or rank?

A A Forensic Scientist.

Q What are your duties or responsibilities in that role?

A In the DNA Casework Department, we receive evidence from crimes that occur across the State of South Carolina. We create DNA profiles from the evidence as well as from the standards, reference standards from known individuals and we make comparison between the evidence and the standards.

Q How long have you been employed with SLED?

A Approximately 2 and a half years.

Q And were you employed there in 2014?

A Yes, I was.

Q In what capacity?

A As an analyst in the DNA Casework Department.

Q Is that the same role you're in now?

A That's correct.

Jennifer Bartman - Direct Examination by Mr. Caskey

1 Q If you would please, tell the jury about your
2 education and background?

3 A I have a Bachelor's Degree in Biology. I also have
4 a Master's Degree in Forensic Science with a concentration
5 in Forensic Biology. I have also completed about a year of
6 on the job training at SLED by a court qualified analyst in
7 the proper techniques and procedures of SLED's laboratory
8 and as part of my education, I've completed course work in
9 Statistics, Population Genetics and Advanced DNA Analysis.

10 Q Now did your formal education include the study of
11 DNA?

12 A Yes, it did.

13 Q Did that include hands on work with DNA?

14 A Yes, it did.

15 Q And did that education include using DNA for
16 paternity analysis?

17 A Yes, it did.

18 Q And statistical analysis of DNA?

19 A That is correct; it did.

20 Q Does that include allele frequency?

21 A Yes, it does.

22 Q Have you ever performed research to DNA?

23 A I have. As part of my Master's Degree, I have
24 performed research in different DNA collection methods.

25 Q And have you maintained fluency in the latest

Jennifer Bartman - Direct Examination by Mr. Caskey

1 scientific updates in the field?

2 A We are required to have at least eight hours of
3 continuing education a year which can be fulfilled through
4 going to conferences or attending webinars or other course
5 work. We also read journal articles to keep abreast of the
6 different techniques and advancements in the field.

7 Q And do you individually personally do all of those
8 things?

9 A Yes, I do.

10 Q What is proficiency testing?

11 A Proficiency testing is a type of testing that we do
12 at SLED. It's an external test where they assess that our
13 tests and techniques at SLED are reliable as well as the
14 competency of the analysts to make sure that we are doing
15 everything correctly.

16 Q How often are those done -- is that proficiency
17 testing done?

18 A We take two proficiency tests a year.

19 Q And how have you performed on those tests?

20 A I've passed all the proficiency tests that I have
21 taken.

22 Q Ms. Bartman, how many DNA cases have you handled?

23 A Approximately a hundred.

24 Q What kinds of DNA cases have you been involved in?

25 A I've been involved in several different kinds

Jennifer Bartman - Direct Examination by Mr. Caskey

1 including criminal paternity cases, sexual assault cases,
2 homicides, burglaries, and things of that nature.

3 Q Now DNA Science, does that include DNA paternity
4 analysis?

5 A Yes, it does.

6 Q And DNA statistical analysis?

7 A Yes, it does.

8 Q Have you testified before today as an expert in DNA
9 science?

10 A Yes, I have.

11 Q How many times?

12 A Eight times.

13 Q In which courts?

14 A In General Session Courts in the State of South
15 Carolina.

16 Q All eight times were in General Sessions?

17 A Yes, that's correct.

18 Q Thank you.

19 MR. CASKEY: Your Honor, at this time, we'd move to
20 have the expert qualified as a witness, I mean excuse me,
21 as an expert in DNA Science, DNA Paternity Analysis, and
22 DNA Statistical Analysis.

23 MR. WILLIAMS: No objection, Your Honor.

24 THE COURT: All right. Again, Madam Forelady,
25 ladies and gentlemen of the jury, normally a person cannot

Jennifer Bartman - Direct Examination by Mr. Caskey

1 give opinion testimony. Normally when a person testifies,
2 they must testify as to what they saw, heard, or sensed by
3 smell or something of that nature. However, there is an
4 exception. When someone is qualified because of education
5 or experience, they're permitted to give their opinions in
6 certain areas if the Court qualifies them that way. This
7 witness, Agent Bartman, Jennifer L. Bartman, will be
8 qualified in the areas of DNA Science, DNA Paternity
9 Testing and DNA Statistical Analysis to give opinion
10 testimony in those areas and the basis of those opinions.
11 That does not mean that you must accept the opinions, but
12 it is evidence, you, the jury, can use in any way you deem
13 appropriate.

14 Thank you, Solicitor, you may continue.

15 MR. CASKEY: Thank you, Your Honor.

16 BY MR. CASKEY:

17 Q Now, Ms. Bartman, what is DNA?

18 A DNA is a chemical that is found in our bodies which
19 makes up who we are. We get half our DNA from our mothers
20 and half of our DNA from our fathers and it is unique
21 between individuals with the exception of identical twins.

22 Q Why is DNA important?

23 A DNA is seen as important in criminal proceedings
24 because it's an identification tool.

25 Q I was -- DNA -- what parts of the body is DNA

Jennifer Bartman - Direct Examination by Mr. Caskey

1 located?

2 A You can obtain DNA from blood, saliva, other body
3 fluids such as that, skin cells.

4 Q Is there a difference between the DNA that's
5 collected in a buccal swab or buccal swab inside the cheek
6 and the DNA that's found in the blood in a human body?

7 A No, the source does not matter in regards to DNA.

8 Q Okay. A second ago, you said that DNA is different
9 in all human beings; is that correct?

10 A Yes, that's correct with the exception of identical
11 twins.

12 Q And with identical -- let me just stop there. Do
13 you perform DNA analysis at SLED?

14 A Yes, I do.

15 Q What kind of analysis do you do there?

16 A The type of DNA testing that we do at SLED is
17 called STR testing. STR stands for Short Tandem Repeats
18 and basically we are looking at different sections of the
19 DNA that repeat over and over again and the number of times
20 that that section of DNA repeats is what there is between
21 individuals.

22 Q So in general terms, how is the STR the Short
23 Tandem Repeat Testing Analysis done; how does that happen
24 in your lab?

25 A We receive the evidence. It can be on swabs or on

Jennifer Bartman - Direct Examination by Mr. Caskey

1 cloth or any other type of material. In this case, it was
2 on swabs. We extract the DNA from the material that it's
3 submitted on. Then we figure out how much DNA we have and
4 then we make millions of copies of those small sections of
5 DNA. Once we make all those copies, it's similar to a copy
6 machine, we then separate it out into the DNA profile.

7 Q Now this method, the STR, has it -- have there been
8 publications concerning this type of testing and has the
9 method been subject to peer review?

10 A Yes, it has.

11 Q What does peer review mean?

12 A Peer review is when other qualified people look and
13 review the paper or the process in order to insure it's
14 reliability.

15 Q And is this method of testing been used or relied
16 upon prior to this case?

17 A Yes, it has.

18 Q And it's been used in other courts?

19 A Yes, it has.

20 Q Are there quality control procedures in place with
21 this testing?

22 A Yes.

23 Q And what's the purpose of those quality control
24 procedures?

25 A We have several controls that we use at SLED to

Jennifer Bartman - Direct Examination by Mr. Caskey

1 insure the reliability of our tests to make sure that our
2 tests are performing properly and our controls also serve
3 as a contamination check too to insure that contamination
4 has not occurred.

5 Q And is this method of testing consistent with
6 recognized scientific principals?

7 A Yes, it is.

8 Q And scientific procedures?

9 A Yes, it is.

10 Q Now what certifications or accreditations does your
11 lab have?

12 A Our lab holds accreditation from ASCLD LAB, and
13 that stands for the American Society of Crime Laboratory
14 Directors and the Lab stands for Laboratory Accreditation
15 Board and that's just a volunteer thing that we do in order
16 to insure the reliability of our tests. People come in and
17 they examine our protocols and techniques and our
18 procedures and insure that we're following some
19 recommendations and standards in the field.

20 Q Is that a national accreditation?

21 A Yes, the state's -- all the crime labs in state's
22 across the United States have this accreditation.

23 Q Okay. And are there quality assurance programs in
24 effect in your lab?

25 A Yes, there are.

Jennifer Bartman - Direct Examination by Mr. Caskey

1 Q And what's the purpose of the quality assurance
2 programs?

3 A They're to insure reliability. It's just a program
4 which includes all of our quality control processes to
5 insure that our techniques and procedures are performing as
6 expected.

7 Q And what controls are in place for this sort of
8 testing?

9 A We have several controls. We have samples that we
10 extract and do the entire process alongside with our
11 evidence samples. We also extract our evidence samples in
12 a separate time or space from our known standards to insure
13 that contamination does not occur that way. We also have
14 separate rooms in SLED where different parts of the
15 analysis procedure takes place.

16 Q I heard you mention the word contamination; what
17 does that mean?

18 A Contamination is unintentional transfer of DNA.

19 Q And what steps do you take to prevent
20 contamination?

21 A We wear gloves. We also wear lab coats and we
22 change our gloves between different samples. We only have
23 one evidence item open at a time and we also do a
24 contamination check at the end to insure that contamination
25 hasn't taken place.

Jennifer Bartman - Direct Examination by Mr. Caskey

1 Q When you say we do a contamination check, what role
2 do you play in determining if contamination has taken
3 place?

4 A After I have analyzed my samples, I look at my
5 controls and make sure that the tests have been performing
6 as expected and I also insure that contamination has not
7 taken place of cross samples or with anything else that may
8 have occurred in the laboratory.

9 Q And, Ms. Bartman, what is a technical review?

10 A A technical review is a review that is done of our
11 casework and it is by a second qualified analyst and it
12 reviews the entire case files. So it looks at all of our
13 worksheets. It will look at the data that it's generated.
14 It will look at statistical analysis, if any is done; and
15 they will agree or they will agree with the results and
16 conclusions that remain.

17 Q If they don't agree, what happens?

18 A Every report that goes out must have a technical
19 review taking place so if the technical review doesn't take
20 place, the report does not go out.

21 Q What if there's a technical review and there's a
22 disagreement?

23 A They -- we discuss the difference results and we
24 either come to an agreement or we consult one of our
25 supervisors or technical leaders according to the matter.

Jennifer Bartman - Direct Examination by Mr. Caskey

1 Q Do you issue your reports if there's not a
2 technical review or agreement with the technical review?

3 A No, we do not.

4 Q Okay. Now, Ms. Bartman, I want to talk to you
5 about the case before today. Did you receive evidence in
6 the case of State v. Martin Rodriguez?

7 A Yes, I did.

8 Q When did you receive that evidence?

9 A I'm going to refer to our verified chain of custody
10 from SLED. The evidence came into SLED on April 21st of
11 2014, and I personally received it on April 28th of 2014.

12 Q If you would please, let's talk about the
13 procedures you use at SLED to take in evidence; what are
14 those?

15 A We have an Evidence Control Department at SLED.
16 Submitting agency will bring in the evidence and in the
17 process of that evidence, the Evidence Control Technician
18 will seal it in a heat sealed pouch. The case is assigned
19 a SLED lab number and each item of evidence is given its
20 own individual item number.

21 Q Once that's occurred, what happens to the evidence,
22 what physically happens with the evidence?

23 A The evidence is then stored in an evidence vault in
24 the Evidence Control Department until the analyst will pick
25 up the evidence in order to do analysis on it.

Jennifer Bartman - Direct Examination by Mr. Caskey

1 Q And you mentioned a second ago that you were
2 looking at a verified chain of custody; what is that?

3 A When the evidence is -- is at SLED, we keep track
4 of where it's going. The -- when the evidence is logged
5 in, it's given a bar code and that will be used throughout
6 the laboratory. We scan that bar code to keep track of
7 where the evidence is and at what time.

8 Q And is that document created in the regular and
9 ordinary course of your business?

10 A Yes, it is.

11 Q Something you do with every case?

12 A That's correct.

13 Q Now, are you familiar with all of the folks who
14 work there in the lab at SLED?

15 A Yes, I am.

16 Q Particularly the -- the evidence room?

17 A Yes, I am.

18 Q If you would, please, take a look at your chain of
19 custody and tell us, you recognize all the individuals on
20 that report up until the time that you took control of the
21 evidence in this case?

22 A Yes, I do.

23 Q Do you recognize everyone on that list?

24 A Yes, I do.

25 Q Now, Ms. Bartman, what specific items were received

Jennifer Bartman - Direct Examination by Mr. Caskey

1 in this case? And for -- I'm referring to SLED Lab,
2 L14-04963.

3 A I received buccal swabs labeled Minor ,
4 buccal swabs labeled that Child , and buccal
5 swabs of labeled Martin Alejandro Rodriguez.

6 Q Ms. Bartman, I'm going to ask you to take a look at
7 a couple of things here. I'm handing you what's been
8 marked as State's Exhibit 12, State's Exhibit 13, and
9 State's Exhibit 14. Just take a look at those and when
10 you're ready, just let me know.

11 A I'm ready.

12 Q Do you recognize those items?

13 A Yes, I do.

14 Q How do you recognize them?

15 A I recognize them by this yellow bar code sticker.
16 That is the sticker that is put on when it's brought into
17 SLED with the SLED Lab Number and the Item Number. I also
18 recognize my initials on the heat sealed pouch as well as
19 on the item of evidence.

20 Q Now when these items are received by SLED, are they
21 accepted if they are unsealed?

22 A No, they're not.

23 Q Were these items sealed when they came to you?

24 A They were.

25 Q Were there any markings on those items that you

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1 recognize?

2 A There are the lab number and item number on the
3 actual piece of evidence, which I put on there as well as
4 my initials and the date that I opened the packaging and
5 sealed the packaging.

6 Q And what was that date?

7 A April 30th, 2014.

8 Q Prior to you unsealing those pieces of evidence,
9 was there any evidence of tampering?

10 A No, there was not.

11 MR. CASKEY: Your Honor, at this time, we'd move
12 State's Number 12 -- Number 12 is in evidence, excuse me.
13 State's 13 and 14 into evidence?

14 MR. WILLIAMS: Your Honor, we would object as to 13
15 and 14; 12 is in evidence and we would argue that the chain
16 has not been complete.

17 THE COURT: All right. Thank you.

18 Madam Forelady, ladies and gentlemen, step out
19 momentarily. Do not discuss the case during this brief
20 recess.

21 (The jury left the courtroom at 4:53 p.m.)

22 THE COURT: All right. Mr. Williams, I'll be glad
23 to hear from you.

24 MR. WILLIAMS: Your Honor, there's been no
25 testimony as to what occurred with these items from the

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1 date of April the 21st up until the date that I believe she
2 said that she -- she either received it on the 28th or she
3 received it on the 30th of April. I think there's some
4 information, she said that she put her initials on it on
5 April the 30th, but at some point in time, I have in my
6 notes that -- that she might have received it and moved it
7 on April 28th of 2014. So there's an absence of any
8 testimony in regards to what transpired to these items
9 during that week or 10 days at all.

10 THE COURT: All right. Solicitor.

11 MR. CASKEY: Your Honor, there was testimony that
12 was elicited earlier from Beth Holliman that she had turned
13 this evidence over to Doris Yarborough, who is one of the
14 individuals who works at SLED and that evidence was
15 delivered in sealed packaging. Then this witness has
16 testified that that same date that it arrived, it was taken
17 into SLED for evidence and was maintained throughout that
18 period to the point where she conducted her analysis and as
19 Court knows under Brockmire, the requirement is that the
20 witness be able to identify all of the individuals who had
21 access to that.

22 THE COURT: All right. Mr. Williams?

23 MR. WILLIAMS: Your Honor, I think the question
24 elicited to her when she was giving the names at SLED was
25 does she recognize is -- does she recognize the name of

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1 these individuals. There was never a question which
2 established who the individuals were and what their
3 involvement was in the touching and carrying of this sample
4 of this evidence that she's talked about. So there's been
5 no explanation in regards to who or how they were involved
6 in the, I guess the disposition of this evidence.

7 MR. CASKEY: Your Honor --

8 THE COURT: Yes, sir.

9 MR. CASKEY: Sir, I would point to Fourth Circuit
10 Case, United States v. Jones and that is 356 Federal Court
11 Third Edition 529, and specifically what I'm going to refer
12 to is at 535 which makes clear that in determining whether
13 or not real evidence is admissible, the trial judge only
14 needs to satisfy himself that it's improbable that the
15 original item had been exchanged or otherwise tampered
16 with. Here the evidence that has been submitted to the
17 Court indicates a clear chain of custody and there's no
18 indication that anyone had otherwise substituted the
19 evidence or impermissibly accessed it.

20 If Your Honor desires, I'm happy to question the
21 witness in-camera whether or not as to specifically who
22 received the evidence from SLED to address Mr. Williams
23 concern.

24 THE COURT: All right. Reading from -- just a
25 moment -- State v. Hatcher 708 S.E. 2d 750, the Supreme

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1 Court of South Carolina 2011. The case having been tried,
2 excuse me, in Marlboro County before the Edward B.
3 Cottingham, Jr. As I understand the law, a party offering
4 into evidence fungible items such as drugs or blood
5 samples, or in this case, buccal swabs, must establish a
6 complete chain of custody as far as practical. Citing
7 State v. Sweet and Benton v. Pelon. Pelon stated it is
8 generally held that the party offering such a specimen is
9 required to establish as far as practical, a complete chain
10 of custody for the substance analyzed is passed through
11 several hands, the evidence must not leave it to conjecture
12 as to who had it and what was done with it between the
13 taking and the analysis.

14 Testimony from each custodian of fungible evidence,
15 however, is not a prerequisite to establish in a chain of
16 custody sufficient for admissibility. Where other evidence
17 establishes the identity of those who have handled the
18 evidence and reasonably demonstrates the manner of handling
19 of the evidence, our Courts have been willing to fill gaps
20 in a chain of custody due to an absent witness. Proof of a
21 chain of custody need to negate all possibility of
22 tampering so long as the chain of possession is complete.
23 Citing State v. Carter, 544 S.E. 2d 835, a 2001 case
24 concerning a blood sample.

25 Our Courts in applying this rule have found

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1 evidence inadmissible only when there is a missing link in
2 the chain of possession because the identity of those who
3 handled the substance was not established at least in as
4 far as practical.

5 In the Hacker case, the Court of Appeals stated
6 that Officer Locklear and SLED Agent Wilson both acted as
7 custodians of the evidence, but neither is directly linked
8 to the other by testimony or documentary evidence.
9 Specifically the Court stated that the person who received
10 the evidence at SLED is not personally identified and there
11 were none of the details presented about how the evidence
12 was handled while Officer Locklear was in possession or
13 once it was surrendered to SLED.

14 The Court of Appeals acknowledged that the South
15 Carolina Case Law provides that the chain of custody need
16 not be established -- need to be established only as far as
17 reasonably practical and each person that handled the
18 evidence is not required to testify, but nevertheless
19 stated that South Carolina Courts have consistently held
20 that all persons in the chain of custody must be identified
21 in the manner of handling the evidence must be
22 demonstrated. The Court of Appeals in that ruling relied
23 in large part on its opinion in State v. Chisholm in which
24 it effectively held South Carolina Law requires every
25 individual who handled the evidence could be specifically

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1 identified either by providing testimony under oath or
2 producing sworn statements pursuant to Rule 6(b), South
3 Carolina Rules of Criminal Procedure. The Court of Appeals
4 thereafter sitting non blanc subsequently overruled
5 Chisholm in State v. Taylor stating that to the extent
6 Chisholm can be read to require the testimony of each
7 person in the chain of custody under all circumstances. It
8 is inconsistent with the precedent established by our
9 Supreme Court and is hereby overruled.

10 Although Hatcher asserted our cases hold all
11 individuals must be identified without exception, this
12 appears to be an extrapolation of the general observation
13 that where all individuals in the chain, in fact, are
14 identified in the manner of handling and is reasonably
15 demonstrated, it is not an abuse of discretion for the
16 trial judge to admit the evidence in the absence of proof
17 of tampering, bad faith or ill motive.

18 Of course in the case of Benton v. Pelon the chain
19 of custody was established as far as practical. They
20 specifically stated that we have never held the chain of
21 custody rule requires every person associated with the
22 procedure to be available to testify or identified
23 personally depending on the facts of the case. In State v.
24 Cochran the Court found the chain of custody was sufficient
25 even though the courier who transported the samples from

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1 the collection site to the testing facility was never
2 identified when the samples arrived at the testing facility
3 sealed and intact.

4 In Cochran, the Court noted that the chain of
5 custody had been established as far as practical. It
6 depends on the unique practical circumstances of each case.
7 In examining issues regarding the chain, a mere suggestion
8 and substitution could possibly have occurred is not enough
9 to establish a break in the chain. And they found in State
10 v Tester that the State provided a sufficient chain of
11 custody for DNA swab samples even though the nurse failed
12 to keep records of each step in collecting and storing the
13 evidence where the nurse testified she took the samples
14 according to Rape Kit instructions and established
15 protocols and sealed and labeled them.

16 It is unnecessary that the police account for every
17 hand-to-hand transfer of the item. It is sufficient if the
18 evidence demonstrated a reasonable assurance, the condition
19 of the item remains the same from the time it was obtained
20 until the introduction at trial.

21 Considering those various factors here and the
22 testimony and I am only concerned with State's Exhibits
23 Number 13 and 14 for identification, one being the DNA swab
24 of Minor and the other being the DNA swab of
25 Child, there was testimony from the collector of

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1 that evidence, Deputy Gilland, who testified the
2 circumstances under which he -- where he went to -- when he
3 went there, how he collected those buccal swabs.
4 Thereafter what he -- what he did with those swabs taking
5 them to the evidence room, the secured evidence room at the
6 Lexington County Sheriff's Department. Thereafter there
7 was testimony by -- that he signed it in. They were later
8 transported to SLED by Officer Holliman. He testified,
9 Gilland testified as to conditions, seal conditions. Ms.
10 Holliman testified as to the conditions, that she took them
11 to evidence intake; I'm not sure if that's my words or her
12 words as far as the location at SLED for DNA testing.

13 The individual she turned them over to was Doris
14 Yarborough. Agent Bartman has now testified that as to the
15 same day that Ms. Holliman testified to saying they were
16 received by Ms. Yarborough, 4/21; she's confirmed that
17 date. They came into her possession on 4/28 and she went
18 down and received them and in the normal course of business
19 and she opened them on 4/30. For that reason, I think that
20 the State has met the -- has reasonably met the standard
21 set forth in this line of cases that I have now alluded to.
22 State's 13 and 14 are in evidence subject to objection.

23 Bring us our jury please.

24 THE BAILIFF: Yes, sir, Your Honor.

25 MR. CASKEY: Your Honor, so I'm clear, are 13 and

Jennifer Bartman - Direct Examination by Mr. Caskey

1 14 in evidence or do I need to make that motion when the
2 jury's back?

3 THE COURT: You can offer them in front of the
4 jury. I have admitted them subject to Mr. Williams'
5 objection.

6 MR. CASKEY: Thank you, sir.

7 THE COURT: I always think evidence has to be
8 offered in front of the jury.

9 MR. CASKEY: I do as well, Your Honor, I just
10 wanted to be clear.

11 (The jury entered the courtroom at 5:09 p.m.)

12 THE COURT: All right. Thank you, ladies and
13 gentlemen, for your patience.

14 Solicitor, you may continue.

15 MR. CASKEY: Thank you. Your Honor, at this time,
16 we'd move to -- the State would move Exhibits 13 and 14
17 into evidence.

18 (State's Exhibit Number 13 and Number 14 were
19 entered into evidence.)

20 MR. WILLIAMS: Thank you, Your Honor.

21 MR. CASKEY: Thank you, Your Honor.

22 BY MR. CASKEY:

23 Q Now, Ms. Bartman, I will hand you this pair of
24 scissors. If you would please go ahead and unseal 13 and
25 14 and tell the jury -- well just go ahead and do that

Jennifer Bartman - Direct Examination by Mr. Caskey

1 first.

2 Okay. Let's start with State's Number 12. This
3 is -- okay. If you would, look in there and tell the jury
4 what's contained in that bag.

5 A This is a buccal swab collection with the name
6 Martin Rodriguez.

7 Q Is that the evidence which you tested in this case?

8 A Yes, it is.

9 Q Okay. If you would just put that back in there.
10 And now State's 13.

11 A This is another buccal swab collection kit with the
12 name Minor.

13 Q Is that the evidence that you tested in this case?

14 A Yes, it is.

15 Q And 14, please?

16 A This is another buccal swab collection kit with the
17 Child.

18 Q And is that evidence that you tested in this case?

19 A Yes, it is.

20 Q Okay. Now was the STR method you testified to
21 earlier the method you used to test these kits or test
22 these samples?

23 A Yes, it is.

24 Q And were -- were these all the items that you
25 tested in the case?

Jennifer Bartman - Direct Examination by Mr. Caskey

1 A Yes, those were the items I tested.

2 Q Were you able to obtain results from your testing?

3 A Yes, I was.

4 Q Were you able to develop a full DNA profile for
5 each buccal or buccal swab that you tested?

6 A Yes, I was.

7 Q Did you issue a report based on your testing?

8 A Yes, I did.

9 Q Was a technical review done?

10 A Yes, it was.

11 Q And did the technical reviewer agree?

12 A Yes, she did.

13 Q Did all of the controls of this case indicate that
14 the tests were performed properly?

15 A Yes, they did.

16 Q Okay. Now, Ms. Bartman, I'm going to show what's
17 been marked as State's Exhibit Number 15 for
18 identification. Do you recognize this?

19 A Yes, I do. It appears to be the third page of my
20 report that I generated.

21 THE COURT: It appears to be what, I'm sorry?

22 THE WITNESS: The third page of the DNA report that
23 I generated which showed the table of the DNA results.

24 BY MR. CASKEY:

25 Q And how are you able to identify this?

Jennifer Bartman - Direct Examination by Mr. Caskey

1 A I identified it by the SLED's lab number as well as
2 I have a copy of my report.

3 Q All right. And what date did you -- did you create
4 this?

5 A This table was approved on May 16, 2014.

6 Q Okay. Just so I'm clear, this wasn't the actual
7 size when you got it; this is a blown up copy of your
8 report?

9 A That's correct.

10 Q Okay.

11 MR. CASKEY: Your Honor, at this time we would move
12 State's 15 into evidence.

13 MR. WILLIAMS: Subject only to the motion which
14 we're already argued in reference to the DNA.

15 THE COURT: All right. With that being said,
16 State's 15 is in evidence subject to the previously argued
17 and ruled upon motion.

18 (State's Exhibit Number 15 was entered into
19 evidence.)

20 THE COURT: Thank you, Mr. Williams.

21 BY MR. CASKEY:

22 Q Ms. Bartman, what is this document?

23 A This is a sample of the DNA results that we
24 generated. We look at 15 different locations on the DNA as
25 well as a gender marker. Those are the different columns

Jennifer Bartman - Direct Examination by Mr. Caskey

1 that you see on the table with the different DNA results
2 for each item of evidence that I tested, which are each of
3 the three different rows.

4 Q Okay. This top line here, what did you say it
5 was -- let me back this up so you can -- can you see from
6 there?

7 A Yes, I can.

8 Q Okay.

9 A That top row is the names of the 15 different
10 locations that we test on the DNA as well as a gender
11 marker.

12 Q And which one is the gender marker?

13 A The last column. An X indicates female and an XY
14 indicates female.

15 Q Okay. And these are individual sites or different
16 locations you're looking at along the DNA?

17 A That's correct.

18 Q Okay. Now on the rows over here, what are these --
19 what is this?

20 A Those are the three items of evidence that I tested
21 in this case.

22 Q All right. And for each row, that corresponds to
23 what?

24 A The top row is the buccal swabs from Minor

25 The second row is the buccal swabs from Child

Jennifer Bartman - Direct Examination by Mr. Caskey

1 and the third row would be the buccal swabs from
2 Martin Alejandro Rodriguez.

3 Q All right. Now, maybe you can come down and help
4 us understand how this works.

5 THE COURT: And you may step down if you'd keep
6 your voice up when you're away from the microphone.

7 MR. CASKEY: My apologies.

8 BY MR. CASKEY:

9 Q Let me have you stand, actually stand on this side
10 so we can make sure the court reporter hears you.

11 Now where does Child get his DNA
12 from?

13 A Like I said earlier, the DNA of an individual, half
14 of it is from the mother and half of it's from the father.

15 Q Okay. So in this case, what do these numbers
16 represent?

17 A As I mentioned, with the STR testing or the Short
18 Tandem Repeat testing, we look at the number of times that
19 those different sections of DNA repeat and the numbers
20 you're seeing are just the numbers of times that it
21 repeats. So he gets one of them, one of those numbers from
22 his mom and one of those numbers from his dad.

23 Q All right. So in this case, this 11, where does
24 that come from?

25 A The 11 could come from his mother.

Jennifer Bartman - Direct Examination by Mr. Caskey

1 Q And the 16, where does he get that from?

2 A The 16 could from the -- Martin Rodriguez.

3 Q All right. Let's move to the next one. This one
4 is just a 30; what does that indicate?

5 A When you just see one number on my chart, you can
6 think of it as 30-comma-30; it just means they have the
7 same number for both the mom and the dad.

8 Q Okay.

9 A Both parents.

10 Q So does the 30 here in Child DNA does that come
11 from the mother?

12 A Yes, that's correct.

13 Q And 31.2, where does that come from?

14 A The 31.2 can come from Martin Rodriguez.

15 Q All right. Now this goes on in each of the fifteen
16 locus?

17 A That's correct. That's the comparison that we made
18 from the -- the mother, the alleged father and then the
19 child.

20 Q And again every time we see just a single digit,
21 it's the equivalent of that number comma that number?

22 A That's correct.

23 Q All right.

24 Thank you, Ms. Bartman, you can take the stand
25 again.

Jennifer Bartman - Direct Examination by Mr. Caskey

1 Now, Ms. Bartman, how do you use this information?

2 A We look at the comparison of the child with the
3 mother and the alleged father; that's the typical paternity
4 case. And then we look to see if the alleged father can be
5 excluded or if he cannot be excluded and then we calculate
6 a statistic in order to put weight on that conclusion.

7 Q All right. Now, for the gender marker here, this
8 last column, is it that gene or chromosome inherited in the
9 same way?

10 A Yes.

11 Q Okay. Now, were you able to develop statistical
12 calculations concerning the probability of parentage by
13 different ethnic groups?

14 A Yes, I did.

15 Q All right. Let me set this down here. So what
16 does that mean, the probability of parentage?

17 A That is a number that we calculate in order to have
18 the probability of parentage. We look at each of the
19 different locations and see if he could have contributed
20 and we put the weight as to whether he could be the father.

21 Q All right. And if I'm not mistaken, your
22 calculations are broken down how?

23 A By population group.

24 Q And those are divided along?

25 A We have Caucasian, black, Southeastern Hispanic and

Jennifer Bartman - Direct Examination by Mr. Caskey

1 Southwestern Hispanic.

2 Q All right. Caucasian; what was the next one you
3 said?

4 A Black.

5 Q Okay.

6 A Southeastern Hispanic and Southwestern Hispanic.

7 Q All right. Now, Ms. Bartman, the probability of
8 parentage of the defendant as to the Caucasian group, what
9 was that?

10 A 99.999997521.

11 Q Okay. And this is a percentage?

12 A Yes, it is.

13 Q Okay. So 99.99 -- keep going?

14 A 9 --

15 Q What's next?

16 A 9 --

17 Q 99 --

18 A 99.

19 Q 9 --

20 A 7521.

21 Q 7521. I'll just stop it. 99.999997 percent
22 probability of parenting; probability of paternity?

23 A Yes.

24 Q Okay. Black, what was that?

25 A 99.999998.

Jennifer Bartman - Direct Examination by Mr. Caskey

- 1 Q I'm sorry. How many 9's after the decimal?
- 2 A Five.
- 3 Q 9 and then what's that next number?
- 4 A 8.
- 5 Q We'll just stop there. Okay. And Southeastern
- 6 Hispanic, is that 99 -- I'm sorry. You tell me.
- 7 A 99.9999959.
- 8 Q Again, five 9's after the decimal?
- 9 A That's correct.
- 10 Q All right. 99.9999959 percent; is that right?
- 11 A Yes.
- 12 Q Okay. And as to Southwestern Hispanic, now the
- 13 probability of parentage of the defendant as to Child
- 14 ?
- 15 A 99.99997949.
- 16 Q Okay. Th weren't as many 9's after the decimal.
- 17 How many decimal -- 9's after the decimal?
- 18 A Four.
- 19 Q Okay. 9 and what was the next number you said?
- 20 A 7.
- 21 Q All right. So as to Caucasian, 99.999997 percent;
- 22 let me just ask you, take a look at this and check it
- 23 against your notes?
- 24 A Okay. That's correct.
- 25 Q Is that the probability of parentage or probability

Jennifer Bartman - Direct Examination by Mr. Caskey

1 of paternity?

2 A Either. Parentage.

3 Q Now, Ms. Blackmon (sic), is it possible to have a
4 100 percent probability of paternity?

5 A No, it's not. With the calculations that we
6 perform, mathematically you cannot reach 100 percent.

7 Q Even in cases of no paternity?

8 A That's correct.

9 Q In your opinion, based on your analysis, what is
10 your expert opinion on the probability of paternity by the
11 defendant as to the child, Child ?

12 A In my opinion at 99.99997 percent.

13 Q Why did you check -- why did you choose that
14 number?

15 A That's the most conservative number of the four.

16 Q So in your expert opinion, it's 99.99997 percent
17 the defendant is the father of Child ?

18 A The probability of paternity, yes.

19 Q Okay. And based on your education and training as
20 an expert in DNA Science, as an expert in DNA Paternity
21 Testing and DNA Statistical Analysis, to a reasonable
22 degree of scientific certainty, do you have an expert
23 opinion on the paternity of the infant, Child ?

24 A In my expert opinion, I believe that Martin
25 Rodriguez is the father of Child .

Jennifer Bartman - Cross-Examination by Mr. Williams

1 Q And the last question, Ms. Bartman, what did you
2 end up doing with this evidence?

3 A Ultimately the evidence was returned to the
4 submitting agency.

5 Q Thank you.

6 MR. CASKEY: No further questions, Your Honor.

7 MR. WILLIAMS: May it please the Court?

8 THE COURT: Yes, sir.

9 **CROSS-EXAMINATION**

10 BY MR. WILLIAMS:

11 Q Ms. Bartman, you went through four groups of
12 population groups, if you will. I think you went through
13 Caucasian, Hispanic, two types of Hispanic and black; is
14 that right?

15 A That's correct.

16 Q And what you were assessing is the probability that
17 the DNA from Child belonged to someone in that
18 group population?

19 A That the -- the, yeah. The probability of
20 parentage if -- if they belonged to that population group.

21 Q So are you saying that someone from that population
22 group, the odds of that someone from that population group
23 of being the parent of Child, are those numbers
24 that you read off?

25 A No, that's a slightly different population that's

Jennifer Bartman - Cross-Examination by Mr. Williams

1 called the probability of exclusion.

2 Q So explain to me what you mean by the probability
3 of inclusion I guess?

4 A Well, I'll start with saying, probability of
5 exclusion is the probability that any random man selected
6 would have the -- would have a DNA profile that could have
7 contributed to being a parent of the child. The
8 probability of paternity or parentage, that looks at the
9 different alleles, or different numbers that are on the
10 chart and it takes into account the alleged father's DNA.
11 Whereas the probability of exclusion does not; it's just a
12 random individual.

13 Q So are you saying that, I guess the population
14 groups that you are looking at, that the father would not
15 have been one of those population groups?

16 A I don't think I understand your question.

17 Q How did you determine the population groups in
18 which -- and which -- and how you would assess those
19 numbers to population groups that you used?

20 A We use a computer program to calculate our
21 statistics which uses the allele frequencies that have been
22 published by the FBI and the Journal of Forensic Scientists
23 in General Forensic Science and in that paper that was
24 published, they broke down the allele groups that belong to
25 different population groups.

Jennifer Bartman - Cross-Examination by Mr. Williams

1 Q So you're saying that somewhere there is a list of
2 allele groups that belong to different population groups?

3 A There is a paper that is published which has the
4 different allele frequencies in it and they were showing to
5 differ enough between different population groups and that
6 they were separated out into the four that you see there.

7 Q So that testimony is not relative in regards to
8 the, I guess the, the character of the father that would,
9 of this child meaning that it didn't designate whether or
10 not it's Hispanic, black or Caucasian, does it?

11 A No, at SLED we always report the most conservative
12 number, so it doesn't matter which group that might fall
13 into in order to be conservative. And typically what you
14 cell-identify as might not be where your DNA lies in. So
15 for that reason, we always report the most conservative
16 number.

17 Q But let me ask you, you said what you essentially
18 do when you get DNA is you take that DNA and you use some
19 sort of material, some solvent, some sort of material to
20 enhance the amount of DNA that you're looking at; is that
21 right?

22 A We use a buffer solvent to extract the DNA from
23 whatever substrate or substance that it's on.

24 Q And that buffer solvent basically segregates the
25 DNA from whatever you're looking at, right?

Jennifer Bartman - Cross-Examination by Mr. Williams

1 A It separates the DNA from the swab or from the
2 cloth or whatever it happens to be on.

3 Q All right. And when you talk about a DNA -- you
4 were talking about STR's which is repeating, repeating DNA,
5 right?

6 A Yes, there are sections of DNA that repeat.

7 Q Now, you measure 15, 15 locations on a DNA strand;
8 is that correct?

9 A That's correct.

10 Q All right. And how long is a DNA strand?

11 A Millions of these pairs long.

12 Q Millions. So you pull out 15 locations and then
13 you measure -- you're looking for proteins or DNA at those
14 locations; is that correct?

15 A We look at specific sequences of DNA. These 15
16 different locations which have been shown to differ between
17 individuals.

18 Q And when you say examine those 15, are you familiar
19 as to whether or not there are other -- this is the same
20 type of test you can get in a drug store, right?

21 A It's --

22 Q Or commercially available, right?

23 A I'm not sure I understand your question.

24 Q Aren't there other testing that you can do to pull
25 out more than 15 loci or locus, loci on a DNA strand?

Jennifer Bartman - Cross-Examination by Mr. Williams

1 A There are other kits that are available that will
2 look at different numbers of locations.

3 Q And how many -- how many locations do these other
4 testing units, if you will -- how much can they test?

5 A There are a few different kits out there that do
6 test more than the 15.

7 Q 20?

8 A Yeah, that's possible.

9 Q 25?

10 MR. CASKEY: Objection; speculation.

11 THE COURT: Overruled.

12 BY MR. WILLIAMS:

13 Q 25?

14 THE COURT: She's an expert.

15 THE WITNESS: I do know that there is a kit that
16 will check 24.

17 BY MR. WILLIAMS:

18 Q 24?

19 A That's correct.

20 Q So there is a kit which you could actually get
21 which will examine 24 locations on a DNA strand. If I'm
22 taking -- of course, you can't see DNA, can you; it's
23 pretty small. But if you take it out and stretch it out,
24 it's examining 24 locations as opposed to 15, right?

25 A Yes, there is a kit available to do that.

Jennifer Bartman - Cross-Examination by Mr. Williams

1 Q And the reason why they have a kit that examines
2 more locations is to be what, more specific?

3 A That's correct.

4 Q To make a determination that is more scientifically
5 correct?

6 A It gives more information.

7 Q All right. Well, let's talk about, let's talk
8 about, can your method -- can your DNA method tell the
9 difference in the -- in the race of a person?

10 A No, we do not determine race from our DNA profile.

11 Q So when you look at these locations, loci, you
12 can't tell if that person is black, white, Hispanic?

13 A With the test that we do at SLED, no.

14 Q And does your DNA testing tell you the age of the
15 person involved?

16 A No, it does not.

17 Q So it can't tell you the age; it can't tell you the
18 race; and that -- there is a kit which is more precise?

19 A It allows more information.

20 Q Now, when it comes to determining, obviously you
21 know population genetics as well as you know individual
22 genetics. So in terms of, I don't know, relationships
23 between parties, would you expect -- you say -- you say
24 that a -- a person inherits half of his DNA from his mother
25 and he inherits half of his DNA from his father, correct?

Jennifer Bartman - Cross-Examination by Mr. Williams

1 A That's correct.

2 Q So when you're looking at a group of people or
3 population of people, would relatives -- would you expect
4 relatives to have more similar DNA than non-relatives?

5 A Yes, I would.

6 Q So the closer the relatives that you have, you
7 would expect them to have more similarities at the loci
8 that you're examining; is that correct?

9 A That's correct, I would expect brothers to have
10 similar DNA than, for example, cousins.

11 Q And as a matter of fact, when you're examining
12 brothers, sometimes you have to go further than 15 loci to
13 determine more accuracy, don't you?

14 A It depends if they're identical twins or not.

15 Q Is it always only identical twins?

16 A In my experience I've not seen non-identical twins
17 have the same DNA at those 15 locations.

18 Q All right. And you're referring to the 15
19 locations that you check?

20 A That's correct.

21 Q Are you familiar with any literature with regards
22 to whether or not there are actual cases where they're not
23 identical and they have the same 15 locations?

24 A Not off the top of my head, no.

25 Q You're not denying that's not possible though are

Jennifer Bartman - Cross-Examination by Mr. Williams

1 you?

2 A It's possible; it's not probable, but it is
3 possible.

4 Q Let me ask you this: You were describing the 15
5 locations and you said that there was a gender DNA; did I
6 say that right?

7 A A gender marker.

8 Q A gender marker, is that the same thing as an,
9 Amelogenin -- Amelogenin?

10 A That's correct.

11 Q So when you determined these markers right here,
12 were you determining the Amelogenins of those individual
13 samples that you were taking?

14 A Amelogenin is the name of the marker that we look
15 at to determine gender.

16 Q And that's actually -- that's actually a gene from
17 the enamel of the tooth or something like that, isn't it;
18 it's used to -- to be a -- you use it to test your samples
19 to make sure you have the right samples, don't you?

20 A I'm not sure what you mean by that.

21 Q Well, if you mixed up your samples, you'd know by
22 taking -- by checking the Amelogenin that it came from a
23 man or it came from a woman, right?

24 A In most cases, yes.

25 Q Do you have case notes with you when you did the --

Jennifer Bartman - Cross-Examination by Mr. Williams

1 when you did your -- your notes that you use when you, when
2 you formulated these notes or when you came out with these
3 summaries, I guess?

4 A Yes, sir.

5 Q Would there be any reason why you would have an
6 inconclusive determination when you talked about population
7 with the Amelogenins; is that because there's so many
8 people that you couldn't figure out the men or the women or
9 it doesn't matter or --

10 A When we do statistical analysis, we look at the 15
11 locations and we don't look at the gender marker when we
12 calculate statistics.

13 Q Why would you not look at the gender marker when
14 you do that?

15 A We don't have allele frequencies that are any sort
16 of amount that we can use to calculate that. It's more as
17 you described, just a gender marker to indicate gender.

18 Q So it's not a determination to determine, I guess,
19 you're looking men and women together when you do that,
20 when you make that formulation because men and women all
21 have genes, right?

22 A That's correct.

23 Q And the only difference between, the only gene
24 difference is what we're seeing in the Amelogenin, right?

25 A Yes, and the gene locations.

Jennifer Bartman - Cross-Examination by Mr. Williams

1 Q When you -- when you were referencing -- excuse me.
2 You have things which -- on the bottom and you refer to
3 bold or major contributor. What does that mean?

4 A Those -- the tests that you see at the bottom are
5 just like a table legend. So for example, if you did see a
6 bold number on the table, it would indicate a major
7 contributor to a mixture, but in this case, those do not
8 apply to the table.

9 Q Why do they not apply?

10 A Based on, if you, if you go through them, we look
11 at different heights at first, I'm not sure if you can see
12 it, but the first says alleles between 75 and 149 are --
13 and that's just basically the height of the peak that we
14 look at. And in this case, all the heights were over 149
15 so that did not apply.

16 The next one you see is no result with a dash and I
17 did get results at every location so that one did not apply
18 to this table. None of the evidence items yielded a
19 mixture, so therefore, I didn't have anything to bold and
20 none of the locations had a conclusive result so that one
21 did not apply to the table either.

22 Q So what is the obligate parentage allele?

23 A When you have a child with a known mother, as I
24 said, you get half of the DNA from the mother; half of the
25 DNA from the father. So for example, if you look at that

Jennifer Bartman - Cross-Examination by Mr. Williams

1 first column, the child, Child , has an 11-16. The
2 mother has an 11-14. So the child must have gotten that 11
3 from the mother. So that 16 is called the obligate allele
4 and means that the father must have that 16 in order to be
5 included as the possible father.

6 Q So what you're saying is that the obligate
7 parentage allele refers to the parent or the alleged parent
8 that the child would have gotten that gene from?

9 A Right, it refers to the number that the -- the
10 alleged parent must have in order to be included as the,
11 the parent.

12 MR. WILLIAMS: Excuse me, Your Honor.

13 (There was a pause.)

14 BY MR. WILLIAMS:

15 Q So the test that you actually ran was only in
16 regards to these three individuals that you ran it on,
17 correct?

18 A Yes.

19 Q And you didn't run a test -- you didn't run the 25
20 loci test which would have tested more sites, correct?

21 A That's correct.

22 Q And your determination is based -- your
23 determination of likelihood of parenting is based on those
24 two items right there, meaning the 15 loci that you found
25 and the individuals that you tested?

Jennifer Bartman - Cross-Examination by Mr. Williams

1 A Yes, we -- I determined that the likelihood that
2 given the DNA results from the child, that it's more likely
3 that Martin Rodriguez is the true biological father than
4 another random male.

5 Q Than another random male?

6 A That's correct..

7 Q What do you mean by another random male?

8 A Just randomly selected person in the population.

9 Q And you have -- did you admit that the closer the
10 family unit than the more likelihood that there would be
11 closer similarities in the genes than the DNA, right?

12 A Yeah, relatives have similar DNA.

13 Q What about the fact that you had -- you were
14 explaining it and I'm a little slow. The individual
15 numbers that you show on your scale, like you will have a
16 10, 11, a 7, but you don't have double; you don't have the
17 double numbers, you know, that would stand for what, two
18 locations?

19 A It could be. That's just typically how we report
20 it, but it could read 10 comma 10 or 11 comma 11..

21 Q So are you telling us that there could have been a
22 different number here, but it wasn't recorded or that the
23 only location that you found was 10?

24 A At that location, both the mother and the father
25 contributed a 10. So it's like 10-10, but as far as our

Jennifer Bartman - Cross-Examination by Mr. Williams

1 reporting we report just the single number.

2 Q But the mother and father have two locations, don't
3 they. I mean they have like 10-11 and 10 and 13?

4 A The number --

5 Q I'm -- go ahead?

6 A I'm sorry. The number does have two; it's 10 comma
7 10. They're both 10.

8 Q Who was the person who checked your work at SLED?

9 A The Technical Reviewer was Amanda Bowen.

10 Q Does she sign off on your work, meaning does she --
11 when you do your report, does she sign off at the bottom
12 like it's -- say like a supervisor would if it was an
13 investigation or something?

14 A Yes, we have a electronic signature in our computer
15 program in which she'll enter her password and
16 electronically sign it to indicate that she agrees with my
17 results.

18 Q Now you were -- you were testifying earlier about
19 the -- the quality, I'm sorry, your testing that you had
20 been tested what, twice a year?

21 A The Proficiency Testing, yes, we are tested twice a
22 year.

23 Q And that you passed the Proficiency Testing twice a
24 year?

25 A Yes, I have.

Jennifer Bartman - Cross-Examination by Mr. Williams

1 Q What is -- what is the measurement of, I mean is it
2 like a 100, do you have 100 percent testing or do you have
3 like, I got through life with a 70 percent testing; do you
4 have a 70 percent test and you passed proficiency or what
5 is the standard?

6 A It's an external company that we get our
7 Proficiency Tests from so we treat it just like a regular
8 case. We receive evidence, we treat and do the exact same
9 process and then we generate a report and submit those
10 results and our conclusions back to the external agency and
11 in order to pass, we have to have the correct results and
12 conclusions.

13 Q So you don't have a percentage?

14 A It's pass/fail.

15 Q Pass/fail. Well I mean is that over, do you have
16 to be right 51 percent of the time?

17 A You have to be correct in your DNA analysis and
18 your conclusions in order to pass.

19 Q On every time that you test it?

20 A I don't --

21 Q Well, I mean most tests I'm used to and if someone
22 gives you something and you answer the questions and then
23 somebody comes behind you and grades you and they assess
24 whether or not you got it all right or you missed a little
25 off or something is just a little wrong; are you saying

Jennifer Bartman - Cross-Examination by Mr. Williams

1 that that's not how -- that that's how they test you or do
2 you have to get everything right?

3 A You have to everything right.

4 Q All right. And how many tests are you given on the
5 samples that you run?

6 A I'm not sure I understand.

7 Q Do you just test one group of samples and that's
8 it?

9 A Well we, like I said, we get a case so it includes
10 some referenced standards as well some evidence items and
11 we do the testing on that case.

12 Q So you get checked every year on one case?

13 A We do it twice a year and throughout our
14 Proficiency Test they make sure that everything that we're
15 competent in and all the different types of testing that we
16 do are covered in those Proficiency Tests.

17 Q All right. And -- and it's your understanding that
18 you can't -- you can't be a little off on any of that, that
19 you have to be a 100 percent accurate on everything that
20 you do?

21 A That's correct. That's my understanding.

22 Q And on the tests that you run, like these tests,
23 your test results are limited to what you check, meaning
24 the 15 loci and the quality of the sample that you have
25 when you test; is that correct?

Jennifer Bartman - Redirect Examination by Mr. Caskey

1 A That's correct.

2 Q Do you have any control of the quality of the
3 sample that you have until it gets to you?

4 A No, I don't.

5 Q And you were talking about what, cross contami --
6 cross contamination, you were talking wearing gloves and
7 stuff like that?

8 A That's correct.

9 Q Why are you concerned about wearing gloves, is --
10 is DNA something that you could -- can you get it off -- if
11 I shake hands with you, could you get some DNA off me and
12 it could accidentally be used or tested if you're testing
13 your own DNA?

14 A It's possible to obtain DNA from, like, skin cells
15 or from hands; that's correct.

16 Q And that's called cross transferring?

17 A It's contamination or transfer.

18 MR. WILLIAMS: That's all the questions I have,
19 Your Honor.

20 THE COURT: Redirect, Solicitor?

21 REDIRECT EXAMINATION

22 BY MR. CASKEY:

23 Q Ms. Bartman, so you just know that 15 loci
24 scientifically reliable?

25 A Yes, it is.

Jennifer Bartman - Recross-Examination by Mr. Williams

1 Q Is this method of testing widely and generally
2 accepted in the scientific community?

3 A Yes, it is.

4 Q What data base did you use to draw these
5 conclusions?

6 A We used a data base that was published by the FBI.

7 Q 99.99997 percent probability paternity of the
8 defendant as to the child, Child ; is that correct?

9 A Yes, given those results it's more likely that
10 Martin Rodriguez is the true parent than a random man.

11 Q Thank you, ma'am. No further questions.

12 THE COURT: Recross?

13 **RECROSS-EXAMINATION**

14 BY MR. WILLIAMS:

15 Q And if you had tested using 25 locations, would
16 that have been a more accurate test?

17 A It would not have been more accurate, it just would
18 have had been given more information. This test is an
19 accurate test.

20 Q You say more information, what would it have done?
21 Given you more locations of DNA?

22 A That's correct and there would be more columns on
23 the table.

24 Q And by definition, more similarities is more
25 accurate, isn't it?

1 A More similarities than what?

2 Q Well, if you had 25 locations that would have to be
3 more precise than 15?

4 A It could be more precise, but precision is a little
5 bit different than accuracy. Both of the tests are
6 accurate.

7 MR. WILLIAMS: That's all I have, Your Honor.

8 THE COURT: Thank you. Thank you very much, Ms.
9 Bartman. You may step down.

10 MR. CASKEY: Your Honor, we'd ask that the witness
11 be excused.

12 THE COURT: You may be excused. Thank you for
13 being with us this evening.

14 All right. Ladies and gentlemen, perhaps now would
15 be a good time to take our evening recess. I remind you
16 once again during this recess, do not discuss the case with
17 others. Do not read, watch or listen to any news reports
18 about the case, present or past, should there be any. Do
19 not do any independent research or any research on the
20 internet. Keep an open mind. Do not begin your
21 deliberations until you've heard all the evidence,
22 testimony, closing arguments by the attorneys, instructions
23 on the law by the Court and are directed by the Court to
24 begin your deliberations with your fellow jurors in your
25 jury room.

1 With that being said, you are now excused for the
2 evening. I would ask you to be back promptly at 9:30 in
3 the morning; 9:30 in the morning. I hope y'all have a
4 pleasant evening.

5 (The jury left the courtroom at 5:54 p.m.)

6 REPORTER'S NOTE: (Jury excused for the evening):

7 THE COURT: All right. Anything further from the
8 State.

9 MS. MAYES: Not at this time, Your Honor. We may
10 or may not have one brief additional witness tomorrow
11 morning and then we would be prepared to rest and just
12 wanted the Court to be aware of that for scheduling
13 purposes.

14 THE COURT: All right. Thank you. Anything from
15 the defense?

16 MR. WILLIAMS: Nothing from the defendant, Your
17 Honor.

18 THE COURT: All right. Have Mr. Rodriguez come
19 around please to the podium. Place him under oath for me
20 please, ma'am?

21 THE CLERK: Yes, sir. Raise your right hand
22 please.

23 MARTIN RODRIGUEZ,
24 having been duly sworn, testified as follows:

25 **QUESTIONING OF THE DEFENDANT BY THE COURT**

1 THE COURT: Mr. Rodriguez, speak up for me. I have
2 certain questions that I'm going to ask you. I needed your
3 responses to be under oath. That's why I had the clerk
4 place you under oath.

5 Tell me your full name please.

6 THE DEFENDANT: Martin Alejandro Rodriguez.

7 THE COURT: How old are you, Mr. Rodriguez?

8 THE DEFENDANT: 24.

9 THE COURT: How much education do you have?

10 THE DEFENDANT: I went all the way to 9th grade,
11 high school.

12 THE COURT: Shortly we're going to reach the stage
13 in the trial where the State rests. Once the State rests,
14 your side, the defense will have the opportunity to present
15 evidence and testimony on your behalf or you may testify on
16 your own behalf. Do you understand where we at in the --
17 where we will be in the trial?

18 THE DEFENDANT: Yes. Yes, sir.

19 THE COURT: In that regard, your side, the defense,
20 may call witnesses to testify on your behalf. If you
21 choose to testify, you may testify yourself. You may
22 certainly do so; do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: No one can force you to testify, Mr.
25 Rodriguez. You have the absolute right to remain silent

1 and if you choose not to testify, I will tell this jury
2 that they cannot hold your silence against you in any way,
3 that they may not even discuss that in the jury room; do
4 you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If your side offers no evidence at all,
7 in other words, if neither you nor anyone on your behalf
8 testifies or offers any exhibits, then your attorney, Mr.
9 Williams, will get to make the last argument to the jury.
10 Otherwise, the Prosecutor gets to make the last argument to
11 the jury; do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Solicitor, does Mr. Rodriguez have any
14 prior criminal history that would subject him to
15 impeachment under Rule 609.

16 MS. MAYES: Yes, sir, Your Honor. He has a
17 conviction from the year 2014 for giving false information
18 to police and that would be impeachable under Rule
19 609(a)(2).

20 THE COURT: Any others?

21 MS. MAYES: That would be the only conviction
22 subject to impeachment, Your Honor.

23 MR. WILLIAMS: Your Honor, I apologize for talking
24 to him --

25 THE COURT: No, sir, if you need to talk with him,

1 please do so.

2 (The defendant was conferring with his attorney.)

3 THE COURT: All right. The solicitor could
4 question or your attorney could question, if they chose to
5 do so, if you have -- or both, if you have 2014 conviction
6 for false information to the police. They could only ask
7 you if you have that conviction or not, not the facts of
8 the conviction. If that were to happen, I would tell the
9 jury that they could use and consider that evidence against
10 you, if they consider it at all, only on the issue of your
11 credibility or your believability and for no other purpose
12 whatsoever; do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The decision about whether you testify
15 or not is your decision to make, your call, and your call
16 alone. I expect that you have conferred with your attorney
17 or others whose opinion you value on life's important
18 decisions, but the bottom line is whether or not you
19 testify is your call to make, your decision; do you
20 understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has anyone exercised any undue
23 influence over you to get you to choose to testify or not
24 to testify? Has anyone tried to influence you in any
25 manner to get you to testify or not to testify?

1 THE DEFENDANT: No, sir.

2 THE COURT: Today are you under the influence of
3 any medication, alcohol or drugs that negatively affect
4 your thinking ability in any manner?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you suffer from any physical or
7 mental problems that affect your thinking today?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you understand your right to testify
10 or not to testify?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions that you
13 would like to ask me about your right to testify or not
14 testify?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Thank you. Thank you very
17 much.

18 MR. WILLIAMS: Thank you, Your Honor.

19 THE COURT: That will give him over the evening
20 hours to discuss that further with you, Mr. Williams.

21 MR. WILLIAMS: Thank you, Your Honor.

22 THE COURT: And/or others if necessary.

23 Anything additional from the defense, Mr. Williams?

24 MR. WILLIAMS: Not at this time, Your Honor.

25 THE COURT: All right. Court -- if y'all have any

1 specific requests to charge, if you'd please e-mail them to
2 my law clerk by 8:30 in the morning.

3 And court will be in recess until 9:30. Thank you.
4 Thank you very much.

5 (Court was in recess for the day.)

6 **WEDNESDAY, AUGUST 26, 2016**

7 THE COURT: All right. Anything from the State
8 before we bring in our jury, Solicitor?

9 MS. MAYES: Nothing from the State, Your Honor.

10 THE COURT: Does the State intend to present any
11 other evidence or testimony?

12 MS. MAYES: Not at this time, Your Honor, and
13 whether or not we have this last testimony would depend on
14 what occurs during the defendant's testimony.

15 THE COURT: So the State intends to rest?

16 MS. MAYES: Yes, sir, Your Honor.

17 THE COURT: All right. Anything from the defense?

18 MR. WILLIAMS: Nothing, Your Honor.

19 THE COURT: Do you object if I hear any motions at
20 this time, Mr. Williams, prior to bringing the jury out and
21 having to send them right back out?

22 MR. WILLIAMS: I have no objection to that, Your
23 Honor.

24 THE COURT: Do you have any motions?

25 **MID-TRIAL MOTIONS**

1 MR. WILLIAMS: They would deal with the sufficiency
2 of the testimony, Your Honor --

3 THE COURT: All right.

4 MR. WILLIAMS: -- and a directed verdict motion.

5 THE COURT: All right. Both the criminal sexual
6 conduct second with a minor and criminal sexual conduct
7 third with a minor?

8 MR. WILLIAMS: Yes, Your Honor.

9 THE COURT: All right. Any -- any further
10 argument?

11 MR. WILLIAMS: Your Honor, simply that the evidence
12 taken in the light most favorable to the State would be
13 insufficient as a matter of law for this jury to return a
14 verdict of guilty in regards to either one of those two
15 particular indictments that he's been charged with.

16 THE COURT: All right. Thank you --

17 MR. WILLIAMS: Thank you, Your Honor.

18 THE COURT: -- Mr. Williams.
19 Solicitor?

20 MS. MAYES: Yes, sir, Your Honor. As to the charge
21 of criminal sexual conduct with a minor in the second
22 degree, which requires preconceptual battery, the victim
23 has testified that there was penetration wherein the
24 defendant put his private part in her private part at least
25 on one occasion, but her testimony was more than one

1 occasion there at the family home in Lexington County
2 between the dates of the Spring of 2013 and September of
3 2013. Your Honor, there's also been ample testimony that
4 she would have been 11 years of age during that timeframe
5 which is another element of that particular offense.

6 As to the charge of criminal sexual conduct with a
7 minor in the third degree, which was previously codified as
8 committing or attempting a lewd act on a child --

9 THE COURT: What's that statute number?

10 MS. MAYES: Your Honor, that is 16-3-655(c).

11 THE COURT: Thank you.

12 MS. MAYES: That's the new codification, but the
13 elements are exactly the same as the previous committing a
14 lewd act on a child. The testimony of the victim was that
15 there were occasions in which she was touched
16 inappropriately that included removal of her clothing up
17 there in the family home; removal of her clothing prior to
18 intercourse in the family home. There was at least one
19 event that occurred in the living room where he had his
20 hands on his hips and was in the process of pulling down
21 her pants when the State alleges her mother walked in and
22 witnessed, at least partially witnessed, that event. So
23 there has been ample evidence of attempting or committing
24 inappropriate contact with the child's body and of course
25 that statute covers any part of her body with lewd and

1 lascivious intent.

2 It's also been proven that the defendant would have
3 been over the age of 14 years and his date of birth has
4 been testified to on the record.

5 THE COURT: All right. Thank you.

6 Anything in response, Mr. Williams.

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: I would respectfully deny the motion
9 for directed verdict both as to criminal sexual conduct
10 second with a minor and criminal sexual conduct third with
11 a minor. I think there has been ample direct and
12 substantial circumstantial evidence as to both of those
13 offenses applying the standard that I must apply at this
14 stage. So the defense motion for directed verdict as to
15 both charges in the separate indictments is denied.

16 Mr. Rodriguez, if you'd come around for me please.

17 Madam Clerk, do you have the indictments?

18 THE CLERK: Yes, sir, I do.

19 THE COURT: Would you place -- Madam Clerk, would
20 you place Mr. Rodriguez under oath for me please.

21 THE CLERK: Yes, sir.

22 Raise your right hand, please.

23 MARTIN RODRIGUEZ,

24 having been duly sworn, testified as follows:

25 **QUESTIONING OF THE DEFENDANT BY THE COURT**

1 THE COURT: Mr. Rodriguez, we spoke yesterday
2 concerning your right to testify or not to testify; do you
3 recall?

4 THE DEFENDANT: Yes. Yes, sir.

5 THE COURT: Did you have an opportunity to discuss
6 that with your attorney over the evening recess?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you need any more time to talk with
9 your attorney about whatever decision you have made?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you have any questions you would
12 like to ask me about your right to testify or not testify?

13 THE DEFENDANT: No, sir.

14 THE COURT: And what is your decision?

15 THE DEFENDANT: I'm not going to testify.

16 THE COURT: All right. And that is your decision?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Made of your own free will and accord?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Thank you. Thank you, Mr.

21 Rodriguez. You may return to your seat.

22 THE DEFENDANT: Thank you.

23 THE COURT: Mr. Williams, does the defense intend
24 to present any evidence or testimony?

25 MR. WILLIAMS: We do not, Your Honor.

1 THE COURT: So we'll bring the jury out, the
2 State's going to rest. I'll note motions.

3 I'll then direct my attention to you, Mr. Williams,
4 I always say a few things at that point as the State as
5 rested to the jury concerning the burden of proof and the
6 presumption of innocence. You will then rest and then it
7 will be time for the closing arguments by the attorneys?

8 MR. WILLIAMS: Yes, sir. I would ask the Court to
9 note that it's always been a question for me when the
10 defendant doesn't put any evidence, at the conclusion of
11 the defendant's case, there is a different standard that
12 should be used as to whether or not a directed verdict
13 should be granted or not. I've asked the Court to note
14 that I've made the motion now that should have been made at
15 the conclusion of the defendant's case also.

16 THE COURT: All right. Certainly.

17 And then -- then we'll probably take a few minutes
18 recess. I need to polish my charge. And were there any
19 requests to charge.

20 **JURY CHARGE CONFERENCE**

21 MS. MAYES: Yes, sir, Your Honor. We did e-mail
22 your law clerk last night and cc'd Mr. Williams on that
23 e-mail. The request from the State would be the Court's
24 standard bench charge on direct evidence, circumstantial
25 evidence, expert witnesses, and then intent and the word

1 intent is used during or actually within the statute for
2 criminal sexual conduct with a minor third degree. So we
3 want to make sure that's clarified to the jury.

4 THE COURT: And that was all your specific requests
5 to charge?

6 MS. MAYES: Yes, sir, Your Honor.

7 THE COURT: Any objections to any of those, Mr.
8 Williams?

9 MR. WILLIAMS: No, Your Honor, it sounds standard.

10 THE COURT: And do you have any particular requests
11 to charge?

12 MR. WILLIAMS: No, Your Honor.

13 MS. MAYES: And also if we would inquire as to the
14 Court's standard charge on reasonable doubt.

15 THE COURT: I charge both State v. Manning and
16 Victor v. Nebraska; I charge them both.

17 All right. Well we'll bring the jury. How long
18 y'all need to argue?

19 MS. MAYES: The State would not anticipate going
20 over 30 minutes, Your Honor.

21 THE COURT: Mr. Williams?

22 MR. WILLIAMS: That should be sufficient, Your
23 Honor.

24 THE COURT: All right. Thank you. Thank you very
25 much.

1 Bring us our jury please.

2 THE BAILIFF: Yes, sir, Your Honor.

3 (The jury entered the courtroom at 9:45 a.m.)

4 THE COURT: Madam Forelady, ladies and gentlemen of
5 the jury, good morning.

6 THE JURY: Good morning.

7 THE COURT: I apologize for the -- for the delay
8 getting out into the courtroom this morning. We're
9 continuing the trial of the case by the presentation of
10 evidence and testimony by the State in its case in chief.

11 Solicitor, you may call your next witness.

12 MS. MAYES: Your Honor, at this time, the State
13 will rest.

14 THE COURT: All right. Thank you.

15 Mr. Williams, motions are noted for the record.

16 Ladies and gentlemen, at this stage of the
17 proceeding, the State has rested. That means that you have
18 heard all the evidence, all the testimony you're going to
19 hear from the State in its case in chief. Mr. Rodriguez
20 may now present evidence and testimony in his defense. A
21 criminal defendant in South Carolina is never required to
22 prove himself innocent. A criminal defendant in South
23 Carolina, regardless of the seriousness of the charges, is
24 always presumed to be innocent and has no burden of proof
25 whatsoever. The burden of proof is on the State of South

1 Carolina to prove the elements of the offenses charged in
2 the indictments beyond a reasonable doubt. However, a
3 criminal defendant may present evidence or testimony if the
4 defendant chooses to do so.

5 With that being said, we'll turn our attention to
6 Mr. Williams and ask Mr. Williams, does the defendant
7 intend to present any evidence or testimony?

8 MR. WILLIAMS: No, Your Honor, we're prepared to
9 argue.

10 THE COURT: All right. Defense rests?

11 MR. WILLIAMS: It does, Your Honor.

12 THE COURT: And motions noted as to the conclusion
13 of the defense resting?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: And I would affirm my previous trial
16 ruling.

17 Madam Forelady, ladies and gentlemen of the jury,
18 you've now heard all the evidence and all the testimony
19 that you're going to hear in the trial of this case.
20 Shortly, the next stage will be the closing arguments by
21 the attorneys. I'm going to take about a 20 minute recess
22 for them and I'm sure they're prepared, very prepared and
23 probably worked over the evening hours in preparation of
24 the closing arguments, but however, I'm going to give them
25 a 20 minute recess. I will then have you back in here for

1 the presentation of the closing arguments by the attorneys.

2 So if you'll please return to your jury room. Do
3 not discuss the case during this brief recess. Thank you.
4 Thank you very much.

5 (The jury left the courtroom at 9:48 a.m.)

6 THE COURT: All right. We'll be in recess about 20
7 minutes, Solicitor and Mr. Williams. Thank you very much.

8 MS. MAYES: Thank you, Your Honor.

9 (A brief recess was observed.)

10 THE COURT: All right. Anything from the State
11 before we bring in our jury, Solicitor?

12 MS. MAYES: Nothing from the State, Your Honor.

13 THE COURT: Defense?

14 MR. WILLIAMS: Nothing from the defense, Your
15 Honor.

16 THE COURT: All right. Thank you.

17 Does either the State or the defense object to
18 sending in the indictments for the foreperson to mark
19 guilty or not guilty?

20 MS. MAYES: No, sir, Your Honor.

21 THE COURT: The State does not.

22 Do you, Mr. Williams?

23 MR. WILLIAMS: No, Your Honor.

24 THE COURT: All right. Thank you.

25 MR. WILLIAMS: Your Honor, I apologize. I was

1 thinking about two things at one time. The indictment and
2 sentencing sheets, I assume that's what you were talking
3 about?

4 THE COURT: Indictment and what?

5 MR. WILLIAMS: And sentencing sheets; sending in
6 those two items.

7 THE COURT: No, just the indictments.

8 MR. WILLIAMS: Okay.

9 THE COURT: We can talk about it later.

10 (The jury entered the courtroom at 10:19 a.m.)

11 THE COURT: Madam Forelady, ladies and gentlemen of
12 the jury panel, welcome back. We're now, as you recall, at
13 the stage of the closing arguments by the attorneys. The
14 procedure we follow in a case such as this is the State,
15 being the party bearing the burden of proving its case,
16 each and every element of the offenses charged beyond a
17 reasonable doubt, will present the first closing argument
18 to you. Thereafter, that will be followed by Mr. Williams
19 on behalf of his client, Mr. Rodriguez.

20 After the closing arguments by the attorneys, I
21 will then charge you, instruct you on the law that you are
22 to apply to the facts of the case as you find them to be.

23 If at any time during the course of the closing
24 arguments any of you need to take a break, please raise
25 your hand and y'all will take y'all's break; we will take

1 ours -- our break. If you want a break between the closing
2 arguments or after the closing arguments before my charge
3 to you, you may certainly do so. Also just please, please
4 get my attention in some form or manner.

5 I would ask you and ask those in the audience also,
6 I do not allow any movement in or out of the courtroom
7 while an attorney is addressing the jury. You may
8 certainly leave after the closing argument by the solicitor
9 before Mr. Williams's closing argument on behalf of Mr.
10 Rodriguez. You may certainly leave after the closing
11 argument by both of the attorneys before my instruction to
12 the -- to the jury, but you may not -- you may not leave
13 during the course of the arguments by the attorneys. I do
14 realize in life there are emergencies. I understand that
15 and if that happens, I would certainly take that into
16 account thereafter and whatever your explanation may be to
17 me, but that is my general rule. No movement in or out
18 while the attorneys are addressing the jury or while I am
19 addressing the jury.

20 With that being said, ladies and gentlemen, I would
21 ask you to please give the attorneys complete and undivided
22 attention. They may argue the law, the facts, and any
23 inferences to be drawn from the facts. These are different
24 than opening statements. These are true arguments and if
25 you would please give them your compete and undivided

1 attention as you have done throughout the trial of this
2 case.

3 Solicitor, you may address the jury.

4 **CLOSING ARGUMENTS**

5 MS. MAYES: May it please the Court?

6 THE COURT: Yes, ma'am.

7 MS. MAYES: What this case is really about is
8 broken trust and it has been all along. Imagine a life
9 where day after day a child is betrayed by her own parents.
10 Her mother, her stepfather, the very people, very people
11 that a child should be able to trust the most in this world
12 to protect them from harm. But for Minor those two
13 people, this defendant violated that trust in the worst
14 possible way. And then at the very moment that the truth
15 comes to light, that her pregnancy is discovered at age 11,
16 she is abandoned by her mother and left to fend for herself
17 and left to fight this path to justice; left to fight for
18 the truth on her own. That's what we know about Minor
19 . And then in the end, it's the truth that will
20 prevail.

21 Who was Minor during those years; during
22 that very beginning of this event coming to light? You
23 heard from multiple witnesses offered by the State. They
24 were all the same in their description of Minor in those
25 first few days; afraid and alone, frightened, timid. He,

1 along with her mother, takes her down to Daybreak Pregnancy
2 Center and Minor explained -- he goes along because her mom
3 doesn't speak English. Someone there needs to translate.
4 She described how he's sitting there in the waiting room
5 looking nervous. He already knew what was going on. And
6 so there she is with the very person who has caused all of
7 this pain, all of this trauma, sitting right there in the
8 same building with her.

9 What child, what child is going to suddenly
10 disclose to strangers in that environment what's been going
11 on in her secret life; a secret life that's pretty much a
12 nightmare for any child and it took days and days and a
13 whole lot of trust and a whole lot of caring people on the
14 outside to break that veil of secrecy. But eventually the
15 truth had to come to light.

16 And what do we know about the defendant, Martin
17 Rodriguez, during that same period? Well, we know that
18 just like Minor said, he worked the second shift at
19 Southeast Frozen Foods, that second shift that has him
20 pretty much getting home after midnight and 12:30 a.m. or
21 later range. And just like Minor said, he comes home
22 during those hours; it's summertime, her mom, whose raising
23 a toddler, is in bed. The siblings are in bed and he comes
24 home and it's the perfect opportunity to prey on someone in
25 that home who is smaller and weaker and vulnerable; that 11

1 year old.

2 And with it didn't just come his actions, but his
3 verbal threats and intimidation of her, making her believe
4 that if she tells, if she breaks this secret, she's going
5 to lose everything she has; a home, her mother and her
6 siblings, those precious siblings who are pretty much all
7 she had in this world and she's the oldest. And she hears
8 those words and she knows that they're true. She will lose
9 all of that if she tells.

10 Many people in life get a difficult hand; we know
11 that. But the hand this child was dealt would break the
12 spirit, the heart of almost anyone until it leaves you with
13 no voice.

14 On September 11th, everything changed for Minor
15 When she walked into Daybreak -- Daybreak Crisis Pregnancy,
16 you heard from that Director, Maggie Downing. She knew
17 right away there was a whole lot more to this story and she
18 followed the law as a mandatory reporter of child abuse.
19 She reports it right away and that decision to take action
20 by the director, that one phone call, it changed everything
21 for Minor because on that day, September 11th, her whole
22 world changed without warning and that phone call, that
23 action, carried with it the smallest possibility of hope.

24 But in that action, that hope led to truth and it
25 led to Minor taking the first steps towards finding her

1 voice, the same voice that she used to confide in her
2 Guardian ad Litem and it took time. It took a couple of
3 months, but finally she had someone that she knew cared
4 about her enough that her best interests were his job, his
5 duty, his responsibility. And he told her, I know you're
6 not ready, but when you are ready, call me. And she did so
7 and the flood gates opened and everything that she told the
8 Guardian ad Litem, everything that she testified to is
9 corroborated, completely corroborated by the evidence in
10 this case. Not just direct evidence such as testimony, not
11 just circumstantial evidence, such as we know he has access
12 to her and he's in the home with her and the work records
13 to support that he's getting home after midnight just like
14 Minor said. It's way more than that.

15 The ultimate proof, the ultimate physical evidence,
16 the ultimate forensic evidence, that genetic fingerprint
17 known as DNA; he's the father of her child. That child she
18 conceived at age 11 as a result of his crime.

19 That's the evidence in this case and the good thing
20 about being jurors is that you don't have to leave your
21 common sense at home. That same common sense that you rely
22 on every day in raising your children or on your job or
23 anything else that you do in daily life, you get to bring
24 that with you here to the courtroom and in the jury room
25 and you know how to evaluate the evidence that you heard in

1 this case and your job as jurors is to rely solely on the
2 evidence that's been presented and the testimony that
3 you've heard, not speculation, not conjecture.

4 You know, throughout this trial, Mr. Williams posed
5 so many questions based purely on speculation or what if or
6 possibilities; that's not what this case is about. This
7 case is about something real, forensic proof that is
8 scientifically reliable and known to be accurate.
9 Paternity, 99.99 percent paternity, that is proof beyond a
10 reasonable doubt that Martin Rodriguez committed these
11 crimes. How many different questions did we hear about did
12 someone connect -- contaminate something in the lab. How
13 would that possibly change and I submit it was absolutely
14 clear that all protocol and controls were followed. But
15 how would that possibly change him being the father; it's a
16 genetic test based on his chromosomes, his allele's, his
17 genetic footprint matching up exactly to this child, Child
18 , at each and every location, it is a perfect match.

19 This Forensic Scientist at the State Law
20 Enforcement Division, it's her job in the crime lab to know
21 DNA. She's been trained on it for years. In addition to
22 that, it's not just something that SLED came up with on
23 their own. DNA Science, Forensic Science, relied on by the
24 State Law Enforcement Division, is the same DNA database
25 used by the FBI and multiple law enforcement agencies and

1 widely accepted by all Forensic Scientists worldwide. So
2 this isn't just a SLED Agent up here saying that she relied
3 on known published research and a known scientifically
4 reliable database.

5 And so then Mr. Williams said well what if he's got
6 some mystery relative out there, some mystery relative
7 who's going to match up at all 15 locations and you heard
8 her say, it is an identical twin that shares the same DNA,
9 no one else, not husbands, not brothers, no one else has
10 the same DNA except an identical twin. He doesn't have an
11 identical twin.

12 So then Mr. Williams said well if it's possible
13 that someone else related to him had similar DNA and again
14 the scientists says, it is not probable. Well, when we
15 talk about all the things that are theoretically possible,
16 is it theoretically possible that a meteorite could strike
17 through this courthouse in the next 30 seconds and hit one
18 us; yes, it's theoretically possible, but it's not probable
19 and it's not going to happen.

20 So I ask you to keep in mind throughout your
21 evaluation of this evidence, it is about what is
22 scientifically reliable. It is not about speculation or
23 conjecture or theoretical possibilities. That is tactic of
24 desperation. Any suggestion as to another suspect is
25 manufactured and completely transparent. There is only one

1 suspect. There has always been only one suspect and it's
2 that man sitting right there.

3 Minor explained that even when she's at Daybreak
4 Crisis Pregnancy Center, he's right there in the waiting
5 room. She can't say exactly what he did because she
6 doesn't feel safe enough. She dropped enough hints along
7 the way that this detective knew she had a suspect and
8 Minor said she made it -- she made it clear in dropping
9 hints that he was the suspect.

10 And you heard Detective Stoner's testimony. She
11 goes to talk to Martin Rodriguez, goes to talk to him about
12 what this is all about. What does he say; he denies he's
13 had sexual contact with Minor, but you know, he knows full
14 well that that detective is talking to Minor and will
15 potentially talk to his wife. He goes ahead and
16 volunteers, oh, but you know what, you're going to hear,
17 you're going to hear that my wife walked in and caught me
18 touching Minor, but I was really looking for something in
19 the couch and that's the reason I was leaning over her and
20 touching her hips.

21 It's ridiculous. He's already in that waiting room
22 thinking of a preemptive strike, how he's going to try and
23 weave his way out of this. He admits voluntarily to the
24 officer that that event occurred; he didn't even know that
25 officer did not even know about that event. And you heard

1 Minor testimony on this. That occurred in August.

2 Little did she know she was already pregnant then. This
3 had been going on for months.

4 You heard the testimony about one of the first
5 times, if not the first time, he had come in through a
6 window. Someone was in that living room. If he walks
7 through that living room, whoever's in there, if it was
8 Uncle David, is going to know, what's he doing back in

9 Minor room for so long. Goes out the front door, comes
10 in through a window. Minor recalled that was the time he
11 gave her paper towels after it was over and told her to
12 clean up. She felt something wet on her in her vaginal
13 area she believed to be blood and it continued on and on
14 until he becomes completely reckless and just doesn't care
15 anymore. He comes home after midnight, mom in bed, he goes
16 to Minor room. He's scoots over Sister , whose just 8
17 years old.

18 And as Minor confided in her Guardian ad Litem by
19 June of that summer, this was going on and it's ongoing
20 timeframe. She had hickeys on her in late May. You heard
21 her testimony about that. She tells her mom that we were
22 just playing vampires. This is an 11 year old trying to
23 explain how the hickeys he put on her got there. And then
24 by the time the mom walks in and sees this in August, she
25 knows full well, she just turns a blind eye. She throws

1 her phone at him when she sees this; tells him to get out
2 of the house, but all it takes is the slightest of
3 apologies and Martin Rodriguez, the flimsiest of
4 explanations, and mom turns that blind eye; she's right
5 back on board.

6 That's her paycheck sitting right there. If
7 somebody's got to go, it's the kid. He's staying.

8 You heard the testimony of Detective Stoner that at
9 the point months and months and months later when that DNA
10 result comes back, he's determined to be the father of her
11 baby and he's placed under arrest; Alicia Cortez was with
12 him when he was arrested. You heard Minor testimony,
13 they're together now. They're still married.

14 Testimony that you head from Heather Smith, the
15 expert in this case, a mutual objective expert, and that's
16 the entire point. This isn't someone who is Minor paid
17 therapist; this isn't a psychologist with a pre-existing
18 relationship with this child; this is a completely neutral,
19 objective, child abuse professional with no ties to this
20 case, no interest in nobody who can tell us exactly how
21 children normally react in these situations when the
22 perpetrator is in the home and the mom refuses to support
23 the child. Those are the least likely situations that a
24 child can tell what's going on and they choose to keep it
25 secret.

1 Minor had no motive whatsoever, no motive to say
2 this except that it's the truth. She had everything to
3 lose. Her worst fears were realized because she was taken
4 away from her siblings. First a children's shelter, then
5 bouncing around in foster homes, she ends up in an
6 orphanage in Charleston before her more recent placement.
7 No child would aspire to that. No child would willingly
8 walk into that. She had no choice. She had no choice
9 because telling the truth meant she lost everything and in
10 the end, it's worth it. Think about that as the price
11 she's paying for justice and give it to her.

12 The corroborating evidence in this case absolutely,
13 undeniable, the DNA that you'll see there on the DNA chart,
14 which is a match at every location even when, as the
15 Forensic Scientist testified, even when in that database,
16 those DNA results are stacked up against every ethnic, all
17 the Caucasians in the database, all the African Americans
18 in the database, all the Hispanics in the database, every
19 single time against the Caucasians, 99.99999 percent
20 probability of paternity.

21 All right. Let's match him up against African
22 Americans in the database; he's still the father, 99.99999
23 percent probability. Let's match him up against the all
24 the Hispanics in the database, once again, 99.99999. He's
25 still the father no matter how it shapes up, no matter who

1 he's compared against in that worldwide population
2 database, he's the father every single time and that will
3 never change because it's a fundamental truth and
4 fundamental fact.

5 The Judge will charge you on reasonable doubt and
6 his charge is much better than anything I can put into
7 words right now. The State is not required to prove the
8 case beyond all reasonable doubt, 99.99999 percent more,
9 more than beyond a reasonable doubt and this is a test that
10 never reaches a hundred percent, even in cases of known
11 paternity. That's part of the scientific application and
12 method that they use. That's as close to accuracy as will
13 ever be found in modern science. Proof that leaves you
14 firmly convinced as the judge will charge you is proof
15 beyond a reasonable doubt.

16 Now the elements in this case and these two charges
17 before you are actually quite simple based on South
18 Carolina Law. The first charge before you is what's known
19 as criminal sexual conduct with a minor in the second
20 degree. Criminal sexual conduct with a minor in the second
21 degree begins with the element of sexual battery with a
22 minor. What is sexual battery? The Judge will give you an
23 actual definition of it, but sexual battery is any type of
24 intrusion, however slight, and that includes sexual
25 intercourse, any type of genital intrusion. In this case,

1 we know that sexual intercourse occurred. We know that
2 there was vaginal intrusion and we know that because
3 ultimately Minor became pregnant by Martin Rodriguez, the
4 defendant. That element has been proven beyond a
5 reasonable doubt.

6 Next the child is at least 11 years of age and less
7 than 14 years of age. So we know that that occurred when
8 Minor was 11 years of age based upon her date of birth
9 here, . She would have been 11 years
10 old in the Spring and Summer of 2013 when these events
11 occurred. That element has been proven beyond a reasonable
12 doubt as well as the age of Minor . In the end, that
13 charge is very simple.

14 The next charge before you is criminal sexual
15 conduct with a minor in the third degree and this differs
16 than the other charge because it does not require sexual
17 battery or intercourse. The first element of this is that
18 the defendant is over the age of 14. Well, we know that he
19 was and his date of birth has been made a part of this
20 record. In fact it's on the marriage certificate.

21 The next element is that the defendant willfully
22 and legally committed or attempted a lewd and lascivious
23 act on or with the body or it's parts of a child under the
24 age of 16 years. Now, that particular offense does not
25 have to involve a private part; it can be any part of the

1 body that is touched with the intent of arousing, appealing
2 to or gratifying the lust or passion or sexual desire of
3 the person or of the child.

4 In this particular case, there were multiple
5 incidents of that nature. There was the incident in the
6 living room in which her own mother walked in and witnessed
7 the defendant, the event that the defendant himself told us
8 about. We know that when -- when her mom walked in he had
9 his hands on her hips and it was enough to send her mother
10 into a rage. There was absolutely no doubt that it was
11 inappropriate touching or else she would have never been in
12 that rage and told him to leave and get out of the house.

13 Minor testified when she took the stand in front all of you
14 and him that he was in the process of pulling down her
15 pants when that occurred. Multiple incidents when her
16 clothing was removed. She described that she would
17 normally sleep in boxers with underwear and then on those
18 many occasions when he came into her room during the night,
19 he would be the one to take or pull her boxers and her
20 underwear down and commit the sexual offense.

21 Any touching of a child whether it's removal of
22 clothing, attempted removal of the clothing, kissing,
23 touching, fondling, anything of that nature is proof beyond
24 a reasonable doubt of criminal sexual conduct with a minor
25 in the third degree.

1 And I submit each and every element of both of
2 those charges has been proven beyond a reasonable doubt.
3 You have before you the most noble of opportunities, the
4 chance to strike back against injustice and deliver a
5 verdict that speaks the truth because throughout this case,
6 throughout all the evidence that you heard, that child took
7 that witness stand and presented direct evidence, direct
8 evidence for something she saw, felt and experienced
9 herself, not circumstantial evidence. Direct evidence
10 about what occurred in this case backed up by undeniable
11 truth and undeniable forensic evidence. So with everything
12 that's been presented, one thing stands like stone. He did
13 it. He did it and there was no other reasonable
14 explanation for what has brought us here.

15 We know, as I stated before, there are many, many
16 tragic situations in this world, in this life, but in this
17 county, Lexington County, for an 11 year old to be preyed
18 upon in her own home under these facts and these
19 circumstances, cannot be tolerated, can never be tolerated,
20 not here. Let this be the last time he hurts a child in
21 this county whether it's this child or any other child that
22 is left in his wake. It must be the last time. The
23 correct verdict in this case is guilty of criminal sexual
24 conduct with a minor in the second degree, guilty of
25 criminal sexual conduct with a minor in the third degree.

1 Thank you.

2 THE COURT: Thank you. Thank you, Solicitor.

3 Mr. Williams.

4 MR. WILLIAMS: Thank you, Your Honor.

5 Ladies and gentlemen of the jury, I want to thank
6 you for your kind attention. I told you something at the
7 beginning and that is that it's not a football game, you're
8 not cheerleaders. We're not trying to get you to, I guess,
9 become emotionally involved because you can do that easily;
10 you can become emotionally involved. I can stand up here
11 and rant and rave; and I can say well you don't want to
12 convict the wrong man. It's not about that. It's not
13 about who does the best dance in front of you. It's not
14 about saying things a number of times in hopes that you buy
15 into it; it's about your analytical review of the evidence.
16 That's what it really is.

17 You'll learn that which -- the way the process
18 works is someone makes an accusation or an accusation is
19 made and someone issues a warrant; the person's arrested
20 and after the person is arrested; then an indictment is
21 done; and then that person's brought forward before you
22 twelve jurors for you to make a determination of guilt or
23 innocence as to whether or not the State has proven the
24 guilt of the person charged. The indictment doesn't mean
25 anything. The warrant doesn't mean anything. The closing

1 arguments don't mean anything. It's the evidence that is
2 presented in this courtroom and applying that evidence to
3 the law His Honor will give you determining what evidence
4 you believe, what evidence that you feel that should have
5 before you make a decision, what evidence that you don't
6 have, what evidence doesn't make sense, what evidence
7 doesn't match up, compared to that standard of beyond a
8 reasonable doubt. That's what you do.

9 The indictments that come, these are pieces of
10 paper and those indictments that were read and you simply
11 state one, I think we talked about it, was a CSC second,
12 which alleged -- which alleges between and note, I used the
13 word between, January 1 of 2013 and September 11 of 2013 a
14 sexual battery was committed. So you've got nine months
15 you're dealing with. It's a piece of paper. It's all it
16 is, a piece of paper. It's your view of the evidence that
17 makes the decision.

18 Same thing with the other indictment, the
19 allegations are between September -- January 1 and
20 September the 11th that there was some lewd action taken.
21 Well, I don't know, was the lewd action connected with the
22 sexual conduct second; was it a different occasion? See
23 that's a shotgun if you're a hunter, I guess. You shoot
24 amongst there and then you get to pick out, you get to pick
25 out how you want to convict my client, but that's not what

1 you're supposed to do. You're supposed to allege what my
2 client did and then you're supposed to prove that and that
3 was -- that's what this case has been so far.

4 To show you what I'm talking about, all you need
5 think is about the list of the potential witnesses that
6 were coming to testify today and think about the ones that
7 didn't testify. Think about the ones that did testify;
8 think about the ones that didn't testify.

9 Well, Minor, we know the story from Minor. She and
10 her mother and father, not my client, but she and her
11 mother and father come over from Mexico. They lived here.
12 He gets divorced or she gets divorced, the mother gets
13 divorced, I should say. At some point in time, she marries
14 my client, Martin Rodriguez and he goes to work at
15 Southeastern Foods. Well, we have a story to tell and the
16 story that we tell has to be consistent. So we have to say
17 well now, supposedly he's having sex with this child and
18 how do I explain the fact that no one knows about it; how
19 do I explain the fact that no one sees it; how do I explain
20 the fact that there are no witnesses to any of this. Well,
21 I know, I can talk about when he works.

22 So we bring a witness down here from Southeastern,
23 excuse me, I'm over 60 obviously, I'm not going to tell you
24 how old I am, but sometimes I forget the names of things,
25 Southeastern not freight lines, but whatever it is, and she

1 comes up here and she has these payroll checks and she's
2 just telling all this story about when he works and when he
3 doesn't work and, of course, I want to see what she's
4 looking at. So I get up there and look at it and I say you
5 know, these are time cards. Well I know when we hired him
6 and I know he works second shift. You know a lot of people
7 work second shift.

8 Well see, we're plugging a hole; we're making a
9 story for you. We've got a beginning, we've got an ending,
10 so now we have to make everything fit.

11 So one of the other examples of what we do to plug
12 a hole, you see this came to me and I'll tell you how it
13 came to me. It never ceases to amaze me, when I get up in
14 the morning I take a shower on a day that I have closing
15 arguments, something will click in my head and I'll say
16 well, you know, what's my closing argument going to be
17 about today? Well, I got up this morning and I went to the
18 closet and I pulled this tie out. I don't like the tie; I
19 like striped ties, but I pulled the tie and I said well
20 this must be the one I'm going to wear today and it
21 reminded me for some reason of getting your eyes checked.
22 I said, well you know, better, worse, better, worse, you go
23 through a list of things until you find the one that you
24 want and then that kind of led me to plug in a hole.

25 I said well you know, it is black or white; things

1 are either black or white. So it all just kind of came to
2 me about what we were doing. I guess I'm old school. I
3 had a delightful mother, by the way, and I've heard a lot
4 of bad things about mothers, how they're -- how they're --
5 I don't know, they -- they have bad relationships. I was
6 adopted. I had two mothers, both of them were great. It
7 seems to me that the thing that you learn, the first thing
8 you learn is that number one, your mother tends to know you
9 and she's probably the best evaluator of her child, whether
10 she be your adoptive mother or your biological mother. I
11 don't buy the accusation. I don't buy the story that
12 somehow a mother doesn't know what's going on. Well, I'll
13 tell you who didn't testify that it was going on and that
14 was the mother. She was listed as a witness and remember
15 one of the accusations was that when they came into a room
16 one day, they were messing around or horseplay was going
17 on, she threw the cell phone at -- or he threw a cell phone
18 or somebody threw a cell phone. Well, why didn't she come
19 in to testify that you know, now I knew something was going
20 on; I thought something was going on.

21 One of the accusations involved touching her leg or
22 something like that and she said, Well my sister saw it;
23 Sister saw it. You know Sister didn't come in here and
24 testify about anything.

25 Let's go back, let's go back to what was testified

1 to. Well, Minor testifies that she was living in this
2 house and she had David, she had Sister , she had her
3 Uncle, she had her mother, she had a father, I'm sorry,
4 stepfather residing in this trailer and -- and she pointed
5 out the bedrooms and she was saying well you know, I was
6 sleeping in the same bed as my sister and what would happen
7 is he would get -- he would push her over, talking about
8 her sister, and then he would do his whatever he was going
9 to do; that was on some occasions. On one occasion, he
10 came in through the window. Felt like Joe Cochran and then
11 I wanted to think well, let's look at this window that he
12 came in through. Well lo and behold, it had a screen on
13 it. Of course the answer to that was he knocked it off,
14 somehow he got the screen back. And then I thought a
15 little bit more about it, I said well let me think, see
16 David was the one who supposedly was in the kitchen when he
17 came in through window and wait a minute, that was David's
18 room. I said well it just doesn't make any sense. David's
19 staying there. David's sleeping in bedroom number two.

20 Well, we were talking about people who was staying
21 and lo and behold, turns out that there were at least two
22 other people who were staying there, Miguel and Roman. You
23 wonder why it all doesn't just come out at one time. It's
24 like cat and you keep pulling it, keep pulling it.

25 Well, Miguel and Roman were residing there. And

1 the solicitor was quick to point out that they happened to
2 be the brothers of the mother. Well, there's a reason she
3 brought that out. Why do you think she brought that out,
4 because they'd be brothers of the mother. And she's
5 thinking down the road, DNA; she's thinking down the road;
6 DNA.

7 Well, then it turns out she talks about well
8 that's -- Roy had been living there and had moved out.
9 Well who is Roy? Roy was on the list; we heard his name
10 called out; who is Roy? Well Roy, his last name is
11 Rodriguez. He is the brother of Martin. It's like why do
12 you have -- it's like you have to strain to get it out.
13 Well, for whatever reason, Minor, when she goes to this
14 Crisis Center and she talks to these, the reporter and she
15 talks to police officers, everybody says, oh, she's so
16 scared. You know, she can't -- it was hard to get a
17 straight story out of her and I'm sure that's part of the
18 reason -- that's the reason why she couldn't tell you what
19 happened. That's the reason. I mean that's the reason why
20 she can't; we're plugging a hole aren't we? We got that
21 hole, this black tile with these white spots, we got that
22 hole where she doesn't tell you that she was assaulted.

23 So the reason she didn't tell you is because I
24 don't know, she's not mentally ill; we know that because
25 we've asked those questions. She was scared. So we have a

1 detective, investigator who says well what we'll do is
2 we're going to snatch her up and we're going to take her
3 and put her in foster care. We're not going to let her go
4 home with her mama and her stepfather because he's a
5 suspect. Well, the question I had because I was thinking a
6 little bit about what about her father; because she's got a
7 daddy. She's got a real daddy who she visits every other
8 weekend. Why wouldn't you take that child to his house?
9 Nobody answers those questions.

10 We just -- well it's got to be Martin and the
11 reason why that starts to kind of get, I guess, more
12 interesting as time goes on, you remember the Guardian ad
13 Litem; you remember the attorney that went to the
14 University of Georgia. He's a textile, I guess he's a
15 lawyer that represents a textile deal. Well, he's talking
16 and he's telling you well, yeah, I told her when she's
17 ready to tell me, she can tell me and lo and behold, she
18 does tell me the first week in December after I give her a
19 birthday present. I said well that is a coincidence.

20 Well you see her birthday is and
21 he had gotten her a birthday present and they asked him,
22 they said, well, did you -- did she show you where she
23 lived, did you go by to see where she lived, where all this
24 happened? He says, well, I think we went over to Red Bank;
25 there's some apartments and trailers over in Red Bank.

1 Guess what; it isn't in Red Bank. Rolling Meadows Mobile
2 Home Park; it's got a West Columbia address.

3 Well, anyway, we go and because we -- because she's
4 not quite telling exactly what happened, we take her
5 through a series of forensic interviews or one forensic
6 interview I should say, and the counselor and in this
7 forensic interview, a person who is trained to talk to
8 children, get the truth out of them, was brought in and we
9 know we had one because everybody's talked about it and
10 they're videotaped and -- and they show how the person is
11 when you talk to them and you hear the questions and you
12 can see. Where is she? Why didn't she come here to
13 testify? The person who had -- oh, what we did, we brought
14 you a totally unbiased person. We brought you somebody who
15 never met Minor, ain't looked at Minor, ain't read her
16 record, to tell you about delayed reporting.

17 Well I started asking her about what she does; well
18 yes, I've given seminars for solicitors and teaching them
19 how try sexual abuse cases. And we start talking about it
20 and I'm sure you were probably just, your eyes had to be
21 glazing over and I was asking her about, well how do you --
22 how do you make those determinations? Well sometimes
23 you'll see that they're angry or they're upset or they're
24 depressed or they're in trouble at school or they're -- and
25 of course, I haven't heard any of that evidence. See I've

1 been around the block long enough to know that, and I'm a
2 father; I have a little bit of sense.

3 Normally if something's wrong with your child, you
4 can tell. They're quiet, screwing up in school, they're
5 angry, they're not doing what they're supposed to do; well,
6 what's wrong with you? Well, Daddy -- but we didn't hear
7 any of that. We didn't have any school records to show the
8 child was having any problems. She's just saying well that
9 might be true. You know those are examples, where a person
10 is having a delayed reaction or delayed discussion. Well
11 that's how we plugged that hole. See we're plugging that
12 hole about why she didn't tell somebody.

13 So I think we've already talked about Margaret
14 Downing, she was simply a first reporter, meaning that they
15 were brought in there. The thing that's interesting about
16 Margaret Downing is she said something about the FBI and it
17 turns out I guess it's City of Columbia. That had to be
18 red herring. I couldn't figure it out either. I assume
19 somebody knows what the deal is there. But it's just one
20 of the interesting things that goes on in the trial of a
21 case.

22 We had Bonnie Smalley who testified. The only
23 thing she really testified too, a lovely lady, she said the
24 child was a full-term baby.

25 Detective Stoner, which is interesting with

1 Detective Stoner, she gets these accusations, yet for some
2 reason, you never even go to the scene. You know, if I get
3 in a traffic accident, if I have a wreck, I'm going to at
4 least go to the scene; at least well was I speeding,
5 something about the road. Take picture, show how it is,
6 show what you can see, what you can't see, show what you
7 can see if you're inside the bedroom versus what you can
8 see when you're in the kitchen. Well, we didn't have a
9 search warrant. Well, did you ask anybody; no, we didn't.
10 You didn't fill that hole; that hole had a little bit of --
11 a little bit of sand in it because what we did, we drew a
12 diagram and made it so that you could kind of look at it
13 and make sure you could see it. They ain't nobody took a
14 picture because we're -- that holes only halfway filled.

15 Then we make this statement about this horseplay
16 that this child was involved in with her father supposedly
17 and about him checking on some sound in the middle of the
18 night. If I hear a sound coming from my children's
19 bedroom, I'm checking on it. If I hear a sound coming from
20 outside, I'm checking on it. But you see, we're not
21 introducing it for that reason; we're filling the hole.
22 We're saying well if he's checking on it, that's the middle
23 of the night, he must be up to no good.

24 By the time we get through, we're going to color
25 all these little holes so I'll have a black tie and a not a

1 polka dot tie.

2 Renee Strickland testified. She simply testified
3 that she gathered the DNA swabs.

4 Louis Gossett we've already talked about.

5 And then we get to, because it's all about the DNA if you
6 believe the solicitor. Oh, it's all about the DNA. I
7 don't even know why we had jurors. Why waste the time?
8 Why do we have jurors? It's just going to take the DNA
9 sample and whatever it is, it is. We're done; let's go
10 home. Well, maybe it's all about the DNA. DNA is just a
11 little piece of evidence and if you listen closely to what
12 the DNA expert said, she said she was comparing to the
13 unrelated, unknown individuals in the world and then we
14 started talking about, what about relatives; well that
15 would be different and then we get to brothers; well unless
16 they're identical twins, I'm not sure that would be the
17 same, but they would have to be identical twins to have all
18 the same markers.

19 I said well are you sure of that? Well, I'm not
20 100 percent. And then I asked her, I don't know if you
21 remember this, the 25 loci test. DNA stuff is just fancy
22 stuff. It's -- you can't see DNA. I mean you really
23 can't. I mean you have to get the DNA, you have to add
24 something to it; you have to make it bigger and then you
25 check for STR's or -- or repeats on this DNA strand. You

1 could actually have trace DNA; you could touch something
2 and you drag a little DNA over. But I asked about the 25
3 loci, loci is the famous Latin word, plural for locus, not
4 the locust with a t, but locus with an s. And you have 25
5 spots on the DNA and I asked her, I said why you think they
6 do that test; why do you think they make one with 25 spots
7 that you check the DNA; got to be a reason? Well it makes
8 it more inclusive; it's a better test. You can tell if
9 it's too close; like maybe family members, like maybe
10 related to. Well let's just go with the DNA yet; let's let
11 jurors make a decision. But I mean you clearly heard about
12 it.

13 Well, I'm going to skip down to poor Beth Holliman.
14 I shouldn't -- I don't mean poor by in a derogatory sense.
15 Beth's a lovely person. She works at the Sheriff's
16 Department. She came up here and she was testifying about
17 this DNA deal. I didn't see the name on Exhibit 12. Well
18 we have a lunch break and lo and behold the solicitor and
19 she get together and oh, yeah, I forgot. I saw it on
20 there; it was on there. Of course, when you look at it,
21 you'll actually see there's two bags. There's a bag with
22 nothing on it and there's a bag with supposedly Martin's
23 name on it. And she said, well I make mistakes.

24 Well you know, I didn't dump all over her about
25 making mistakes. Some of us have been married more than

1 once too. Everybody makes mistakes; that's what she said.
2 Everybody makes mistakes. It's true. I said well what
3 about labs? Well, I don't work in the lab. I think that's
4 the point, I mean that's really the point we're making
5 here. She just didn't see it.

6 Mr. Novak testified and nobody's talked about this.
7 I'm wondering why no one has brought this up. You remember
8 who Douglas Novak was; the nice guy that stood up there,
9 the guy who came in on September the 12th and went to his
10 little box and we tried to describe it. I thought like
11 maybe a mailbox or something like that. It's a standup box
12 3 x 4. He comes in that morning and he finds this package.
13 And which package are we talking about? Number 12. Martin
14 Rodriguez's package.

15 He takes the package, he goes inside the evidence
16 area that is climate controlled; remember all the
17 discussion about climate control; well, is that humidity;
18 is that temperature; oh, it's 68 degrees. It's got to be
19 68 degrees. And I was thinking wonder what the temperature
20 was before he took it from that area that it was at to the
21 climate controlled area where it was 68 degrees. I don't
22 know. I can't explain it. I don't know what affect it has
23 or doesn't have. But you know who doesn't have the burden
24 of proof; me.

25 You have Roger Gilland and Glenn Ross who picked up

1 the DNA from Minor and her baby at the hospital and that's
2 essentially what their testimony was. Was that they
3 delivered it and it was used to be tested.

4 I've talked about Heather Smith, the counselor, who
5 never met with Minor, didn't do the forensic interview. We
6 talked about Jennifer Bartman with her Master's. We talked
7 about relatives and how you would expect their DNA closely
8 akin to -- well, I mean if you think about it, you don't
9 have to really be a scientist to figure this part out. If
10 you start with the basic principal that when mom and dad
11 have a baby, the baby gets some of the DNA from the mom and
12 some of the DNA from the dad. Well, if the same mom and
13 dad have two children, those two children will get DNA from
14 mama and DNA from daddy.

15 You know when I sit down, I won't to get a chance
16 to talk about anything else. I think I've talked about all
17 the people that didn't testify, Roy Rodriguez, not Roy
18 Rogers; I keep wanting to say that, but not Roy Rogers.
19 The wife, the forensic examiner, the counselor who spent, I
20 don't know how many weeks talking with the child, but for
21 some reason she wouldn't talk to the counselor, about the
22 grades that we haven't seen, why the child kept getting
23 transferred, why the child was not with the father, you
24 know sometimes, all a guy can do is tell you that he's not
25 guilty and leave it up to you. So that's what I'm doing.

1 Thank you for being my jury.

2 THE COURT: Thank you. Thank you, Mr. Williams.

3 MR. WILLIAMS: Thank you, Your Honor.

4 THE COURT: Madam Forelady, ladies and gentlemen of
5 the jury -- yes?

6 THE BAILIFF: She needs to go to the bathroom; a
7 bathroom break.

8 THE COURT: Certainly, yes, ma'am, of course.
9 We'll take about -- I can never get anybody -- I never can
10 get a group back together within five minutes. I will put
11 it to you like this. We'll take about a ten minute recess.
12 Certainly. Do not discuss the case during this brief
13 recess. Thank you.

14 (The jury left the courtroom at 11:19 a.m.)

15 THE COURT: We'll be in recess ten minutes. Thank
16 you.

17 (There was a brief recess.)

18 THE COURT: All right. Bring us our jury please.

19 THE BAILIFF: Yes, sir, Your Honor.

20 (The jury entered the courtroom at 11:32 a.m.)

21 THE COURT: All right. Welcome back, ladies and
22 gentlemen of the jury panel, if you would please give me
23 your complete and undivided attention.

24 **JURY CHARGE**

25 THE COURT: The manner in which I charge the jury

1 in criminal or a civil case follow the same form and the
2 pattern. I charge the general criminal law that applies to
3 all criminal cases in South Carolina first. I will give
4 you the caption of the subject matter I'm fixing to cover.
5 And when I go from one subject matter to the next, I will
6 give you the caption of that area. Once I have instructed
7 on the general criminal law that applies to all criminal
8 cases in South Carolina, I will then charge specifically on
9 the offenses in the indictments, criminal sexual conduct
10 with a minor in the second degree, and criminal sexual
11 conduct with a minor in the third degree. Finally, I will
12 then charge you the form of the verdict.

13 I will certainly try to change the inflection of my
14 voice from time to time. Charge to the jury can take 25 to
15 30 minutes.

16 Charge, arrest, indictment's not evidence: The
17 indictments charge the defendant, Martin Alejandro
18 Rodriguez, with criminal sexual conduct with a minor in the
19 second degree and criminal sexual conduct with a minor in
20 the third degree. I remind you that the fact that the
21 defendant was arrested, charged, and indicted in this case
22 is not evidence in this case and cannot be considered by
23 you as evidence of guilt in this case, nor does it create
24 any presumption or inference of guilt. These documents,
25 these indictments, are simply the formal written

1 instruments by which the case is brought into court that
2 has been made against the defendant. It's the formal
3 charging document that brings the case before the court and
4 the jury.

5 Multiple charges: The indictments in this case
6 allege two different offenses against the defendant. Again
7 the charges are criminal sexual conduct with a minor second
8 degree and criminal sexual conduct with a minor third
9 degree. Each indictment charges a separate and distinct
10 offense. You must decide each indictment separately on the
11 evidence and the law applicable to it, uninfluenced by your
12 decision as to the other indictment. The defendant may be
13 convicted or acquitted on either or both of the indictments
14 as to the offenses charged. You will be asked to write a
15 separate verdict of guilty or not guilty for each
16 indictment.

17 Presumption of innocence: The defendant has pled
18 not guilty to these indictments and that plea puts the
19 burden on the State to prove the defendant guilty. A
20 person charged with committing a criminal offense in South
21 Carolina is never required to prove himself innocent. I
22 charge you that it is an important rule of the law that a
23 defendant in a criminal trial, no matter what the
24 seriousness of the charges may be, will always be presumed
25 to be innocent of the crime for which the indictment was

1 issued unless guilt has been proven by evidence satisfying
2 you of that guilt beyond a reasonable doubt.

3 The presumption of innocence does not end when you
4 begin your deliberations, but it accompanies the defendant
5 throughout the trial until you reach verdicts of guilty
6 based on evidence satisfying you of that guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is said to be like a
9 robe of righteousness placed about the shoulders of the
10 defendant which remains with the defendant until it has
11 been stripped from the defendant by evidence satisfying you
12 of the defendant's guilt beyond a reasonable doubt.

13 Ladies and gentlemen, the presumption of innocence
14 is not a mere legal theory, it is not just a legal phrase,
15 it is a substantial right to which every defendant is
16 entitled unless you the jury are satisfied from the
17 evidence of the defendant's guilt beyond a reasonable
18 doubt.

19 What is a reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable person to hesitate to act. The State has the
22 burden of proving the defendant guilty beyond a reasonable
23 doubt. Some of you may have served as jurors in the past
24 in civil cases where you were told that it is only
25 necessary to prove that a fact is more likely true than not

1 true, such as what is known as the greater weight or the
2 preponderance of the evidence. In criminal cases, the
3 State's proof must be more powerful than that; it must be
4 beyond a reasonable doubt.

5 Proof beyond a reasonable doubt is proof that
6 leaves you firmly convinced of the defendant's guilt.
7 There are very few things in this world that we know with
8 absolute certainty and in criminal cases, the law does not
9 require proof that overcomes every possible doubt. If
10 based on your consideration of the evidence, you are firmly
11 convinced that the defendant is guilty of the crime
12 charged, you must find the defendant guilty. If on the
13 other hand, you think there is a real possibility that the
14 defendant is not guilty, you must give the defendant the
15 benefit of that doubt and find the defendant not guilty.

16 Duties of jury and trial judge: I remind you that
17 during this trial, you and I have certain distinct duties
18 to perform. As the trial judge, it is my responsibility to
19 preside over the trial of this case and I also have the
20 duty to rule on the admissibility of the evidence offered
21 during this trial. You are to consider only the competent
22 evidence before you. If there was any testimony ordered
23 stricken from the record in this case during the trial, you
24 must disregard that testimony. You are to consider only
25 the testimony which has been presented from the witness

1 stand and any exhibits which have been made part of the
2 record.

3 I have the additional duty to charge you the law
4 applicable to this case. As the presiding judge, I am the
5 sole judge of the law of this case and it is your duty as
6 jurors to accept and apply the law as I now state it to
7 you. If you already have any idea as to what the law is or
8 what the law ought to be and it does not agree with what I
9 tell you the law is, you must set aside, you must abandon
10 your idea, because you are sworn to accept the law and
11 apply the law exactly as I state it to you.

12 In every case tried in this court before a jury,
13 the jury becomes the sole and the exclusive judge of the
14 facts in a case. A trial judge cannot intimate, state,
15 comment on, or make any statement to a jury about the facts
16 in the case. Since you, the jury, are the sole judges of
17 the facts in this case, you are not to infer from what I
18 have said during the progress of this trial in ruling upon
19 the admissibility of evidence or otherwise or anything that
20 I say now during the course of these instructions to you
21 that I have any opinion about the facts in this case.

22 The law does not allow me to have an opinion about
23 the facts in this case. That is a matter solely for you,
24 the jury, to determine. As jurors, it is your duty to
25 determine the effect, the value, the weight, and the truth

1 of the evidence presented during the trial.

2 Direct and circumstantial evidence: There are two
3 types of evidence which are generally presented during a
4 trial; direct evidence, circumstantial evidence. Direct
5 evidence is the testimony of a person who claims to have
6 actual knowledge of a fact, such as an eyewitness or an ear
7 witness. It is evidence which immediately establishes the
8 main fact to be proven. Circumstantial evidence is proof
9 of a chain of facts and circumstances indicating the
10 existence of a fact. It is evidence which immediately
11 establishes a collateral fact from which the main fact may
12 be inferred.

13 Circumstantial evidence is based on inference and
14 not on personal knowledge or observation. The law, our law
15 makes absolutely no distinction between the weight or the
16 value to be given to either direct or circumstantial
17 evidence, nor is there a greater degree of certainty
18 required of circumstantial evidence than of direct
19 evidence.

20 You should weigh all of the evidence in this case.
21 After weighing all of the evidence, if you are not
22 convinced of the guilt of the defendant beyond a reasonable
23 doubt, you must find the defendant not guilty. If on the
24 other hand, after weighing all of the evidence in this
25 case, you are convinced of the guilt of the defendant

1 beyond a reasonable doubt, you must find the defendant
2 guilty.

3 Credibility of witnesses: .Necessarily, you, the
4 jury, must determine the credibility of the witnesses who
5 have testified in this case. As you all know, credibility
6 simply means believability. It becomes your duty as jurors
7 in using your individual and your collective good judgement
8 and common sense, to analyze and to evaluate the evidence
9 and determine which evidence convinces you of its truth.
10 In determining the believability of witnesses who have
11 testified in this case, you may believe one witness over
12 several or several over one. You may believe a part of the
13 testimony of a witness and reject the remaining part of the
14 testimony of that same witness. You may believe the
15 testimony of a witness in its entirety or reject the
16 testimony of a witness in its entirety.

17 You may consider whether any witness has exhibited
18 to you any interest, any bias, any prejudice or other
19 motive in this case. You may also consider the appearance,
20 the manner, the demeanor of a witness while on the witness
21 stand. You search for the truth. You have no friends to
22 reward, no enemies to punish. Your job is to search for
23 the truth, which evidence convinces you of its truth.

24 Expert witnesses: And you've heard -- you've heard
25 this somewhat shortened version. By that, I don't mean to

1 imply this is necessarily a lengthy version, but I must
2 restate it at this time. The rules of evidence ordinarily
3 do not permit witnesses to testify to opinions or to
4 conclusions. An exception to this rule exists with
5 witnesses we call expert witnesses. A witness, who by
6 education, experience, has become expert in some art,
7 science, profession, calling or craft, may state an opinion
8 as to relevant and material matter in which the witness
9 claims to be an expert and may also state the reason, the
10 basis for those opinions. You should consider any expert
11 opinion received in evidence in this case and like any
12 other evidence. You should give it the weight you think it
13 deserves.

14 If you decide that the opinion of an expert is not
15 based on sufficient education or experience, or if you
16 conclude that the reasons given in support of the opinions
17 are not sound or that the opinion is outweighed by other
18 evidence, you may disregard the opinion in its entirety.
19 An expert witnesses testimony is to be given no greater
20 weight than that of other witnesses simply because the
21 witness has been qualified as an expert witness. Further,
22 you are not required to accept an expert's opinion even
23 though it is uncontradicted.

24 I instruct you and emphasize the fact that the
25 defendant did not testify is not a factor to be considered

1 by you in any way in your deliberation and in your
2 consideration of the question of the guilt or the innocence
3 of the defendant. It must not be considered by you in any
4 manner whatsoever. A defendant has the constitutional
5 right to remain silent and the assertion of this right must
6 not be considered by you in your deliberations.

7 I repeat, under your oath, you are to draw no
8 conclusion whatsoever from the fact that the defendant in
9 this case did not testify. The fact that this defendant
10 did not testify should not even be discussed in the jury
11 room.

12 The burden of proof as I have stated to you is on
13 the State. The defendant is not required to prove his
14 innocence. The burden of proof remains on the State to
15 prove guilt beyond a reasonable doubt.

16 Criminal intent: In order to establish criminal
17 liability, criminal intent is required. For example, the
18 mental state required to be proven by the State for a
19 particular crime might be purpose; it was on purpose or it
20 was intentional or it was with knowledge, recklessness or
21 criminally negligent. Criminal intent must be proven by
22 the State beyond a reasonable doubt. Criminal intent is
23 always a matter that must be determined by the jury from
24 the circumstances surrounding the situation.

25 There is no way to prove intent to a mathematical

1 certainty. There is no way medical science can dissect a
2 person's brain and determine what the person had in mind.
3 So the law, our law says that criminal intent may be
4 inferred from the circumstances shown to have existed.
5 This is how you, the jury, make a determination of whether
6 or not the element requiring intent was present.

7 It is not necessary to establish intent by direct
8 positive evidence, but intent may be established by
9 inference in the same way as any other fact, by taking into
10 consideration the acts of the parties and all the facts and
11 circumstances of the case. Criminal intent is a mental
12 state, a conscious wrongdoing. It is up to you to
13 determine what the defendant intended to do based on the
14 circumstances shown to have existed. Criminal intent can
15 arise from action or a failure to act. It may arise from
16 negligence, recklessness or an indifference to a duty or to
17 consequences that is considered by the law to be the
18 equivalent of criminal intent.

19 Ladies and gentlemen, that is the general criminal
20 law in South Carolina. Again, just a highlight of the
21 subject matter covered; charge, arrest, indictment, not
22 evidence; multiple charges; presumption of innocence;
23 reasonable doubt; duties of jury and trial judge; direct
24 and circumstantial evidence; credibility of witnesses;
25 expert witnesses; constitutional right to remain silent;

1 criminal intent. Again, that is the general criminal law
2 that applies to all criminal cases in South Carolina.

3 I will now charge the specific offenses charged in
4 the indictments.

5 First, I will charge criminal sexual conduct with a
6 minor in the second degree. That is a statute in South
7 Carolina, Statute 16-3-655(b). The defendant is charged
8 with second degree criminal sexual conduct with a minor.
9 The State must first prove beyond a reasonable doubt that
10 the defendant engaged in a sexual battery with the victim,
11 the alleged name, the named victim alleged, Minor

12 Sexual battery is a term defined in the criminal
13 sexual conduct with a minor statute. A sexual battery is
14 sexual intercourse, cunnilingus, fellatio, anal
15 intercourse, or any intrusion, however slight, of any part
16 of a person's body or of any object into the genital or
17 anal openings of another person's body except when the
18 intrusion is accomplished for medically recognized
19 treatment or diagnostic purposes.

20 So the State must first prove beyond a reasonable
21 doubt that the defendant engaged in a sexual battery with
22 the victim. The State must then prove beyond a reasonable
23 doubt that the victim was at least 11 years of age, but not
24 more than 14 years of age at the time of the sexual
25 battery.

1 Consent, willingness, indifference, or ignorance on
2 the part of the minor, if any, as to what was taking place,
3 does not in any way affect the charge of criminal sexual
4 conduct with a minor because an unmarried woman under the
5 age of fourteen cannot legally consent to sexual
6 intercourse. That is the charge of criminal sexual conduct
7 with a minor in the second degree.

8 The defendant is also charged with criminal sexual
9 conduct with a minor in the third degree, which is Code
10 Section 16-3-655(c). As to criminal sexual conduct with a
11 minor in the third degree, a minor is a person defined as
12 being under the age of 16. The State must first prove that
13 the victim was a minor under the age of 16. The State must
14 then prove beyond a reasonable doubt that the defendant,
15 the actor, was over the age of 14.

16 Next the State must prove that the defendant,
17 willfully and lewdly committed or attempted to commit a
18 lewd or lascivious act upon or with the body or its parts
19 of a child, minor under the age of 16 years, with the
20 intent of arousing, appealing to, or gratifying the lusts,
21 passions, or sexual desires of the defendant or of the
22 minor. The term willfully in the law means voluntarily,
23 intentionally, with specific intent to do something the law
24 forbids. The term lewd means obscene, lustful, indecent or
25 lecherous. The term lascivious means tending to excite

1 lust, lewd, indecent, obscene or attempting to deprave the
2 morals, in respect to sexual relations. That is the charge
3 of criminal sexual conduct with a minor in the third
4 degree.

5 Finally, ladies and gentlemen, the form of the
6 verdict. There are two possible verdicts which you may
7 find in this case as to each indictment, guilty or not
8 guilty. There is no significance whatsoever in the order
9 in which I just stated those possible verdicts. It simply
10 means that one must be stated first. And as you recall,
11 under multiple indictments, you may find guilty or not
12 guilty as to either or both. In other words, criminal
13 sexual conduct with a minor second degree, guilty or not
14 guilty; criminal sexual conduct with a minor third degree,
15 guilty or not guilty. Whatever combination you decide
16 guilty of both, not guilty of both, guilty of one, not
17 guilty of the other. It depends on your version of the
18 facts applying those facts to the law as I've told you the
19 law is.

20 Ladies and gentlemen, your verdicts must be
21 unanimous. All twelve of you must agree on the verdict in
22 the -- as to the offenses charged. Your verdict may not be
23 based on sympathy, passion, bias, prejudice, conjecture,
24 surmise, or any improper motive not in evidence in this
25 case.

1 Ladies and gentlemen, what you will do is you
2 determine the facts, the inferences to be drawn from the
3 facts as to criminal sexual conduct with a minor in the
4 second degree. You determine the facts, then you take
5 those facts and you apply them to the standard of the law
6 as I've told you, general criminal law and the law specific
7 to criminal sexual conduct with a minor in the second
8 degree. If the State has failed to meet its burden in this
9 case beyond a reasonable doubt, your verdict would be not
10 guilty. If based on your findings of the facts, the
11 inferences to be drawn, applying it to the law as I've told
12 you, you must find that the State has met its burden of
13 proof of finding the defendant -- proof beyond a reasonable
14 doubt, you would then find the defendant guilty of criminal
15 sexual conduct with a minor in the second degree.

16 The same as criminal sexual conduct with a minor in
17 the third degree. You determine what the facts are and the
18 inferences to be drawn. You then apply the facts as you,
19 the jury, find them to be to the law, the general law and
20 the law specific to criminal sexual conduct with a minor in
21 the third degree. If you find the State has failed to meet
22 its burden of proving its case beyond a reasonable doubt,
23 your verdict would be not guilty. If you find the State
24 has met its burden of proving its case beyond a reasonable
25 doubt, your verdict would be guilty.

1 Again, the verdict of the jury must be unanimous;
2 guilty or not guilty as to whatever indictment or whatever
3 combination of guilty or not guilty.

4 Ladies and gentlemen, Madam Forelady, when you have
5 reached a verdict and this is just -- I'm going to send the
6 indictments, without objection by the parties, there is a
7 area on the facing of the indictment at the bottom left
8 that says verdict.

9 If you find the State has met its burden of proof
10 as to criminal sexual conduct with a minor in the second
11 degree, I would ask you please, Madam Forelady, to write
12 the word guilty and sign as Foreperson of the jury. If
13 your verdict is not guilty, unanimous verdict, I would ask
14 you to write the words not guilty, sign it as Presiding
15 Juror, same as to criminal sexual conduct with a minor in
16 the third degree.

17 Ladies and gentlemen, the law requires me to meet
18 one final time outside of your presence with the attorneys
19 in case I have failed to address a particular subject
20 matter that I should have addressed or have improperly
21 addressed a subject matter. If I have done one or the
22 other, I will certainly bring you back out and give you
23 further instructions. If I have not, what would happen
24 then -- everybody looks great. So what would happen then
25 is our two alternates would come out of the jury room; you

1 will then be delivered the indictments, all the items of
2 evidence that were introduced. You would then be
3 instructed by the Clerk to begin your deliberations with
4 your fellow jurors.

5 Do not begin your deliberations until you are so
6 instructed. If during the course of your deliberations,
7 Madam Forelady, ladies and gentlemen of the jury, if you
8 have any questions, Madam Forelady, if you'd please write a
9 note for me, knock on the jury room door, the bailiff will
10 be posted outside, he will -- he will get the note to me
11 and I will hopefully respond timely. Thank you. Thank you
12 very much for your attention and focus. You may now go
13 with your bailiff.

14 Again, do not begin your deliberations until you're
15 instructed to do so.

16 (The jury left the courtroom at 12:04 p.m.)

17 THE COURT: All right. Any exceptions, Solicitor?

18 MS. MAYES: None from the State, Your Honor.

19 THE COURT: Mr. Williams?

20 MR. WILLIAMS: None from the defendant, Your Honor.

21 THE COURT: All right. If y'all would check --
22 check the indictments, check the evidence please.

23 (The attorneys were confirming all exhibits were
24 collected.)

25 THE COURT: Are you satisfied we have the correct

1 items of evidence, Solicitor?

2 MS. MAYES: Yes, sir, Your Honor.

3 THE COURT: And, Mr. Williams?

4 MR. WILLIAMS: Yes, Your Honor.

5 THE COURT: All right. Madam Clerk, Mr. Bailiff,
6 if y'all will get them to the jury.

7 Tell them they have the indictments and they may
8 begin their deliberations. Just bring our alternates out.

9 THE BAILIFF: Yes, sir.

10 THE COURT: And the two alternates out, yes, sir.

11 MS. MAYES: Here are the two indictments.

12 (The jury began deliberations at 12:09 p.m.)

13 (It was reported to the court at 12:32 p.m. that
14 the jury had reached a verdict.)

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

17 MR. CASKEY: Nothing from the State, Your Honor.

18 THE COURT: Defense?

19 MR. WILLIAMS: Nothing from the defendant, Your
20 Honor.

21 (The jury entered the courtroom at 12:36 p.m.)

22 THE COURT: All right. Madam Clerk?

23 **VERDICT**

24 THE CLERK: Madam Forelady, have you reached your
25 verdicts?

1 THE FOREPERSON: Yes, ma'am.

2 THE CLERK: Please pass them up by the bailiff.

3 THE COURT: All right. It appears to be in proper
4 form signed by our foreperson. If you'd publish our
5 verdict please.

6 THE CLERK: Yes, sir. Indictment 2015-GS-32-01531,
7 State v. Martin Alejandro Rodriguez, indicted for criminal
8 sexual conduct with a minor in the third degree, verdict,
9 guilty. And it was so signed by the forelady.

10 Indictment 2015-GS-32-01404, the State v. Martin
11 Alejandro Rodriguez, indicted for criminal sexual conduct
12 with a minor second degree verdict, guilty. And is so
13 signed by the forelady.

14 Madam Forelady, ladies and gentlemen of the jury,
15 if this is your verdict, please indicate each of you by
16 raising your right hand?

17 All hands raised, Your Honor.

18 THE COURT: Thank you. Thank you, Madam Clerk.
19 Anything further for the jury from the State.

20 MS. MAYES: Nothing from the State, Your Honor.

21 THE COURT: Defense?

22 MR. WILLIAMS: Yes, Your Honor. Individual poll.

23 THE COURT: All right. Thank you.

24 Madam Clerk, will you explain that procedure to our
25 jury and conduct the poll?

1 THE CLERK: Yes, sir.

2 POLLING OF THE JURY

3 THE CLERK: I'll call you by your juror number and
4 as I do, please hold your hand up where I can recognize
5 you. I will ask you, as to the verdicts were they your
6 verdicts and are they still your verdicts. At that time
7 give me your response please.

8 No, 107, as to the verdicts, were these your
9 verdicts and are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Thank you.

12 21, as to the verdicts, were these your verdicts
13 and are they still your verdicts?

14 THE JUROR: Yes.

15 THE CLERK: 205, as to the verdicts, were these
16 your verdicts and are they still your verdicts?

17 THE JUROR: Yes.

18 THE CLERK: Number 3, as to the verdicts, were
19 these your verdicts and are they still your verdicts?

20 THE JUROR: Yes.

21 THE CLERK: 158, as to the verdicts, were these
22 your verdicts and are they still your verdicts?

23 THE JUROR: Yes.

24 THE CLERK: 195, as to the verdicts, were these
25 your verdicts and are they still your verdicts?

1 THE JUROR: Yes.

2 THE CLERK: 225, as to the verdicts, were these
3 your verdicts and are they still your verdicts?

4 THE JUROR: Yes.

5 THE CLERK: Number 5, as to the verdicts, were
6 these your verdicts and are they still your verdicts.

7 THE JUROR: Yes.

8 THE CLERK: Number 56, as to the verdicts, were
9 these your verdicts and are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Number 77, as to the verdicts, were
12 these your verdicts and are they still your verdicts?

13 THE JUROR: Yes.

14 THE CLERK: Number 67, as to the verdicts, were
15 these your verdicts and are they still your verdicts?

16 THE JUROR: Yes.

17 THE CLERK: Number 74, as to the verdicts, were
18 these your verdicts and are they still your verdicts?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: They jurors are polled, Judge.

21 THE COURT: Thank you, Madam Clerk.

22 Anything further for the jury, Mr. Williams.

23 MR. WILLIAMS: Nothing for the jury, Your Honor.

24 THE COURT: All right. Thank you. Thank you very
25 much.