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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM NEWBERRY COUNTY
Court of General Sessions
Honorable Eugene C. Griffith, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2013-GS ~~30~~ 00500
Appellate Case No. 2014-002376

The State, ...

Respondent,

v.

Mario Valerio-Gonzalez Hernandez, ...

Appellant.

RECORD ON APPEAL
VOLUME ONE

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**RECORD ON APPEAL
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VOLUME ONE

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STATE OF SOUTH CAROLINA

COUNTY OF Newberry
STATE VS.
Mario Valerio Gonzalez Hernandez

AKA:
Race: HISPANIC Sex: M Age: 42
DOB: -1972 SS#:
Address:
City, State, Zip: Newberry, SC 29108
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second Degree

in violation of § 16-03-0655 of the S.C. Code of Laws, hearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Taylor Oan 100588 SC Bar# Defendant Attorney for Defendant 77881 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 6-30-13

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Joy Houston

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 13GS36-0500

A/W#: 2013D3600100060

Date of Offense: 5/7/2013

S.C. Code § : 16-03-0655

CDR Code #: 0396

SENTENCE SHEET 0-20 yrs,
sex offender
Registry

☒ CONVICTED OF or

☐ PLEADS

in violation of § 16-03-0655 of the S.C. Code of Laws, hearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Presiding Judge

Judge Code: 154

Sentence Date: 10-30-14

1 State of South Carolina) In the Court
2 County of Newberry) Of General Sessions
3
4 State of South Carolina,)
5 Plaintiff,)
6 vs.) Transcript of Record
7 Mario Valerio-Gonzalez) 2013-GS-36-0498
Hernandez) 2013-GS-36-0500
8 Defendant.)
9

10 October 27, 2014

11 Newberry, South Carolina
12

13 BEFORE:

14 The Honorable Eugene C. Griffith, Junior, Judge

15 APPEARANCES:

16 Christopher Dale Scott, Assistant Solicitor
Taylor Daniel, Assistant Solicitor
17 Attorneys for the State
18

19 Edgar Michael Pinilla, Esquire
Michael McMullen, Esquire
20 Attorneys for the Defendant
21
22
23
24

25 ORIGINAL

Steven E. LeBlanc, Sr., R.P.R., Circuit Court Reporter
P.O. Box 184 Lexington, South Carolina 29071

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* * * * *

(Whereupon, the following proceedings were had.)

THE COURT: All right, folks. Y'all got in here at 9:30, 9:45. Y'all want to keep rolling on? The state, I think, has a really good idea which case they want to call. What we'll do is call the case, you'll meet the lawyers and the parties, the potential witnesses, and then I ask questions such as this: Any member of the jury panel related by blood, marriage, close personal friend to the lawyers, the witnesses, to the participants? That kind of thing. That's my next line of questions. We can take a short break or go roll right on into that and try to get this jury picked. And then once we do that, once I pick the first jury, the people not selected will have to call in in the evening at 6:00 to find out if you have to come back in the morning. You call in. Call in until the week is done. So once I get this first jury picked, we're going to start work on them. The balance of you just call in in the evening and follow the directions. So y'all tell me. Y'all ready to roll on?

(Unanimous yea.)

THE COURT: Let's roll on. All right, Solicitor.

MR. SCOTT: Thank you, Your Honor. The first case is State versus Mario Valerio-Gonzalez Hernandez. He's

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1 indicted on two counts.

2 THE COURT: Hold. Hang on. We've got to get him in
3 here. He's back over this way. All right. Y'all come
4 here real quick.

5 (Whereupon, a bench conference was held off the
6 record.)

7 THE COURT: All right. We're going to bring Mr.
8 Hernandez in here to be with us.

9 (Brief recess.)

10 THE COURT: Come to order, please. Now, call that
11 case.

12 MR. SCOTT: Thank you, Your Honor. The first case
13 we have for the week is State versus Mario
14 Valerio-Gonzalez Hernandez indicted on two counts. The
15 first one being a true billed indictment for criminal
16 sexual conduct with a minor.

17 THE COURT: Please, speak up. I'm having some sinus
18 -- I can't hear.

19 MR. SCOTT: Yes, sir. The first indictment is
20 13-GS-36-0498 as a true billed indictment for criminal
21 sexual conduct with a minor first degree. The second
22 was likewise a true billed indictment, 13-GS-36-0500,
23 criminal sexual conduct with a minor second degree.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, I have been handed two indictments by the Deputy

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1 Solicitor for the Eighth Circuit. These indictments are
2 for the State versus Mario Valerio-Gonzalez Hernandez.
3 Mr. Hernandez is here in the courtroom represented by
4 his two lawyers. Would y'all introduce him and
5 yourselves, Mr. Pinilla and Mr. McMullen?

6 MR. McMULLEN: Thank you, Your Honor. May it please
7 the Court.

8 THE COURT: Yes, sir.

9 MR. McMULLEN: I'm Michael D. McMullen from
10 Columbia.

11 MR. PINILLA: And I'm Mike Pinilla also from
12 Columbia. And this is our Client Mr. Mario
13 Valerio-Gonzalez Hernandez.

14 MR. McMULLEN: Also joining us at counsel table,
15 Your Honor, is Dr. Laura Cahue who is an interpreter or
16 translator.

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, you have just met Mr. Hernandez and both of his
19 attorneys. I'm going to go back and revisit a little
20 bit and give you a brief summary of the facts.

21 The indictments are formal allegations brought by
22 the state true billed by the Newberry County Grand Jury.
23 And they're just that. They're allegations of some
24 event that the state believes Mr. Hernandez needs to
25 come to court to be prepared to defend. They are not

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1 proof of anything. They are allegations. And the
2 allegations are that Mr. Hernandez between the dates of
3 May 7th of 2013 and June 30th of 2013 did commit the
4 offense of criminal sexual conduct with a minor, with a
5 female. This is in violation of Code, Section 16-3-655.

6 The second indictment alleges that between the dates
7 of January 1st of 2011 and May 7th of 2013 that he
8 committed the offense of criminal sexual conduct in the
9 first degree with the same minor.

10 Now, does any member of the jury panel know anything
11 about the allegations contained in the indictments from
12 the state regarding these charges against Mr. Mario
13 Valerio-Gonzalez Hernandez? If so, please stand and let
14 me ask you additional questions. I don't want you to
15 stand up and say, yeah, I know the whole story, this,
16 this and this. That's not the point of my question.
17 What I'm looking for is jurors who have not heard
18 anything, don't know anything about the case, and
19 willing to listen.

20 So my question is any member of the jury panel know
21 anything about the allegations brought against Mr.
22 Hernandez that occurred between January of 2011 and May
23 of 2013? If so, please stand.

24 No one is standing.

25 Any member of the jury panel related by blood,

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1 marriage, close personal friend to the two attorneys,
2 Ms. Cahue, or Mr. Hernandez? If so, please stand.

3 No one is standing.

4 Any member of the jury panel ever been represented
5 in any fashion by either Mr. McMullen or Mr. Pinilla in
6 any legal manner? If so, please stand.

7 No one is standing.

8 Mr. Scott, please introduce everybody at your table
9 also.

10 MR. SCOTT: Thank you, Your Honor. As the Judge
11 said, my name is Dale Scott, Deputy Solicitor here in
12 the Eighth Circuit. I primarily prosecute cases in
13 Lawrence and Newberry County. However, the circuit you
14 live in also includes Abbeville and Greenwood counties.
15 Your elected solicitor is David Stumbo. I work for him.
16 I'm going to be prosecuting this case, if you're picked
17 for this jury today, and Taylor Daniel, Assistant
18 Solicitor is going to help me out with it. Kevin
19 Goodman here is with the Newberry Police Department.
20 He's going to be my lead investigator on the case.
21 Thank you.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, is any member of the jury panel related by blood,
24 marriage, close personal friend to either of the
25 solicitors or Detective Goodman? If so, please stand.

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1 (Prospective juror stands.)

2 THE COURT: Hang on. I'll come back to you. Tell
3 me your name, please, sir.

4 DEMETREIOUS CHAPMAN: Demetreious Chapman.

5 THE COURT: Mr. Chapman, you are related by blood,
6 marriage, close personal friend to which party?

7 DEMETREIOUS CHAPMAN: Mr. Goodman.

8 THE COURT: Mr. Goodman. Are you friends or
9 related?

10 DEMETREIOUS CHAPMAN: Friends.

11 THE COURT: How long have you know Mr. Goodman?

12 DEMETREIOUS CHAPMAN: All my life.

13 THE COURT: Now, would the fact that you're friends
14 with Mr. Goodman, would that affect your ability -- He's
15 not accused of anything. He's just the lead
16 investigator. Would that affect your ability to be fair
17 and impartial to both the state and to Mr. Hernandez?

18 DEMETREIOUS CHAPMAN: No, sir.

19 THE COURT: You can be a good listener, open mind,
20 listen to the facts and testimony and my instructions on
21 the law?

22 DEMETREIOUS CHAPMAN: Yes, sir.

23 THE COURT: And be fair and impartial to both sides?

24 DEMETREIOUS CHAPMAN: Yes, sir.

25 THE COURT: Thank you so much. All right, folks.

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1 We have another one. Tell me your name, please,
2 ma'am.

3 ELIZABETH MARTINEZ: Elizabeth Martinez.

4 THE COURT: Ms. Martinez, what is your juror number?

5 ELIZABETH MARTINEZ: 99.

6 THE COURT: 99. All right. Tell me which party I
7 introduced that you're related by blood or marriage or
8 friends with.

9 ELIZABETH MARTINEZ: Well, friends. I was ESL
10 instructor at Newberry Adult Ed. I teach
11 Mr. Hernandez.

12 THE COURT: How long ago did you work with the ESL
13 program in Newberry County?

14 ELIZABETH MARTINEZ: Yes. I worked about five
15 years.

16 THE COURT: And how long ago did you teach him and
17 have him as a student?

18 ELIZABETH MARTINEZ: Like one year, but he was not a
19 regular student.

20 THE COURT: Now, the fact that you have taught him
21 in the education field, would that affect your ability
22 to be fair and impartial to him?

23 ELIZABETH MARTINEZ: No.

24 THE COURT: Can you be fair and impartial also to
25 the state?

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1 ELIZABETH MARTINEZ: Say what?

2 THE COURT: The state. Can you be fair and
3 impartial to both sides?

4 ELIZABETH MARTINEZ: I will be impartial.

5 THE COURT: And you can be a good listener and
6 render a fair jury verdict?

7 ELIZABETH MARTINEZ: Yes.

8 THE COURT: Thank you very much. Anybody else? I
9 missed that hand. Sorry. All right. Folks, I'm going
10 to read a list of potential witnesses. This doesn't
11 mean they will be called, but they could be called. I'm
12 going to read them out, then I'm going to ask the same
13 question, related by blood or marriage. Now, if any of
14 the witnesses are in the courtroom, they will stand up
15 and I'm told there's a couple of the state's witnesses.
16 The county council chambers are kind of crowded and so
17 we have got people in the halls. If they're in the
18 hall, will you please bring them in, Ms. Chappell?

19 All right. Potential witnesses. Tomasa
20 Aguirre-Cruz. Andy Rowe. Liz Rivera. I have already
21 called Detective Goodman. Boris Alvarado. Donna
22 Debrew. Jennifer Bartman. MINOR . Jessica
23 Herron. Andrea Simmons. Ruby Stevens. Esmeralda
24 Gomez. Sergeant Rusty Fulmer. Deputy Michael Claytor.
25 Niele Andrews. Ashley Cromer. Paula Couch. S.M.)

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1 S.M. .

2 All right. Any member of the jury panel related by
3 blood, marriage or close personal friend to any of those
4 potential witnesses just called out by me please stand.
5 I've got one. Got two. All right. We'll start
6 with you, ladies first. Tell me your name.

7 CORETTA COLEMAN: Coretta Coleman.

8 THE COURT: Ms. Coleman, which witness were you
9 associated with?

10 CORETTA COLEMAN: Michael Claytor.

11 THE COURT: And Mr. Claytor is a potential witness.
12 How are you connected with him?

13 CORETTA COLEMAN: Just know him in school. He's
14 good friends with my kids.

15 THE COURT: Okay. Now, would the fact that you're a
16 family friend of his, do you socialize with him or just
17 have known him for a long time?

18 CORETTA COLEMAN: No, sir. I just know him. And
19 then Ms. Liz, she brings people who are unable to speak
20 English to our office.

21 THE COURT: Tell me what you do for a living.

22 CORETTA COLEMAN: I'm a dental assistant..

23 THE COURT: Okay. And so you work where?

24 CORETTA COLEMAN: At Palmetto Dentistry for Rick
25 Bledsoe.

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1 THE COURT: All right. And so one of the witnesses
2 is a transport person for some of your patients?

3 CORETTA COLEMAN: Yes, sir. And she translates for
4 them.

5 THE COURT: Translates for them. Now, either of
6 those relationships you have with Deputy Claytor and/or
7 Ms. Hernandez you said?

8 CORETTA COLEMAN: Yes, sir. No, sir. Rivera.

9 THE COURT: Rivera. I'm sorry. Would that affect
10 your ability to be fair and impartial to the state?
11 I've called out the state witnesses and the defense
12 witnesses all at one time. I didn't call them one side
13 or the other. I called out everybody so I don't really
14 know which ones are which. They are witnesses and
15 I want fair and impartial jurors for all the witnesses.

16 Now, will that affect your ability to be fair and
17 impartial to both sides?

18 CORETTA COLEMAN: No, sir.

19 THE COURT: You can do that?

20 CORETTA COLEMAN: Yes, sir.

21 THE COURT: Thank you very much. All right. The
22 first man to stand up in the green shirt, tell me your
23 name.

24 MICHAEL THOMAS: Michael Thomas.

25 THE COURT: Which witness did I call out that you

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1 have a relationship with?

2 MICHAEL THOMAS: Deputy Claytor. I'm also the fire
3 chief in Whitmire and he's a volunteer in the fire
4 department.

5 THE COURT: So you work with him in the fire
6 department in Whitmire?

7 MICHAEL THOMAS: Yes, sir.

8 THE COURT: And would that affect your ability to be
9 fair and impartial?

10 MICHAEL THOMAS: No, sir.

11 THE COURT: He's not an employee of yours. He works
12 with you as a volunteer?

13 MICHAEL THOMAS: We're all volunteers, yes, sir.

14 THE COURT: All right. But there's not an
15 employment/employee relationship?

16 MICHAEL THOMAS: No, sir.

17 THE COURT: All right. And you can be fair with
18 him?

19 MICHAEL THOMAS: Yes, sir.

20 THE COURT: You can fair to both sides and listen to
21 everybody?

22 MICHAEL THOMAS: Yes, sir.

23 THE COURT: Okay. Thank you so much. Tell me your
24 name, please, sir.

25 BRYAN HARRIS: Bryan Harris, juror number 62.

1 THE COURT: Which witness?

2 BRYAN HARRIS: Michael Claytor. I work - we all are
3 volunteers with Whitmire fire department.

4 THE COURT: So you're also a volunteer at the local
5 fire department?

6 BRYAN HARRIS: Yes, sir.

7 THE COURT: And will that affect your ability to be
8 fair and impartial to both sides?

9 BYRAN HARRIS: No, sir.

10 THE COURT: Very well. All right. I had one juror
11 step out. He didn't stand up for that last question.
12 We'll retrieve him back in. He was coughing.

13 All right. Any member of the jury panel members,
14 members of your immediate family, members of any
15 temperance organizations or victim advocacy groups such
16 as CAVC, Citizens Against Violent Crime, MADD, Mothers
17 Against Drunk Drivers, SADD, any type of organization
18 such as that? This is for information purposes only.
19 Please stand. Got one. Tell me your name, please,
20 sir.

21 JOHN MAJOR: John Major.

22 THE COURT: And which one of the originations are-
23 you a member of, Mr. Major?

24 JOHN MAJOR: I'm not. I misunderstood the question.
25 My brother works for the County Detention Center.

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1 THE COURT: Okay. Now, would that affect your
2 ability to be fair and impartial to both the state and
3 the defense?

4 JOHN MAJOR: No.

5 THE COURT: Any member of this jury panel for any
6 reason whatsoever they can't give both sides, both the
7 State of South Carolina and Mr. Hernandez a fair trial
8 in this matter please stand.

9 No one is standing.

10 If you have anymore, I'll ask. That's generally
11 what I ask, unless y'all got something in particular,
12 either side. I really didn't have a - I didn't have a
13 --

14 MR. McMULLEN: May I approach?

15 THE COURT: Sure.

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

18 THE COURT: All right. Folks, I'm going to ask this
19 question. This is going to be a yes or no answer just
20 for information for the attorneys.

21 The allegations involve criminal sexual conduct with
22 a minor. That subject matter is sometimes difficult for
23 people that have either had a family member or a close
24 friend or they personally have been associated with any
25 type of allegation such as this. So my question is does

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1 any member of the jury panel feel that because of some
2 personal issue you cannot be fair and impartial because
3 of this subject matter of this case please stand.

4 No one is standing.

5 I think that was good enough.

6 MR. McMULLEN: Thank you, sir.

7 THE COURT: Fair enough. All right. Hearing
8 nothing else -- It's cool in here, isn't it? All right.
9 My Clerks of Court are going to generate a list randomly
10 from your number and then we'll call you up here one at
11 a time and then we're going to select a jury for this
12 first case.

13 I always tell a joke about this time. Do y'all want
14 to hear it?

15 (Unanimous yea.)

16 THE COURT: Ms. Bowers says I tell the same one all
17 the time.

18 THE CLERK: That's all right. I like to hear it.

19 THE COURT: Anyway, I'm going to use it. It's her
20 joke. I want to make sure I get it right. I'm going to
21 make it truthful, too.

22 Ms. Bowers' grandmother lived to be 105. I made
23 that part up. Anyway, she was elderly and she was being
24 interviewed by the local newspaper about how she lived
25 so long and what were any secrets she had to good health

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1 and living so long. And she said -- this is her answer
2 -- she told the newspaper reporter, she said if I have
3 indigestion, I drink beer. If I lose my appetite, I
4 drink white wine. If my blood pressure drops, I drink
5 red wine. If I get high blood pressure, I try scotch.
6 When I have a cold, I drink Schnapps. The reporter
7 asked her, "When do you drink water?"

8 "Never been that sick."

9 I think that's a pretty good joke. That's not true.
10 Ms. Bowers' grandmother did not say those things.

11 All right, folks, this is the way it's going to
12 work. Ms. Bowers is going to call you up. I want y'all
13 to come and stand right in front of me, back up to this
14 table and turn around and face - the lawyers are just
15 going to look at you. I don't know why they make us do
16 this, but we still do it. So anyway, I'm going to let
17 you come up here, turn your back to me, and then the
18 lawyers will say please excuse the juror or please
19 accept the juror or something along those lines. Ms.
20 Bowers will direct the traffic as you come forward.
21 Okay?

22 Five and ten.

23 THE CLERK: Number 151, Sabrina Waldrop.

24 (Whereupon, Sabrina Waldrop, a white female, was
25 called forward.)

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1 THE CLERK: What says the State?

2 MR. SCOTT: Please present the juror.

3 THE CLERK: The Defense?

4 MR. McMULLEN: Please excuse the juror from this
5 trial.

6 THE CLERK: You may have a seat, Miss Waldrop.

7 (Juror Sabrina Waldrop was excused.)

8 THE CLERK: 160, Susan Wicker.

9 (Whereupon, Susan Wicker, a white female, was called
10 forward.)

11 THE CLERK: What says the State?

12 MR. SCOTT: Please present the juror.

13 THE CLERK: The Defense?

14 MR. McMULLEN: Please excuse the juror.

15 THE CLERK: You may have a seat.

16 (Juror Susan Wicker was excused.)

17 THE CLERK: 122, Jane Ringer.

18 (Whereupon, Jane Ringer, a white female, was called
19 forward.)

20 THE CLERK: What says the State?

21 MR. SCOTT: Please present the juror.

22 THE CLERK: The Defense?

23 MR. McMULLEN: Please swear the juror.

24 THE CLERK: Have a seat on the front row, please,
25 ma'am, this way.

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1 THE COURT: Get your pocketbook.

2 THE CLERK: 69, Mike Herbert.

3 (Whereupon, Mike Herbert, a black male, was called
4 forward.)

5 THE CLERK: What says the State?

6 MR. SCOTT: Please present the juror.

7 THE CLERK: The Defense?

8 MR. McMULLEN: Please swear the juror.

9 THE CLERK: Have a seat on the front row, please,
10 Mr. Herbert. Number 6, Johnette Ballentine.

11 (Whereupon, Johnette Ballentine, a white female, was
12 called forward.)

13 THE CLERK: What says the State?

14 MR. SCOTT: Please present the juror.

15 THE CLERK: The Defense?

16 MR. McMULLEN: Please swear the juror.

17 THE CLERK: Have a seat on the front row, please.
18 79, Ricky Jones.

19 (Whereupon, Ricky Jones, a white male, was called
20 forward.)

21 THE CLERK: What says the State?

22 MR. SCOTT: Please present the juror.

23 THE CLERK: The Defense?

24 MR. McMULLEN: Please swear the juror.

25 THE CLERK: Have a seat in front, please, sir. 55,

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1 Roger Graham.
2 (Whereupon, Roger Graham, a white male, was called
3 forward.)
4 THE CLERK: What says the State?
5 MR. SCOTT: Please present the juror.
6 THE CLERK: The Defense?
7 MR. McMULLEN: Please excuse this juror.
8 THE CLERK: You're excused, Mr. Graham.
9 (Juror Roger Graham was excused.)
10 THE CLERK: 93, Fabian Lozano.
11 (Whereupon, Fabian Lozano, a Hispanic male, was
12 called forward.)
13 THE CLERK: What says the State?
14 MR. SCOTT: Please excuse the juror from this trial.
15 THE CLERK: You're excused, Mr. Lozano.
16 (Juror Fabian Lozano was excused.)
17 THE CLERK: Number 92, Peggy Longshore.
18 (Whereupon, Peggy Longshore, a white female, was
19 called forward.)
20 THE CLERK: What says the State?
21 MR. SCOTT: Please present the juror.
22 THE CLERK: The Defense?
23 MR. McMULLEN: Please swear the juror.
24 THE CLERK: Have a seat, ma'am. 77, Gary Johnson.
25 (Whereupon, Gary Johnson, a white male, was called

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1 forward.)
2 THE CLERK: What says the State?
3 MR. SCOTT: Please excuse the juror from this trial.
4 THE CLERK: You're excused, Mr. Johnson.
5 (Juror Gary Johnson was excused.)
6 THE CLERK: 65, James Hazel.
7 (Whereupon, James Hazel, a white male, was called
8 forward.)
9 THE CLERK: What says the State?
10 MR. SCOTT: Please present the juror.
11 THE CLERK: The Defense?
12 MR. McMULLEN: Please swear the juror.
13 THE CLERK: Have a seat, please. 143, Susan Suber.
14 (Whereupon, Susan Suber, a white female, was called
15 forward.)
16 THE CLERK: What says the State?
17 MR. SCOTT: Please present the juror.
18 THE CLERK: The Defense?
19 MR. McMULLEN: Could you repeat the juror number,
20 please, ma'am?
21 THE CLERK: 143.
22 MR. McMULLEN: Thank you. Please swear the juror.
23 THE CLERK: Have a seat, please. 60, Ruth Anne
24 Hare.
25 (Whereupon, Ruth Anne Hare, a white female, was

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1 called forward.)

2 THE CLERK: What says the State?

3 MR. SCOTT: Please present the juror.

4 THE CLERK: The Defense?

5 MR. McMULLEN: Please excuse the juror.

6 THE CLERK: You're excused.

7 (Juror Ruth Anne Haré was excused.)

8 THE CLERK: 33, Maxwell Cregger.

9 (Whereupon, Maxwell Cregger, a white male, was

10 called forward.)

11 THE CLERK: What says the State?

12 MR. SCOTT: Please present the juror.

13 THE CLERK: The Defense?

14 MR. McMULLEN: Please excuse the juror from this

15 trial.

16 THE CLERK: You're excused, Mr. Cregger.

17 (Juror Maxwell Cregger was excused.)

18 THE CLERK: 107, Katrina Minick.

19 (Whereupon, Katrina Minick, a white female, was

20 called forward.)

21 THE CLERK: What says the State?

22 MR. SCOTT: Please present the juror.

23 THE CLERK: The Defense?

24 MR. McMULLEN: Please swear the juror.

25 THE CLERK: Have a seat on the front row. 36,

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1 Richard Crump, Junior.

2 (Whereupon, Richard Crump, Junior, a black male, was
3 called forward.)

4 THE CLERK: What says the State?

5 MR. SCOTT: Please present the juror.

6 THE CLERK: The Defense?

7 MR. McMULLEN: Please swear the juror.

8 THE CLERK: Have a seat, please, in the front row.

9 110, Roberta Myers.

10 (Whereupon, Roberta Myers, a white female, was
11 called forward.)

12 THE CLERK: What says the State?

13 MR. SCOTT: Please present the juror.

14 THE CLERK: The Defense?

15 MR. McMULLEN: Please excuse the juror.

16 THE CLERK: You're excused, Ms. Myers.

17 (Juror Roberta Myers was excused.)

18 THE CLERK: 159, Helen Wicker.

19 (Whereupon, Helen Wicker, a white female, was called
20 forward.)

21 THE CLERK: What says the State?

22 MR. SCOTT: Please present the juror.

23 THE CLERK: The Defense?

24 MR. McMULLEN: Please excuse the juror.

25 THE CLERK: You're excused, Ms. Wicker.

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1 (Juror Helen Wicker was excused.)

2 THE CLERK: 156, Alison White.

3 (Whereupon, Alison White, a white female, was called
4 forward.)

5 THE CLERK: What says the State?

6 MR. SCOTT: Please present the juror.

7 THE CLERK: The Defense?

8 MR. McMULLEN: Please swear the juror.

9 THE CLERK: Have a seat, please, ma'am. 28, Coretta
10 Coleman.

11 (Whereupon, Coretta Coleman, a white female, was
12 called forward.)

13 THE CLERK: What says the State?

14 MR. SCOTT: Please present the juror.

15 THE CLERK: The Defense?

16 MR. McMULLEN: Please excuse the juror.

17 THE CLERK: You're excused, Ms. Coleman.

18 (Juror Coretta Coleman was excused.)

19 THE CLERK: 133, Rebecca Shealy.

20 (Whereupon, Rebecca Shealy, a white female, was
21 called forward.)

22 THE CLERK: What says the State?

23 MR. SCOTT: Please present the juror.

24 THE CLERK: The Defense?

25 MR. McMULLEN: Please excuse the juror.

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1 THE CLERK: You're excused.
2 (Juror Rebecca Shealy was excused.)
3 THE CLERK: 161, Audrey Williams.
4 (Whereupon, Audrey Williams, a black female, was
5 called forward.)
6 THE CLERK: What says the State?
7 MR. SCOTT: Please present the juror.
8 THE CLERK: The Defense?
9 MR. McMULLEN: Please swear the juror.
10 THE CLERK: Have a seat, please, ma'am. 168, Gena
11 Zolan.
12 (Whereupon, Gena Zolan, a white female, was called
13 forward.)
14 THE CLERK: What says the State?
15 MR. SCOTT: Please present the juror.
16 THE CLERK: The Defense?
17 MR. McMULLEN: Please swear the juror.
18 THE CLERK: Have a seat on this side, please, ma'am,
19 second seat. Only one alternate?
20 THE COURT: Yes.
21 THE CLERK: 16, Jeffrey Brooks.
22 THE COURT: Let's do two.
23 (Whereupon, Jeffrey Brooks, a black male, was called
24 forward as an alternate.)
25 THE CLERK: What says the State?

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1 MR. SCOTT: Madam Clerk, what number is that?
2 THE CLERK: 16. What says the State?
3 MR. SCOTT: Please present the alternate.
4 THE CLERK: The Defense?
5 MR. McMULLEN: Please seat the alternate.
6 THE CLERK: Have a seat, third seat over, please,
7 Mr. Brooks. 124, Michael Robinson.
8 (Whereupon, Michael Robinson, a black male, was
9 called forward as an alternate.)
10 THE CLERK: What says the State?
11 MR. SCOTT: Please excuse the alternate.
12 THE CLERK: You're excused.
13 (Juror Michael Robinson was excused as an
14 alternate.)
15 THE CLERK: 98, Simone Marshall.
16 (Whereupon, Simone Marshall, a black female, was
17 called forward as an alternate.)
18 THE CLERK: What says the State?
19 MR. SCOTT: Please present the alternate.
20 THE CLERK: The Defense?
21 MR. McMULLEN: Please seat the alternate.
22 THE CLERK: Have a seat. That's it, Your Honor.
23 THE COURT: All right. Are there any matters of law
24 regarding the selection process employed by the Court or
25 the composition of the jury from the State or the

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1 Defense?

2 MR. SCOTT: Not from the State, Your Honor.

3 MR. McMULLEN: No, sir.

4 THE COURT: Very good. All right. Folks in the
5 front row this is not for y'all. Y'all don't have to
6 listen to this. Everybody else. I don't want to
7 confuse you because I have jurors all the time say, wait
8 a minute. You said this. All right. Everybody that
9 didn't get picked, y'all got a card that has the phone
10 number for Ms. Bowers' office. You got it, great. If
11 you don't, you need one. You need to call back tonight
12 after 6:00 p.m. to listen for your instructions. My
13 guess is that the instructions are going to be please
14 call back Tuesday night after 6:00. The instructions
15 could be please report back to the annex sometime
16 tomorrow. So listen to the instructions and follow
17 them. All right?

18 Now, if it says anything about the jury on the first
19 case, that's not for you. The jury on the first case
20 may have to call in also because of some scheduling
21 matters. We just don't know that yet. If you hear
22 something about the jury that's been picked, not for
23 you, but the jury not selected, y'all call in, follow
24 the instructions. If you will do that, you may not have
25 to come back in for the rest of the week. If the

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1 recording is to come back in and you don't, we'll send
2 for you so please call in.

3 Now, this is important. Because of the way the
4 courthouse is set up right now, if you call at 4:30
5 trying to get a heads up, get a little head start, Ms.
6 Bowers is going to be in the courtroom with me. Ms.
7 Folk will be in the courtroom with me and guess who the
8 first person I tell that, you know, Court is going to do
9 this tomorrow is one of the two of them. They are not
10 over in the building where the phone rings. That's
11 across the street. If you call early, you will ring the
12 phone off the hook and talk with one of the ladies over
13 there that has no idea what the answer is yet. So
14 please don't call early. Wait until after 6:00 and get
15 the recording so her staff is not overloaded.

16 Every Clerk of Court in the circuit asks me to say
17 that because jurors, I'm going to call a little bit
18 ahead of time and I'll find out. Well, I'm sorry.
19 You've got to call after 6:00. Okay?

20 Now, everybody picked, y'all stay seated. Everybody
21 that didn't get picked, you're excused for the day to
22 call in after 6:00.

23 (The remaining jury panel was excused.)

24 JOHN MILLER: Excuse me.

25 THE COURT: Yes.

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1 JOHN MILLER: I have a question.

2 THE COURT: Tell me your name.

3 JOHN MILLER: John Miller, juror 105. I'm scheduled
4 to be in Magistrate Court jury tomorrow. I got two
5 different papers.

6 THE COURT: He got pulled for Magistrate Court,
7 too.

8 JOHN MILLER: I'm in Magistrate Court tomorrow.

9 THE COURT: Can we call out and speak with whoever
10 the Magistrate Court juror person is and he's been
11 called. He's serving now. Can we call out there and
12 get him just having one master.

13 JOHN MILLER: I got yours today and Magistrate Court
14 tomorrow.

15 THE CLERK: We'll take care of that.

16 THE COURT: I'll call over there and have you
17 excused for that because you're answering my jury call.
18 You don't need to be on two juries. Help me with that,
19 Ms. Bowers.

20 THE CLERK: Yes, sir. We'll take care of it.

21 JOHN MILLER: I was just thinking I was a popular
22 guy, that's all.

23 THE COURT: Thank you, Mr. Miller.

24 JOHN MILLER: Thank you, sir.

25 THE COURT: Mr. Scott and Mr. McMullen, come on up

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1 here real quick.

2 (Whereupon, a bench conference was held off the
3 record.)

4 THE COURT: All right. Folks, I have got several
5 things unrelated to this trial scheduled this afternoon
6 already. Mondays are kind of hectic. I have some
7 probation matters. I had to get y'all qualified and
8 picked. I have some pretrial matters on this case I
9 have got to hear. I don't know anything about this case
10 yet so there are some pretrial matters where the lawyers
11 kind of want some ground rules. Are y'all going to call
12 this rule or that kind of thing. I have got to hear
13 those things this afternoon so I'm going to excuse y'all
14 until tomorrow morning.

15 We'll start fresh in the morning, so y'all don't
16 have anything to do this afternoon here so I'm going to
17 let you go on about your business. Go home, go back to
18 work, whatever it is you need to do. I want y'all back
19 in the jury room tomorrow morning between 9:15, no later
20 than 9:30.

21 Now, y'all need to follow Ms. Wardlaw down the hall
22 and she'll show you where the jury room is. We won't be
23 in here. We will be down here. That's part of the
24 reason for the delay. My court reporter has got to take
25 all of his stuff down and we've got to go to another

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1 courtroom. That's going to take a little bit of time,
2 then we have lunch. There's really no reason to let you
3 all sit around until 3:00 or 3:30 and we start at 3:30
4 this afternoon and get an hour and a half of work done.
5 I'd rather start tomorrow morning, have a good run
6 before lunch and then go from there.

7 Now, any questions of y'all about what time tomorrow
8 to report to the jury room on that end of the building?
9 Ms. Wardlaw will walk you down and say there it is. So
10 y'all come right to that room. And we generally have
11 coffee and water in there, do we not? Okay. So when
12 you come in the morning, we'll have you something to eat
13 maybe, maybe some coffee or water or soft drinks, that
14 kind of thing. Any questions from y'all? That's what
15 we're going to do.

16 All right. Now, wear your stickers coming to and
17 from court. You don't realize this, but I had - this
18 jury panel was full of people that I knew. Y'all may
19 know some of the lawyers. You may know some of the
20 witnesses. The green stickers are to keep those people
21 alert that y'all are on the jury and should try not to
22 start a conversation with you about how things are
23 going. People are going to kind of stay away from you
24 so they don't try to influence you ahead of time.

25 Everything y'all need to try the case, to decide

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1 the case you will hear in the courtroom with a court
2 record with the lawyers presenting the case from the
3 witness stand. Don't want to try the case in the
4 parking lot or on Facebook.

5 So two things. The people that are involved with
6 the case generally know to stay away from the jurors.
7 If they don't know you're a juror, they'll break that
8 rule. The stickers are helpful in that regard.

9 Now, if you see somebody you know and they're not
10 real friendly, that's why they're being unfriendly.
11 They're told to steer clear.

12 Please don't go on Facebook tonight and say, oh, I'm
13 on the jury. You don't know anything about the case.
14 You're inviting somebody to comment back to you and then
15 you have got a conversation started. That's one of the
16 worst things about social media in my opinion is I don't
17 want y'all to be influenced off of Facebook. Anything
18 else on there I could care less. I want this case
19 decided from the witness stand with y'all 14 people
20 hearing the witnesses and the evidence all at the same
21 time and not some comment of somebody on Facebook.

22 Now I'll tell you a story. Don't go reading the
23 newspaper either. Newspapers get it wrong. I have had
24 a couple occasions up in Lawrence that they put in there
25 that Judge Addy had heard such and such a case and

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1 handed down this sentence or that sentence. It was me.
2 Then I read in the state paper about two months ago
3 there was a big lawsuit and huge verdict and there was a
4 motion to reconsider that I was hearing. I wasn't even
5 down there. It was Judge Keesley. The reporters
6 sometimes don't even show up and they'll call in and
7 they ask somebody what happened in court today and they
8 say, oh, yeah, this is what. It's amazing what they put
9 in newspapers that I'm finding out is wrong. It's
10 absolutely wrong. So don't go get your information
11 there either. Just steer clear of trying to figure out
12 what happened when. Don't let anybody influence you.
13 If they do, let me know.

14 So y'all can go on Facebook, but don't put on the
15 Facebook that I'm a juror because that's what starts it.
16 That's the conversation started. So, you go home
17 tonight and you tell your spouse, your pets, your
18 children, whoever, I'm on jury duty, but the Judge says
19 don't talk about the case. Even though you don't know
20 anything about it yet, don't do it. Okay? See y'all in
21 the morning. Take them down there, Ms. Wardlaw.

22 (Whereupon, the Jury released at 11:00 a.m. for the
23 day.)

24 THE COURT: All right. You all want to stand at
25 ease until 1:00? Is that good? You have enough time

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ROA_0035

1 for lunch, 1:00? Then we can get our stuff done. The
2 motion to quash got resolved.

3 MR. SCOTT: Yeah. Because I saw that he withdrew.

4 THE COURT: They filed it Thursday. I said you can
5 come argue it today after lunch. They set new pretrial
6 matters, and the secretary said, oh, we can't come then.
7 It won't be convenient to us. You know, you made the
8 motion. You come when I say come or else it's too late
9 so I don't know. That's the last I heard of it so I
10 assume they're going to comply.

11 MR. SCOTT: He says he emailed it this morning, too.

12 THE COURT: It's y'all's subpoena. I don't care
13 whether he comes or not.

14 MR. SCOTT: I had a brief conversation with
15 Mr. Konen. He said he was going to quash it because he
16 realized he was calling for the person and not the
17 documents.

18 THE COURT: So he's withdrawn his objection?

19 MR. SCOTT: Right. Yeah. Because he sent an e-mail
20 out this morning and copied everyone.

21 THE COURT: All right. That's fine. You can't ask
22 for relief and then say I can't come to court to discuss
23 it so I wasn't real...

24 MR. SCOTT: Is that it? Have we got anything else?

25 MR. McMULLEN: We have got one --

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1 THE COURT: So is 1:00 good? It will give y'all a
2 long lunch and we'll start at 1:00 and get done, then do
3 whatever else we need to do to get ready.

4 MR. McMULLEN: Yes, sir.

5 THE COURT: All right. I'm going to go off the
6 record. We'll let Mr. LeBlanc get moved. That way he
7 can go to lunch and get back by 1:00.

8 MR. McMULLEN: We have one brief motion. I'll give
9 it to you this afternoon.

10 THE COURT: Okay. Fair enough. Off the record.

11 (Whereupon, there was a luncheon recess.)
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1 (Whereupon, the following bench conference was held
2 on the record outside the presence of the jury.)

3 THE COURT: Be seated, please. All right.

4 Mr. Scott, what have we got with this case? We've got a
5 Jackson v. Denno hearing here?

6 MR. SCOTT: Yes, sir, and I received the motion.
7 There's another motion for Your Honor to consider,
8 defense motion really. I have seen these before.
9 Basically just to instruct the parties from referring to
10 the complaining witness as a victim. I don't have a big
11 problem with that. I don't know what the remedy is if I
12 slip up at some point and say that. I think -- I have
13 seen these before. It's really just the repeated use of
14 the term victim, victim, victim. I don't intend to do
15 that. I think I can comply with this. I would ask, we
16 do have one minor amendment or two minor amendments to
17 make to the two indictments.

18 THE COURT: Mm-hmm. Hang on one second. Let's deal
19 with that motion in limine.

20 MR. SCOTT: Okay.

21 THE COURT: Mr. McMullen, what do you want to call
22 the accusing young lady?

23 MR. McMULLEN: Perhaps, Your Honor, by her name or
24 the young lady, MINOR

25 THE COURT: I think I can agree to caution people,

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1 but it's going to come out and happen and so I can't
2 give a --

3 MR. McMULLEN: Yes, sir.

4 THE COURT: If it happens, I'm not going to grant
5 you a mistrial if he says the victim.

6 MR. McMULLEN: No, sir.

7 THE COURT: I mean, if he says the victim is going
8 to say this, the victim is going to say this, no.

9 MR. McMULLEN: No, Your Honor. What I did ask him,
10 the last sentence of the motion is that if Your Honor
11 would give a curative instruction and perhaps just the
12 first time that it occurs.

13 THE COURT: Yeah.

14 MR. McMULLEN: But I might be the worst offender.
15 I'll try not to either.

16 THE COURT: Okay. I mean, it's not so horrible to
17 do.

18 MR. McMULLEN: Yes.

19 THE COURT: And I understand your concern.

20 MR. McMULLEN: Yes, sir.

21 THE COURT: I think the name will be sufficient, but
22 if someone does it inadvertently, I'm not going to say
23 anything. I just assume not make a big deal about it,
24 but if it happens repetitively, point it out and we'll
25 give a curative instruction at that time.

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1 MR. McMULLEN: Very good. Thank you.

2 THE COURT: Good deal.

3 MR. McMULLEN: We would have one other motion, Your
4 Honor, at the appropriate time.

5 THE COURT: All right. What is that?

6 MR. McMULLEN: To sequester the witnesses.

7 THE COURT: I'll grant that.

8 MR. SCOTT: Here's who we've got lined up.

9 MR. McMULLEN: Okay. Well, in particular because
10 there is a juvenile complaining witness, we would expect
11 that she and her mother could be in the courtroom
12 together unless Your Honor sees it otherwise, but we
13 would like while one is testifying for the other to be
14 sequestered, if that's not objectionable.

15 MR. SCOTT: Judge, well, outside the presence of the
16 jury my victim in this case is a 12 year old minor. She
17 is here with her mother who will testify as an
18 eyewitness as well. I think they are both entitled to
19 be present during the testimony or during the court
20 proceedings, I think, is the way the statute reads and,
21 of course, there is a translator. The young girl does
22 not need a translator, but the mother will and that's
23 Ruby Stevens right here behind me. So those three would
24 be the only ones we would request to be here during the
25 entirety of the trial.

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1 MR. McMULLEN: And, Your Honor, my only concern
2 about having the mother and daughter in at the same time
3 is that the allegations are that the mother caught the
4 defendant in the act with the victim, or I'm sorry, with
5 the complaining witness and our concern is that they
6 would conform their testimony to each other if they
7 heard it.

8 THE COURT: All right. You got any order of
9 witnesses lined up yet, Mr. Scott?

10 MR. SCOTT: Yes, sir.

11 THE COURT: If you call them early, that will solve
12 my problem.

13 MR. SCOTT: What did we do? We have the order.
14 Here it is. Tomasa, the mother will be first. This
15 isn't going to help you. And MINOR tentatively will
16 be last.

17 MR. McMULLEN: Now, Your Honor, I don't have a
18 problem with them being in here together the rest of the
19 time, only when each other is testifying.

20 THE COURT: How about this: You call the mother
21 first, the child will stay outside. As soon as she's
22 finished testifying, she can be in the remaining part of
23 the trial?

24 MR. SCOTT: May I consult on that, Your Honor?

25 THE COURT: Yeah. That will about cure it.

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1 MR. SCOTT: Yes, sir. I don't know what the
2 solution is. The victim in this case wishes to be
3 present during the proceedings.

4 THE COURT: All right. I'm going to let her stay
5 out. The mother is first. Stay out during that one and
6 then she gets to stay in the rest of the trial. Just
7 that first witness and I think that will afford enough
8 protection for the defense, but she will be allowed in
9 the balance of the time to comply with the request of
10 sequestered witnesses and also comply with the Victim's
11 Right Rule.

12 MR. SCOTT: Okay. And in the Jackson v. Denno, we
13 don't believe either of them testifying.

14 THE COURT: Okay.

15 MR. SCOTT: Your Honor, are you ready to hear our
16 rule request?

17 THE COURT: Yes. Let's hear it.

18 MR. SCOTT: In the indictments, let me start with
19 the indictment that ends in 498. I think that's the CSC
20 first. We have dates of between January 1st, 2011 and
21 May 7th, 2013. What we would ask is to back date the
22 May 7th, 2013 to May 6th, 2012. It shortens the window
23 of time. After May 6th, 2012 she becomes over the age
24 of 11.

25 THE COURT: That was her birthday then?

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1 MR. SCOTT: Yes, sir.

2 THE COURT: All right.

3 MR. SCOTT: I think May 7th is, so after May 6th,
4 when you get to May 7th, she becomes 11. So we just ask
5 for that to be May 6th, 2012 instead of May 7th, 2013.

6 THE COURT: And that's consistent with your other
7 indictment which starts May 7th; is that right or not?

8 MR. SCOTT: Let me see.

9 THE COURT: No, it doesn't. I'm sorry.

10 MR. SCOTT: What that does is shorten the window of
11 time that the state has to pinpoint the event occurring
12 in. After May 6th, 2012, she's outside the realm of a
13 CSC first because she's gone past the age of 11 and in
14 this statute they are also confusing the windows of
15 time.

16 THE COURT: What about the other indictment?

17 MR. SCOTT: The other is going to be the CSC second.
18 Okay. Between the dates it says of May 7th, 2013 and
19 June 30th, 2013, we would ask for that first date,
20 instead of May 7th, 2013 to be May 7th, 2012.

21 THE COURT: That's just basically driven upon the
22 birth date of the child occurring from 11 to 12.

23 MR. SCOTT: Yes, sir. And the age she is of those
24 dates.

25 THE COURT: Okay. I understand your request.

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1 Mr. McMullen, what do you think about that?

2 MR. McMULLEN: I think that makes sense. Yes, sir.
3 No objection.

4 THE COURT: I don't think it changes. It actually
5 enlarges the time with a smaller crime.

6 MR. McMULLEN: Yes, sir.

7 THE COURT: So that benefits your client.

8 MR. McMULLEN: I think that's a very fair motion.

9 THE COURT: Yeah. All right. The motion is granted
10 so each indictment will be modified such that the
11 criminal sexual conduct first which is indictment 498,
12 the dates will be between January 1st, 2011 and May 6th,
13 2012. That's the amendment to May 6th, 2012.
14 Indictment 500 will be between the dates of May 7th,
15 2012 and June 30th, 2013. So both of the May dates are
16 now converted to 12's. So May 6th, '12 on the earlier
17 indictment and May 7th, 2012 of the latter indictment.
18 It will be so amended.

19 MR. McMULLEN: Very good.

20 THE COURT: Okay. All right.

21 MR. SCOTT: And last there is a DSS record not
22 associated with this case. There was a DSS report
23 generated after these allegations and I'm kind of trying
24 to read the tea leaves here. The defense has put on
25 their witness list some witnesses that have been

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1 involved with that DSS action. I'm curious to see what
2 the nature of that testimony is going to be because I
3 may need to craft some kind of motion in limine. And
4 it's unclear. They may not even use it, but there is a
5 DSS report where the minor in this case was in foster
6 care for some period of time and it was kind of a
7 corporal punishment type deal between the mother and the
8 daughter so I guess my request is sort of see without
9 really giving away strategy what is going to be
10 testified to in regards to the DSS report.

11 THE COURT: All right. What's your response, Mr.
12 McMullen?

13 MR. McMULLEN: Yes, sir. If you will just give me
14 one moment, Your Honor, please. May it please the
15 Court.

16 THE COURT: Yes, sir.

17 MR. McMULLEN: The state alleges that this incident
18 that sparked the arrest occurred on June 28th, 29th,
19 late Saturday night, early Sunday morning of 2013. On
20 or about December 13th of 2013 the little girl ran next
21 door to a neighbor and called 911 because she had been
22 beaten severely. It resulted in emergency protective
23 custody by DSS and we would be introducing that for a
24 number of reasons, if the Court permits us.

25 One reason is that as to Tomasa Cruz, the mother, in

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1 speaking with the case worker says at certain times the
2 children's parents are dead. At certain times she says
3 one lives in Texas, one lives in Mexico. At certain
4 times she calls one of the children Miguel. At certain
5 times she calls that same child S.M. so that Saulo, a
6 man she used to date, would think that the little boy
7 was his.

8 Also, we would be introducing this because she tells
9 DSS there is no male in the house and yet there is a
10 man's belt that was apparently used on the children.

11 We also would like to be able to show -- The
12 allegations are that this child was abused sexually by
13 the defendant for four years is what it says in the
14 incident report and nobody said anything until this
15 night. However, the moment she gets hit by her mother,
16 she runs next door and calls 911. So our argument would
17 be she knows very well how to go and ask for help and
18 that if she didn't do it for four years when a man was
19 raping her, then why would she know to do it then when
20 her mother hits her with the belt?

21 I'm sure there's more. There are numerous
22 contradictory statements she made to the DSS caseworker.
23 And then the young lady also had an opportunity then and
24 there in a forensic evaluation to talk about both
25 incidents and told the caseworker actually I don't

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1 really want to talk about the sexual abuse, but I'll
2 talk about the physical abuse at the hands of my mother.
3 And I don't know if the Court wants to rule now or
4 later.

5 THE COURT: I want to wait and hear a little more as
6 the trial starts progressing. Then once we get to the
7 defense side, then I may hear you again as to what's the
8 purpose of it, if needed. It may not be that it comes
9 up. I don't know.

10 MR. SCOTT: Well, I guess my argument before they
11 come up, they're going to have a chance to cross examine
12 MINOR and I think that would be the time to cross her
13 on her credibility instead of bringing in extrinsic
14 evidence when they start calling their witnesses. In
15 other words, you had a chance to cross examine her on
16 her credibility at that time. If she says no, I'm
17 always very honest, then you can say, well, what about
18 this?

19 THE COURT: I don't think that's up to them.

20 MR. SCOTT: Okay. I think I feel like whenever they
21 begin to call their witnesses, DSS agent number one
22 steps up there. Again, this all happens after these
23 allegations. And there was a finding in the DSS case.
24 Ms. Tomasa was actually charged with an A&B third.

25 THE COURT: I understand the defense counsel will be

1 able to cross examine all the witnesses thoroughly.

2 Let's don't let me rule on this and see where we get
3 after the cross examination and after the state's case
4 and if it's not probative, maybe it didn't come in, if
5 they have a reason for it, and we'll see about it then.

6 MR. McMULLEN: We'll not refer to it in the opening
7 statement.

8 THE COURT: Very good. All right. Now, so far so
9 good.

10 MR. SCOTT: We're ready, Your Honor.

11 THE COURT: Ready for statement?

12 MR. SCOTT: I'll get my sequestered folks out of
13 here and we'll be ready to go.

14 (Witnesses sequestered.)

15 MR. DANIEL: Your Honor, we call Andy Rowe.

16 THE COURT: Mr. Rowe, come right here and be sworn.
17 Thereupon,

18 ANDREW DELL ROWE, JUNIOR
19 after having been first duly sworn, testified as follows,

20 THE CLERK: Please state your name.

21 THE WITNESS: Andrew Dell Rowe, Junior.

22 DIRECT EXAMINATION

23 BY MR. DANIEL:

24 Q. All right. Mr. Rowe, where are you currently
25 employed?

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1 A. I'm currently employed at Lexington Medical Center,
2 public safety.

3 Q. Did you just get that job?

4 A. I did, yes, sir, about five weeks ago.

5 Q. And prior to getting that job at the hospital in
6 Lexington, where were you employed?

7 A. Newberry City police department.

8 Q. How long were you there?

9 A. 13 years.

10 Q. When you were a police officer with the Newberry
11 police department, were you working in that agency on June
12 29th of last year 2013?

13 A. Yes, sir.

14 Q. Okay. On that date did you have occasion to respond
15 to a call that originated at 1903 River Street here in the
16 city of Newberry?

17 A. Yes, sir, I did.

18 Q. What was that call in reference to?

19 A. It was in reference to a criminal sexual conduct
20 with a minor.

21 Q. Approximately what time were you dispatched out to
22 this residence? You can refer to your notes.

23 A. It was about 11:18 on the 29th of June.

24 Q. When you arrived there -- And this is at night,
25 correct?

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1 A. Yes, sir.

2 Q. When you arrived, what did you observe?

3 A. When I first got on scene, we, you know, the initial
4 call come in. That's how it was when I got there. I was met
5 by the complainant's mother, Ms. Tomasa. I mean the victim's
6 mother, Ms. Tomasa, a translator that we're familiar with,
7 Liz, and the victim, she was in a car in the driveway. So
8 that's who I was met by. They told me -- Does that answer
9 your question?

10 Q. Yeah. So you're describing three people that were
11 on scene when you arrived?

12 A. Yes.

13 Q. Okay. And Liz, your familiar with, you say the
14 translator is Liz? You said you're familiar with her; is
15 that correct?

16 A. Yes, sir.

17 Q. Okay. Was the suspect at the scene when you
18 arrived?

19 A. He was at the scene, but he was inside. He wasn't
20 outside at that time.

21 Q. Inside? The suspect was inside the residence when
22 you arrived?

23 A. Yes, sir.

24 Q. And why was Liz on the scene?

25 A. Uhm, the complainant couldn't speak in English so

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1 she had went ahead and contacted the translator. Let me make
2 sure.

3 Q. Okay. We're talking about Liz Rivera, correct?

4 A. That's correct.

5 Q. Rivera is her last name. Okay. At any point did
6 the suspect come out of the residence?

7 A. Yes, he did. He came out a few moments later after
8 we knocked on the door a few times.

9 Q. That suspect is Mario Hernandez?

10 A. That's correct.

11 Q. Okay. So what happened when Mr. Hernandez exists
12 the residence?

13 A. As soon as he exits the residence based on the
14 information I got so far, I put him in investigative
15 detention. I handcuffed him and I read him his Miranda
16 Rights through the assistance of the translator.

17 Q. Okay. So Mr. Hernandez does not speak fluent
18 English?

19 A. No, sir.

20 Q. So you used Liz Rivera to assist you in Mirandizing
21 Mr. Hernandez?

22 A. Yes, sir, I did.

23 Q. How do you typically Mirandize suspects? Do you
24 have a process or a protocol that you follow?

25 A. I do. I have a card with the Miranda Rights listed

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1 and I read them verbatim line for line off the card.

2 Q. Do you have that card handy that you use?

3 A. I do.

4 Q. So you used Liz Rivera to convey these rights due to
5 the language barrier?

6 A. Yes, sir.

7 Q. Explain how that works. I guess it might be self
8 explanatory, but I guess explain the mechanics of how you
9 were doing it with a Spanish speaking suspect?

10 A. Okay. I had the translator here and I had the
11 suspect here, the defendant here and I would say, I would
12 read the first line. For instance, you have the right to
13 remain silent. Then at that time the translator, she would
14 look at the suspect, or the defendant and then she would say
15 in Spanish you have the right to remain silent and we would
16 go through all the lines. And then after that she indicated
17 that he understood his rights.

18 Q. Did Mr. Hernandez appear to have understood the
19 rights? Did he nod or make any kind of gesture?

20 A. Yes, sir.

21 Q. Could you, I guess, go through the rights that were
22 read or what you read in English?

23 A. Sure. You have the right to remain silent.
24 Anything you say can and will be used against you in a court
25 of law. You have the right to talk to an attorney and have

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1 him or her present with you while you're being questioned.
2 If you cannot afford to hire an attorney, one will be
3 appointed to represent you before questioning. If you wish,
4 you can decide at any time to exercise these rights and not
5 answer any questions or make any statements. Then I say do
6 you understand each of these rights that I have explained to
7 you? And having these rights in mind do you wish to talk
8 with us now?

9 Q. So you went line by line. Liz Rivera is translating
10 that into Spanish to Mr. Hernandez?

11 A. Yes, sir.

12 Q. Okay. Did Mr. Hernandez make any statements to you
13 after that was read?

14 A. Did the translator?

15 Q. Or did --

16 A. Did Liz make any statements to him?

17 Q. Did Liz translate any statements into English that
18 Mr. Hernandez made?

19 A. I'm sorry. She did. She advised me that the
20 defendant was making statements to the point that, you know,
21 he was sorry for what he did and that he was enticed by the,
22 I don't want to say victim, but the juvenile complainant. He
23 was enticed by her and that's why he did what he's been doing
24 or did what he did.

25 Q. Did you ask questions in English that had to be

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1 translated to Mr. Hernandez?

2 A. Sure, I did.

3 Q. And Liz would translate that for you?

4 A. She would translate to him and then relay it right
5 back to me.

6 Q. All right. Did Mr. Hernandez appear like he was
7 under the influence of any substance, drugs or alcohol at
8 this time?

9 A. No, sir.

10 Q. Did you threaten Mr. Hernandez in any way to make
11 statements?

12 A. No, sir.

13 Q. Any kind of undo influence, any promises, things of
14 that nature in exchange for making statements?

15 A. No, sir.

16 Q. How many other officers were on scene or were you
17 the only one at this time?

18 A. I wasn't. I had Patrolman Siebert. She was on
19 scene.

20 Q. And what did Liz convey to you in English, the
21 statements that Mr. Hernandez made? What did she translate
22 to you?

23 A. Okay. The subject admitted to Liz to fondling the
24 victim on numerous occasions, but denied intercourse. The
25 subject, or the defendant then went into a long excuse about

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1 how the victim enticed him by walking around the house in
2 provocative clothing. He explained that he was a pastor and
3 he also explained that he was a man and responded to that
4 enticement as any other man would.

5 Q. Did Mr. Hernandez appear to understand when you
6 spoke English prior to Liz even translating into Spanish?
7 Did he seem, in your opinion, did he seem like he understood
8 anything that you said in English?

9 A. I don't really recollect. I just remember kind of
10 going through the translator on that. But it was, I guess,
11 just watching the interaction between the translator and him,
12 it didn't seem like there were any issues with
13 understanding.

14 Q. And how long did this exchange take place between
15 you and Mr. Hernandez and Liz Rivera?

16 A. Just a couple minutes. Once we had Mirandized him
17 and went through those questions, at that point he was
18 transported to jail. So just a guesstimate we were there
19 maybe 10, 15 minutes.

20 Q. And Mr. Hernandez you said was handcuffed at that
21 time?

22 A. Yes, sir.

23 Q. Where was this interview taking place?

24 A. That was taken outside the house near the road in
25 the front yard.

1 MR. DANIEL: Nothing further. Please answer any
2 questions Mr. Pinilla has for you.

3 MR. PINILLA: Your Honor, may it please the Court.

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION.

6 BY MR. PINILLA:

7 Q. Officer Rowe --

8 MR. PINILLA: Your Honor, I beg the Court's
9 indulgence. Do they intend to call Liz today? I
10 noticed that she was outside before we asked to
11 sequester her.

12 MR. SCOTT: I plan to, yes, Your Honor.

13 THE COURT: She's outside, right?

14 MR. SCOTT: Yes, sir.

15 THE COURT: Yeah. Okay.

16 MR. PINILLA: Thank you.

17 BY MR. PINILLA:

18 Q. Officer Rowe, good afternoon.

19 A. Good afternoon.

20 Q. Officer Rowe, do you speak any other languages
21 besides English?

22 A. I do not.

23 Q. You speak no Spanish?

24 A. No, sir.

25 Q. Okay. Now, you responded at 11:18; is that

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1 correct?

2 A. That's correct.

3 Q. And it says here that you arrived at 11:22; is that
4 correct?

5 A. That's correct.

6 Q. By the time you arrived in four minutes was the
7 translator already there?

8 A. Yes, sir.

9 Q. She was already there so she beat you in four
10 minutes?

11 A. She beat me from the time that I was, the call came
12 out until the time I got there, that's correct.

13 Q. Did you contact Liz Rivera?

14 A. No, sir.

15 Q. Did anybody from the Newberry police department
16 contact her to be there that night?

17 A. No, sir.

18 Q. So she was there?

19 A. (Witness nodding head.)

20 Q. Do you know if she was there as a friend to the
21 complainant?

22 A. I'm assuming so.

23 Q. And when you arrived there, you mentioned earlier
24 that you said he said he was sorry?

25 A. Mm-hmm.

1 Q. Did you hear that firsthand or did you hear that
2 from the translator?

3 A. I heard that from the translator.

4 Q. Okay. Do you know if the translator actually heard
5 that?

6 A. Uhm, I don't know that for sure, no. It's the
7 information given me as soon as I got on the scene.

8 Q. Officer Rowe, in your 13 years with the Newberry
9 police department was it normal to use a translator not
10 provided by the department?

11 A. Was it normal?

12 Q. Yes.

13 A. It was normal.

14 Q. So you just use anybody that's there that can maybe
15 speak Spanish and maybe speak English at the same time?

16 A. Well, at that point I just assumed that since she
17 didn't speak in English, she had called someone that could
18 call the police and have a translator there for us who
19 happened to be Liz who we also use for our police force.

20 Q. So you automatically believe Liz?

21 A. Sure.

22 Q. But you don't know about any possible bias between
23 Liz and the complainant?

24 A. No, sir.

25 Q. Did you ask?

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1 A. No, sir.

2 MR. PINILLA: Beg the Court's indulgence.

3 BY MR. PINILLA:

4 Q. Officer Rowe, at the time when you said that he gave
5 a long excuse, how do you know he was giving an excuse?

6 A. I don't really remember saying that he gave a long
7 excuse. If I said that, I may have misspoke. I don't
8 remember saying that.

9 Q. You put it in your report, if you would like to take
10 a look at the second page there.

11 A. Okay. That was just a, uhm - a, uhm --

12 Q. Assumption?

13 A. -- phrase. Just a phrase just -- just based on the
14 information that was given to me during translation.

15 Q. How do you know that he said that he was just a man
16 and that he responded as any man would?

17 A. Translator.

18 Q. Do you believe everything she said?

19 A. Yes, sir.

20 Q. Now, when she was there, did she seem to be, the
21 translator seem to be comforting the complainant and her
22 daughter?

23 A. She just -- As I said, I've worked with Liz before.
24 She was just relaying information to me.

25 MR. PINILLA: No further questions, Your Honor.

1 THE COURT: All right. Anything else, Mr. Daniel?

2 MR. DANIEL: No, sir, Your Honor.

3 THE COURT: All right. Mr. Rowe, thank you for
4 coming up.

5 MR. DANIEL: Your Honor, we call Liz Rivera.
6 Thereupon,

7 ELIZABETH RIVERA
8 after having been first duly sworn, testified as follows,

9 DIRECT EXAMINATION

10 BY MR. DANIEL:

11 Q. Ms. Rivera, what do you do for a living?

12 A. I'm an interpreter.

13 Q. You're a paid interpreter?

14 A. Yes, I am.

15 Q. What are your kind of credentials, certifications
16 for being an interpreter?

17 A. I'm certified by the State of South Carolina Court
18 Administrator to interpret in any courts. I'm also certified
19 by DHEC to interpret.

20 Q. So you are a court certified interpreter and you've
21 translated and interpreted in court proceedings in the State
22 of South Carolina, correct?

23 A. Yes, I have.

24 Q. So you are bilingual?

25 A. Yes, I am. Spanish and English.

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1 Q. So you're fluent in both those languages?

2 A. Yes.

3 Q. And where were you born?

4 A. California.

5 Q. Are you, I guess, a native speaker to Spanish?

6 A. Yes, I am.

7 Q. You studied English and Spanish in school
8 obviously?

9 A. Like we all did. All Americans.

10 Q. So you're familiar with all the different dialects
11 of Spanish, Central American, South American?

12 A. Some. Some dialects. Not all.

13 Q. You currently live in Newberry; is that correct?

14 A. Yes, I do.

15 Q. How long have you lived in Newberry?

16 A. 18 years.

17 Q. All right. And you have been a translator for how
18 long? A court certified translator for how long?

19 A. For about 12 years.

20 Q. And do you ever assist law enforcement?

21 A. Yes, I do.

22 Q. Do you ever assist the Newberry police department
23 with anything?

24 A. Yes, I do.

25 Q. Do you know a lot of the police officers?

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1 A. Yes, I do.

2 Q. All right. I want to go back to June 29th of 2013.
3 Going back to that date, do you remember going out to a
4 residence at 1903 River Street in Newberry?

5 A. Yes.

6 Q. Why did you go out to that residence?

7 A. Ms. Tomasa Aguirre called my home in the evening
8 saying, "He raped her. He raped her." And I didn't know. I
9 calmed her down. I said, what's wrong? She said, "I need
10 you to come to my house because he raped her." So I live
11 about four or five houses from where they live from so I took
12 off running over there.

13 Q. So you're neighbors? You're essential neighbors
14 with the residence at 1903 River Street?

15 A. Yes, sir.

16 Q. Four houses down, is that what you said?

17 A. My address is 2017, so we are in between the two
18 blocks.

19 Q. And you're acquaintances with Tomasa Aguirre?

20 A. Yes.

21 Q. Social friends? How do you know this woman?

22 A. I have helped her in a lot of court dealings, family
23 court and helped interpret different court sessions for
24 her.

25 Q. June 29th, 2013 you go over there. What time did

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1 you go over there?

2 A. It was already in the evening. I was already laying
3 down.

4 Q. Okay. So you go to the house. What do you observe
5 when you get there?

6 A. When I got there, she came running from around the
7 corner. I didn't see around my car as I parked in the
8 driveway.

9 Q. Who is she?

10 A. Tomasa. And then I said, what happened? And she
11 said, "Well, he was trying to rape my daughter." And I said,
12 well, where are the children? Because I didn't see her
13 children. She said, "They're inside the neighbor's house."
14 They came running out and everybody was just talking. I
15 said, have you called the police? They said, "Yes, we've
16 already called the police." So I took the children and I put
17 them in my car so they wouldn't be out there when we were
18 talking about it because I didn't really know what was going
19 on. Then the Newberry police department got there.

20 Q. Tomasa, is she fluent in English?

21 A. No.

22 Q. And what was the reason she called you again?

23 A. She just called me. As I picked up my phone all I
24 heard her was saying, "He raped her. He raped her." I
25 didn't know any details. I couldn't. At first I was

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1 startled. I didn't know what really she was saying. And I
2 told her, what? What's going on? "He raped her. He tried
3 to rape her. Can you come over right now?"

4 Q. Who was the "he" that Tomasa was referring to?

5 A. She was just saying "he." I didn't know at the time
6 exactly who. I knew who lived there, but I didn't know.

7 Q. Who lived there at that time at 1903 River Street?

8 A. The Pastor Mario. That's how I knew him.

9 Q. Mario Hernandez?

10 A. I assume, yes.

11 Q. And who else lived there with him?

12 A. Tomasa and her two children.

13 Q. Pastor Hernandez --

14 A. Pastor Hernandez, uh-huh.

15 Q. -- is he fluent in English?

16 A. I don't know.

17 Q. Well, all right. Shortly after you arrived, you did
18 mention the police came at some point?

19 A. Yes. The police got there maybe a couple of minutes
20 after I got there.

21 Q. Was Pastor Mario on the scene?

22 A. He was inside the trailer where they lived.

23 Q. Okay. Were you translating for Tomasa to the
24 police?

25 A. Yes, I was.

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1 Q. At any point did Pastor Hernandez come out of the
2 trailer?

3 A. After the police made him come out.

4 Q. At that point did you translate to Pastor Hernandez
5 in any way?

6 A. Yes, I did.

7 Q. What police officer were you dealing with?

8 A. I believe it was Kevin. I don't know about the last
9 names.

10 Q. Was he the only police officer?

11 A. There were several police officers there.

12 Q. So you were translating for the police. The police
13 were speaking English and you were translating that into
14 Spanish?

15 A. Yes.

16 Q. And you were doing that for both Tomasa and Pastor
17 Hernandez?

18 A. Yes.

19 Q. You said you consider yourself a friend of Tomasa?

20 A. Well, an acquaintance. I have known her in the
21 community for a while. Not friend friend, but I know her.

22 Q. Did that impact in any way on what you would
23 translate?

24 A. No.

25 Q. Would that influence you in any way?

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1 A. No.

2 Q. So in other words, everything that you were
3 translating was true and accurate?

4 A. Yes. Whatever Tomasa was saying to the officer, I
5 was saying. Whatever the officer said. I didn't give my
6 opinion. I have been trained enough to be impartial.

7 Q. Okay. Pastor Hernandez, at any point did he
8 communicate with the police on scene through you as
9 translator?

10 A. Yes. Through me, yes.

11 Q. Did the police read Pastor Hernandez his Miranda
12 Rights in English?

13 A. Yes, they did.

14 Q. And did you translate those into Spanish?

15 A. Yes, I did.

16 Q. And tell us how that played out. Tell us how that
17 went, the mechanics?

18 A. Well, the officer would say a phrase from the
19 Miranda Rights and then I would say that in Spanish to
20 Mr. Hernandez and then they would say another phrase and
21 that's how we did it.

22 Q. And these Miranda Rights, was it a verbatim
23 translation into Spanish?

24 A. Yes.

25 Q. Did Mr. Hernandez understand your translation?

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1 A. He said he did.

2 Q. And at any point did Mr. Hernandez waive those
3 rights and choose to speak with police?

4 A. Yes, he did.

5 Q. And did you translate Pastor Hernandez'
6 statements?

7 A. Yes.

8 Q. Did Pastor Hernandez appear drunk in any way?

9 A. No.

10 Q. Under the influence of any substances?

11 A. No.

12 Q. He said he understood the rights that were read to
13 him?

14 A. He said he did.

15 Q. And it was true and accurate what you translated to
16 the police from --

17 A. Yes.

18 Q. -- Mr. Hernandez or Pastor Hernandez?

19 A. Yes.

20 Q. Do you recall any specific statements Pastor
21 Hernandez made while on the scene?

22 A. Yes.

23 Q. What were some of the things he said in English
24 obviously?

25 A. That he told me -- The officers were asking him

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1 questions and then he would answer.

2 Q. Do you recall what he said, the translated version
3 of what he said?

4 A. Of what he said?

5 Q. Yes. Do you recall any of it?

6 A. Yes. Some of it. He said that he - that Ms. Tomasa
7 and her daughter would dress provocatively around the house a
8 lot and even though he was a pastor, that he was still a man
9 and he still had feelings like a man so they were like
10 enticing him. He did say that.

11 Q. What questions were the police asking that you were
12 asking Mr. Hernandez?

13 A. They asked him if he had had sexual relations with
14 MINOR . And they asked him -- Gosh, I really don't remember
15 a lot of the questions. And he said that he had touched her
16 and that he was very sorry, that that night he had just
17 touched her, that there was no penetration, but he had been
18 touching her.

19 Q. Did it appear to you that Mr. Hernandez knew some
20 English?

21 A. I don't really recall. I don't know if he knew or
22 he understood. I don't know. Because he would wait until I
23 asked him the question, you know.

24 Q. And how long did you translate for the police, relay
25 these statements to the police? How long did this exchange

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1 go on?

2 A. Oh, gosh. I don't know. Maybe 20, 30 minutes. The
3 whole time we were there.

4 Q. Did you threaten Mr. Hernandez in any way to make
5 any statements to the police?

6 A. Did I threaten?

7 Q. Yes.

8 A. No.

9 Q. Did you promise any offers of leniency if he talked
10 to the police? Did you make any statements to that effect?

11 A. No.

12 MR. DANIEL: No further questions. Please answer
13 any questions Mr. McMullen has.

14 MR. McMULLEN: May it please the Court.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. McMULLEN:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. Ms. Rivera, in what country did you grow up?

21 A. The United States.

22 Q. Where did you learn your Spanish?

23 A. With family. I'm from Texas. I grew up in Texas
24 and when I came to Newberry, South Carolina, I integrated
25 a lot with the Hispanic people here, learned Spanish, learned

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1 more Spanish here with the community.

2 Q. Would you say Spanish is your first language or is
3 English your first language?

4 A. English is my first language.

5 Q. You answered earlier that you speak some of the
6 other dialects?

7 A. I can understand. Not speak other dialects, no.
8 But from other countries sometimes I understand what they are
9 saying. They --

10 Q. Do you know what -- I'm sorry.

11 A. Go ahead.

12 Q. I want you to finish. I'm sorry.

13 A. No. Basically is Spanish what I speak.

14 Q. Thank you. I'm sorry to cut you off. Do you know
15 where Mr. Hernandez is from?

16 A. From Guatemala.

17 Q. Yes, ma'am. Do you know what dialect he speaks?

18 A. No, I don't.

19 Q. But you interpreted his statements not knowing what
20 dialect he speaks?

21 A. No. In Spanish I interpreted.

22 Q. Is that the language he was speaking?

23 A. Yes.

24 Q. And does Guatemalan have a different dialect?

25 A. I don't know. I assume.

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1 Q. You said, ma'am, that you got a call that night at
2 your home?

3 A. Yes.

4 Q. Was it your home telephone or your cell telephone?

5 A. Well, it's my cell telephone. That's all I have. I
6 don't have a land line at home.

7 Q. Okay. But you were at home?

8 A. Yes.

9 Q. You said you were ready for bed, dressed for bed?

10 A. Yes. Just relaxing.

11 Q. And that you ran four or five houses down to their
12 house?

13 A. I went to their house, yes. I went in my car to
14 their house.

15 Q. You went in your car?

16 A. Yes. I drove. Yes, I drove because I put the
17 children in my car.

18 Q. Okay. So is your car in this photograph?

19 A. No.

20 Q. Where is your car?

21 A. That's not my car.

22 Q. Where is your car?

23 A. It was in the driveway. Just before you get there,
24 there's a driveway and behind the red car and my car, I
25 pulled up in that driveway.

1 Q. Okay. And with your phone could you tell from your
2 caller ID who was calling you?

3 A. Yes.

4 Q. Who's phone was being used?

5 A. Tomasa.

6 Q. She used her phone to call you?

7 A. Yes.

8 Q. And then did you ever hear Mario say I'm sorry for
9 what I did?

10 A. Yes.

11 Q. You told, as I understand it, when you first got
12 there, you were told what was said?

13 A. I was -- Excuse me. Could you say that again?

14 Q. When you first got there, apparently Tomasa started
15 telling you this is what's just been happening?

16 A. Right. She told me what was happening, what was
17 going on.

18 Q. Okay. And so is that when you heard him say he was
19 sorry or did you hear him say it himself?

20 A. No. I heard him say it himself.

21 Q. Okay. Now, did you make any sort of recording that
22 night?

23 A. No.

24 Q. All right. What is the Spanish word for
25 provocatively?

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1 A. Provocativo.

2 Q. And for enticing?

3 A. Enticing? Right now I can't recall.

4 Q. But that's the word he used and you translated?

5 A. Yes, because I remember at that time that word came
6 out.

7 Q. What about the word fondle?

8 A. Otocondo (phonetic.)

9 Q. Otocarlo (Phonetic.)

10 A. Otocondo.

11 Q. That means fondle?

12 A. Touching.

13 Q. Well, is it fondling or touching?

14 A. Touching.

15 Q. But fondle is what the police wrote down. You have
16 no control over what they wrote.

17 A. No.

18 Q. The court administration certifies and qualifies
19 people to do what you do; is that correct?

20 A. Yes.

21 Q. Now, you testified that you were certified. What's
22 the difference between certified and qualified?

23 A. Well, South Carolina doesn't have a certification
24 program for DHEC. They just qualify people to be able to
25 interpret. But the court administrator certifies

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1 interpreters.

2 Q. Are you certified?

3 A. Yes, for the court administration to certify -- I'm
4 sorry -- to interpreter in courts. I'm not certified to
5 translate. Translate is writing. I'm just certified to
6 interpret which is speaking.

7 MR. McMULLEN: All right. May I beg the Court's
8 indulgence.

9 BY MR. McMULLEN:

10 Q. Now, I got this from court administration. It has
11 you as Elizabeth Rivera from Wilson Road, Newberry?

12 A. That's where I used to live.

13 Q. It doesn't show you as certified.

14 MR. McMULLEN: May I approach?

15 THE COURT: Yes.

16 BY THE WITNESS:)

17 A. Well, I have --

18 (Mr. McMullen hands document to the witness.)

19 BY MR. McMULLEN:

20 Q. But you're telling us you are?

21 A. Yes, because they pay me. If I wasn't, they
22 wouldn't pay me to come to court.

23 Q. Okay. All right. Uhm, I want to show you, if I
24 may, a statement that was written by Tomasa. Were you there
25 when this statement was written?

1 A. Can I see it?

2 Q. Yes, ma'am.

3 (Mr. McMullen hands document to the witness.)

4 BY THE WITNESS:

5 A. I don't remember. It was with -- I was there at one
6 time when she did write a statement. That might have been
7 it. I don't --

8 BY MR. McMULLEN:

9 Q. Well, on what date was this statement written?

10 A. July 1st.

11 Q. Now, can you translate that for the court?

12 A. Can I interpret it for the court?

13 Q. Yes, ma'am. Whatever the written one is.

14 A. Because she doesn't write -- Okay.

15 MR. SCOTT: Judge, I'm sorry. I missed that. What
16 is that that we are translating, the court
17 administration?

18 MR. McMULLEN: The July 1st written statement of
19 Tomasa.

20 BY THE WITNESS:

21 A. She doesn't write.

22 BY MR. McMULLEN:

23 Q. I'm asking you to --

24 A. Yeah, but I can -- Okay.

25 THE COURT: Wait a minute.

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1 MR. SCOTT: Judge, I think it's outside the scope of
2 Jackson v. Denno, A. That is a written statement. She
3 says she's qualified to interpret. That would be
4 translating. That would be writing into the spoken
5 word. I think the testimony regarding her credentials
6 is whether she's qualified by the courts for
7 interpretation. That's all she did that night. And
8 really I think the purpose of this hearing is to get to
9 the voluntariness of Mr. Hernandez' statement.

10 MR. McMULLEN: May I?

11 THE COURT: Sure.

12 MR. McMULLEN: What I would like the witness to do
13 is, she apparently was present at the request of the
14 Newberry police two days after this, July 1st, a Monday.
15 Tomasa wrote this statement and then this typewritten
16 version of it was produced. And what I would like to
17 show is they bear very little resemblance to each other;
18 that this is not a verbatim translation at all; and that
19 the same thing is what happened that night with these
20 statements that they are trying to introduce that were
21 at the scene, these confessions and fondling and
22 enticing.

23 THE COURT: In her direct she said "touching."

24 MR. McMULLEN: Okay.

25 THE COURT: I wrote that down.

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1 MR. McMULLEN: All right. But she didn't know the
2 word for enticing and she used that word earlier. All
3 I'm trying to show, Your Honor, is that the translation
4 is not accurate and that that's why the statement should
5 not be admitted. What she says this defendant said is
6 not a verbatim translation.

7 THE COURT: Well, here is what I don't understand is
8 if the mother to the child provided a written statement
9 in Spanish, that's about as far as I have gotten. I
10 don't have this witness' relationship to that. You gave
11 it to her and asked her to read it out to you. Why?

12 MR. McMULLEN: Because as I understand it, Your
13 Honor, she was in the room on July 1st when that was
14 written.

15 THE COURT: Well, I didn't know she said that.

16 MR. McMULLEN: And that this is -- She said she
17 didn't remember, but this was produced July 1st and it
18 has her name on it, Liz Rivera, translator, and I
19 believe she's using a writing to translate to a writing
20 which I think she's testified she's not certified or
21 qualified to do. But the point I'm making and getting
22 to I hope is that when Mario was being interrogated or
23 giving a confession, that the translation, the
24 translator versus what the police wrote down is not
25 reliable. If we have something that Tomasa wrote and

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1 then was changed significantly, I mean, one can see just
2 by looking at the length of the two statements that
3 something has been embellished and so my point would be
4 that if just what we can show in writing was not a
5 faithful translation, that whatever was said verbally
6 has been embellished and is unreliable and shouldn't be
7 admitted.

8 THE COURT: For the purpose of this hearing I'm not
9 sure -- Thus far the state has not offered anything in
10 writing given to or basically verbal statements from the
11 defendant to the police and translator being present.
12 The testimony thus far has been that she translated
13 accurately to the police officers and they asked 10, 15
14 minutes worth of questions. She translated the
15 questions and translated back the responses. That's
16 about as far as I have got. This statement is something
17 else two days later.

18 MR. McMULLEN: Okay.

19 THE COURT: Let's take a short break. I need to go
20 to the bathroom, and see if we can get organized where
21 we're headed. I understand what you're doing. I'm just
22 not sure this is the way you want to do it.

23 MR. McMULLEN: Yes, sir.

24 THE COURT: We'll stand at ease for about ten
25 minutes. Step down.

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1 (Brief recess.)

2 (Witness leaves the witness stand.)

3 THE COURT: Back on the record.

4 (Witness resumes the witness stand.)

5 MR. McMULLEN: May it please the Court.

6 BY MR. McMULLEN:

7 Q. Mr. Rivera, we are back on the record, I guess.

8 A. Yes.

9 Q. Thank you for coming back.

10 A. Yes.

11 Q. Now, are you familiar with -- Let me ask you this:

12 The night that you went and performed these services June
13 28th, you get a call from Tomasa. Would you consider her
14 your friend?

15 A. An acquaintance.

16 Q. Okay. You got dressed. You ran to her house?

17 A. Yes. Got in my car and took off to her house.

18 Q. Put her children in your car?

19 A. Yes.

20 Q. Did you get paid?

21 A. No.

22 Q. You did this voluntarily?

23 A. Yes.

24 Q. And all right. Now, are you familiar with rule 511,
25 rules of professional conduct for court interpreters?

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1 A. Not the specific rule I don't know.

2 MR. DANIEL: Your Honor, we want to object. This is
3 kind of outside the scope of Jackson v. Denno and
4 voluntariness.

5 THE COURT: I think her qualifications as an
6 interpreter are within the scope. Let's hear it.

7 BY MR. McMULLEN:

8 Q. Rule 1 is about accuracy and completeness of
9 interpretation.

10 THE COURT: Do you have a copy of that to show her?

11 (Mr. McMullen hands document to the witness.)

12 BY MR. McMULLEN:

13 Q. Are you familiar with that?

14 A. I have seen this.

15 Q. It says basically you're not supposed to add or
16 subtract.

17 A. Right.

18 Q. Then there is a rule in here about impartiality,
19 rule 3, and avoiding conflict of interest. Would you mind
20 reading that?

21 A. Interpreter shall be impartial and non bias and
22 shall refrain from conduct that may give an appearance of
23 bias. Interpreter shall disclose any real or perceived
24 conflict of interest.

25 Q. All right. In the commentary it says the

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1 interpreter should avoid any conduct or behavior that
2 presents the appearance of favoritism toward any of the
3 parties. Do you feel like that is something you have done?

4 A. Yes.

5 Q. One of the circumstances that create a conflict it
6 says is being a friend, associate or relative of the party or
7 counsel for a party involved in the proceedings. Another is
8 the interpreter has been previously retained by a law
9 enforcement agency to assist in preparation of the criminal
10 case at issue.

11 MR. DANIEL: Your Honor, I want to object. She's
12 not acting in her capacity on that night as a court
13 certified interpreter.

14 THE COURT: I agree. She was called that night and
15 volunteered, hadn't been paid. She's got to comply with
16 those rules, but I think that's in her performance of
17 her duties in the court system.

18 MR. McMULLEN: All right.

19 THE COURT: You can point out -- This is cross
20 examination but --

21 MR. McMULLEN: That's all the questions I have. I
22 want to thank you for answering my questions. Your
23 Honor, my argument would be simply that the translations
24 we got are not --

25 THE COURT: Those are written statements?

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1 MR. McMULLEN: Yes.

2 THE COURT: The translation of the oral statements
3 made by your client?

4 MR. McMULLEN: Yes, sir. And I guess my point would
5 be it would be impossible for us to prove or disprove
6 the content of oral statements when they weren't
7 recorded. The next best thing we could do is say, well,
8 all right. Here's something that you translated in
9 writing and it's not verbatim.

10 THE COURT: Okay. Let's make certain that's all the
11 state's got.

12 MR. McMULLEN: Thank you.

13 THE COURT: All right. What else you got,
14 Mr. Daniel?

15 MR. DANIEL: Witnesses, Your Honor, or redirect?

16 THE COURT: Redirect. Either way.

17 REDIRECT EXAMINATION

18 BY MR. DANIEL:

19 Q. Just to clarify, Ms. Rivera, you were only
20 translating oral statements that Mr. Hernandez made to law
21 enforcement?

22 A. Yes. That night, yes.

23 Q. And were you're translations in English to Spanish
24 and Spanish to English, were they true and accurate?

25 A. I was interpreting that night.

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1 Q. Interpreting. Excuse me.

2 A. Yes. And it was accurate English to Spanish,
3 Spanish to English.

4 Q. Do you have any personal animosity towards Pastor
5 Hernandez?

6 A. No. I didn't even know him so no.

7 Q. Do you have any favoritism towards Tomasa and her
8 daughter?

9 A. No.

10 Q. Would any of your relationships affect the way you
11 would translate - or interpret?

12 A. No.

13 Q. You don't let that influence on how you interpret?

14 A. No. This isn't the first time I have done this.

15 Q. And law enforcement is familiar with you as being a
16 interpreter within the Newberry community?

17 A. Yes.

18 Q. So you have done this kind of work before where you
19 have translated statements on the scene or interpreted
20 statements on the scene?

21 A. Yes. Both.

22 MR. DANIEL: No further questions.

23 MR. McMULLEN: May I just briefly?

24 THE COURT: Mm-hmm.

25 RECROSS EXAMINATION

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1 BY MR. McMULLEN:

2 Q. Is this the first time you ever voluntarily did it
3 at 11:00 at night?

4 A. No. I have done it before.

5 Q. You do it without being paid?

6 A. Yes.

7 Q. How often?

8 A. Oh, I don't know. More then - more then when they
9 have paid me. I have been doing this for so long I couldn't
10 tell you an amount. But most of the time when I'm called
11 like this, I'm not paid.

12 Q. How often have you known Tomasa?

13 A. How long have I known her?

14 Q. Yes. That's what I meant.

15 A. I don't know. Three, four years maybe.

16 Q. You have been to her house before?

17 A. Yes.

18 Q. You have watched her children grow?

19 A. Well, I have seen them. I'm in the community and
20 I'm just active in the whole community.

21 Q. You go to the same church?

22 A. No.

23 MR. McMULLEN: All right. Thank you, ma'am.

24 THE WITNESS: Thank you.

25 THE COURT: One question from the Court. You

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1 translated -- I'm sorry -- interpreted statements made
2 by Pastor Hernandez and one of the statements you have
3 testified to today is that he said he admitted to
4 touching her and that was the verb you used was
5 touching.

6 THE WITNESS: Yes.

7 THE COURT: Nothing else?

8 THE WITNESS: No.

9 THE COURT: No other verb?

10 THE WITNESS: Right.

11 THE COURT: All right. Thank you. Step down.

12 MR. SCOTT: Judge, there's going to be kind of a
13 bifurcated, I guess, Jackson v. Denno. That was the
14 oral statement given that night. There was a subsequent
15 written statement given in the presence of Kevin Goodman
16 and Boris Alvarado. Do you just want to handle
17 arguments after that testimony?

18 THE COURT: Yes.

19 MR. SCOTT: All right. We'll call Kevin Goodman.
20 Thereupon,

21 KEVIN GOODMAN

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please state your full name.

24 THE WITNESS: Kevin Goodman.

25 MR. SCOTT: May it please the Court.

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1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. SCOTT:

4 Q. Officer Goodman or Lieutenant Goodman, you're with
5 the Newberry police department, correct?

6 A. Yes, sir, that's correct.

7 Q. All right. Do you recall becoming involved with a
8 case on June 29th, 2013 around 11:18 p.m., out at 1903 River
9 Street?

10 A. That's correct.

11 Q. When were you called over there to respond to that
12 scene?

13 A. You say when?

14 Q. Yeah.

15 A. It was at - it was on June the 29th, June 30th,
16 somewhere along in there. It was late Saturday night, early
17 Sunday morning.

18 Q. But you responded as a detective, correct?

19 A. Yes, sir. I was actually doing some off duty
20 security work. I am an investigator. I wasn't actually
21 on-call per se, but I was doing some off duty security work
22 in Grand Homes and they needed some help so I went over since
23 I am an investigator.

24 Q. You were presumably called by, I guess, a road
25 deputy?

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1 A. Right. It would be Andrew Rowe, Sergeant Rowe.

2 Q. Okay. So Andy would have been the first responder
3 and then he would have called you in after he made his
4 initial --

5 A. That's right.

6 Q. All right. So what was going on when you got
7 there?

8 A. Actually, when I got there, Mr. Hernandez, Sergeant
9 Rowe, Ms. Liz, they were all at the scene and they were
10 talking, Liz, Mr. Gonzalez Hernandez and Andrew Rowe.

11 Q. All right. Liz is going to be Liz Rivera?

12 A. Liz Rivera, yes, sir.

13 Q. All right. And I guess she was acting in her
14 capacity as a translator or interpreter?

15 A. That's right.

16 Q. What was the nature of the call you were responding
17 to?

18 A. It was an alleged criminal sexual conduct with a
19 minor.

20 Q. Okay. Were you present whenever Mr. Hernandez was
21 speaking with Officer Rowe?

22 A. I was.

23 Q. All right. Did you hear through the translator or
24 the interpreter what he was saying?

25 A. Yes, sir, I did.

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1 Q. Well, let me back up. Did you hear Miranda Rights
2 being administered to him?

3 A. No, sir. I wasn't there during the Miranda Rights.
4 I got up, I walked up just after that.

5 Q. Okay. You were informed that he was Mirandized?

6 A. Yes.

7 Q. What was the gist of the statement that he gave
8 through the translator that you overheard?

9 A. Can I refer to my notes?

10 Q. Yes.

11 A. Basically what I got through the translator was
12 Mr. Hernandez made the statement that the young lady and her
13 mom had lived with him about four years or so. They needed a
14 place to stay. They had been staying there about four years
15 or so. That the mom and the young lady walk around the house
16 dressed very provocatively and he's a man. Although he's a
17 preacher, he's still a man and that enticed him and he
18 reacted as a normal male would and that he had never put his
19 penis inside of the young lady, but he had fondled and
20 inappropriately touched her and he was sorry for that.

21 Q. Okay. He indicated some inappropriate touching, but
22 denied intercourse?

23 A. Right.

24 Q. He's in handcuffs at this time, correct?

25 A. At this particular time I don't remember him being

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1 in handcuffs because this is at the onset of everything
2 happening. Apparently he had just come out of the house and
3 this was around the -- I don't remember him being in
4 handcuffs.

5 Q. And you mentioned the mother and the young girl.
6 The mother you're speaking of is Tomasa?

7 A. That's right, Tomasa.

8 Q. Aguirre-Cruz?

9 A. That's right.

10 Q. And then the young girl was MINOR .?

11 A. MINOR .

12 Q. Okay. Were they on the scene when you were there
13 that night?

14 A. Yes, sir.

15 Q. All right. Mr. Hernandez was presumably arrested
16 that night and taken to the jail?

17 A. Yes, sir. That's right.

18 Q. So this is the late hours of June 29th going into
19 the early morning hours of June 30th?

20 A. That's correct.

21 Q. Did you have another occasion to speak with
22 Mr. Hernandez?

23 A. I did, Your Honor. I'm sorry. I did speak with him
24 again on July the 1st.

25 Q. All right. Where was that?

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1 A. That was at the Newberry City police department.

2 Q. Mr. Hernandez, to your knowledge, does he speak
3 English? Well, let me ask you this: Did you speak English
4 with him or did you speak through a translator with him?

5 A. The entire statement was done with the translator.
6 I would say hello. When he walked in, I would say hello. He
7 would respond to that, but not to detailed questions.

8 Q. Okay. I think I asked you the question about, I
9 missed your answer, but you interviewed him at the police
10 station on July 1st?

11 A. That's right.

12 Q. And what room was that in?

13 A. That was in my office.

14 Q. Was he in handcuffs?

15 A. Yes, sir.

16 Q. Did you take them off of him?

17 A. At some point in time I had to for him to sign his
18 name and write his initials.

19 Q. Who was in your office with you besides
20 Mr. Hernandez?

21 A. That would have been Officer Al Boris Alvarado.

22 Q. And Mr. Alvarado, does he speak Spanish?

23 A. Yes, sir.

24 Q. In fact, does he handle some translation for you
25 guys?

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1 A. A lot of it, yes, sir.

2 Q. And he's an officer with the Newberry police
3 department as well?

4 A. That's correct.

5 Q. So what's the first thing you do when he's in the
6 office before you start questioning him?

7 A. I read him his Miranda Warnings.

8 Q. In English?

9 A. I read the English version. Officer Alvarado
10 translated or read the Spanish form, Rights Waiver Form to
11 him at the same time.

12 MR. SCOTT: If I may beg the Court's indulgence. I
13 have three items pre-marked for purposes of this
14 hearing.

15 (Whereupon, State's exhibits #1, #2, #3 marked and
16 received in evidence.)

17 BY MR. SCOTT:

18 Q. So I'll show you state's exhibit 1, pre-marked
19 state's exhibit 1.

20 A. Yes, sir.

21 Q. What is that?

22 A. This is the Spanish version of our rights form,
23 Adult Waiver Rights Form.

24 Q. Okay. And that would be, I guess, Miranda as we
25 know it, the English translated into Spanish for a Spanish

1 speaker to read and go over?

2 A. That's right.

3 Q. I notice you also gave him an English Miranda
4 form?

5 A. That's right.

6 Q. That's state's number 2 for purposes of this
7 hearing.

8 A. Yes, sir, that's right.

9 Q. All right. So forms one and two would be the same
10 Miranda form, but one is in Spanish, one is in English?

11 A. That's right.

12 Q. All right. Well, I guess just for purposes of this
13 hearing state's number 2, what is the top portion of that
14 Miranda form?

15 A. This is the suspect's name, age, address, last grade
16 finished in school, our name, the investigators and officers
17 there conducting the interview, and the charge.

18 Q. Who is filling that out, you or him?

19 A. I'm filling the top part out. I'm filing all the
20 information in up top.

21 Q. How are you getting that information?

22 A. Through our translator through Mr. Hernandez. I
23 would ask him his full name. Alvarado would translate that.
24 He would give it back to me, and I'll write it.

25 Q. Any reason why you didn't let him write that

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1 himself?

2 A. No, sir. No, sir. I routinely, I fill out the top
3 portions of all the rights forms and stuff.

4 Q. That's just the informational section?

5 A. That's just the informational section. In 19 years
6 of having people fill these out I have got nicknames and
7 everything else at the top so I routinely, since I have
8 learned and grown in investigations, I fill out the pertinent
9 information up top as I get it from them and the rest of the
10 form obviously they take care of themselves.

11 Q. What grade did he indicate he completed?

12 A. He indicated he had an Associates Degree.

13 Q. Did he appear to understand the instructions he was
14 given? I know you can't understand what the conversation was
15 in Spanish.

16 A. Right.

17 Q. But did he indicate that he understood? I guess
18 visibly did he nod his head or anything like that? Do you
19 recall?

20 A. Yes, sir. As a lot of people do when they are in
21 agreement or understand something kind of nod their head
22 answering the questions. He didn't seem to be confused at
23 all in my opinion.

24 Q. All right. The middle part there, what is that?

25 A. This is the actual rights.

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1 Q. How many rights are noted there?

2 A. They're broken down into six different sections.

3 Q. Okay. What are they?

4 A. The first one says I have the right to remain
5 silent. That means I don't have to say anything or answer
6 any questions. The second one being anything I say can be
7 used against me. The third, I have the right to talk to a
8 lawyer and to have a lawyer here with me to help me and
9 advise me during questioning. Fourth, if I want a lawyer
10 with me during questioning and I cannot afford to pay a
11 lawyer, one will be provided to me at no cost before I'm
12 questioned. Five, if I decide to answer questions now
13 without a lawyer here, I still have the right to stop
14 answering questions whenever I want to. And six, I also have
15 the right to stop answering questions until I've talked to my
16 lawyer.

17 Q. All right. So he had state's number 1 which is the
18 Spanish form of the Miranda form, I guess, in Spanish right
19 in front of him and at the same time as Boris Alvarado is
20 orally giving him these --

21 A. Right. What we would do is I would say - I would
22 read one. I have the right to remain silent. That means I
23 don't have to say anything. I don't have to answer any
24 questions. And Alvarado then in turn would read number one
25 on the Spanish speaking form.

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1 Q. But the whole time Hernandez has this written form
2 in front of him?

3 A. Right. Exactly. The Spanish speaking form in front
4 of him, yes.

5 Q. Okay. So as you go over right number 1, you said
6 there were six, broken down into six lines, as you read right
7 number 1 to him, how does he indicate that he understands
8 it?

9 A. Well, he puts his initials before we go to number 2.
10 He's asked do you understand your rights? That was
11 translated. Do you understand item 1? Yes. And to indicate
12 that he would put his initials.

13 Q. Okay.

14 A. And that would go on before you would go to the next
15 one.

16 Q. So I see MG written beside each one of those six
17 rights. Whose handwriting is that?

18 A. That would be Mario Valerio Gonzalez-Hernandez.

19 Q. So he would have put the MG there, not you?

20 A. That's right.

21 Q. Okay. So after going over all these, did he
22 indicate that he wanted a lawyer present?

23 A. No, sir. He was willing to talk to us.

24 Q. And he was not threatened in any way?

25 A. No, sir.

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1 Q. So how did the interview go? Did he give, I guess,
2 an oral statement, then reduced it to writing or did he just
3 put pen to paper immediately?

4 A. Actually, he talked about it first and as he spoke
5 it was translated to me and then he put it in writing.

6 Q. All right. What, if anything, did he say different
7 from what he had said on the scene the night of June 29th?

8 A. I'll have to refer back to my notes. Mr. Mario
9 stated that the inappropriate touching actually started
10 somewhere around 2012 in December or so. He said that they
11 would be playing around touching each others private parts,
12 he and MINOR . MINOR .. He said that the mother would be
13 present. During those times their clothes would be on at all
14 times, but they would touch. He said, and specific about
15 that night, he basically said that, uhm, he was in the room
16 sitting on the bed with the lights on and when the mother
17 came in, the victim got, the young lady got up and ran into
18 the bathroom and he and the mother had a conversation about
19 what was going on.

20 I also talked to him about why did he change his
21 clothes because there was some confusion about what he was
22 actually wearing when we got there that night or when I got
23 to the scene, when the police officers got to the scene, and
24 he admittedly said he had changed clothes and the clothes
25 that he had on during this particular incident was actually

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1 at his house in the closet in the top of his closet. He gave
2 us consent to go to his home and get those clothes, and
3 that's what we did, myself and Sergeant Moore.

4 Q. All right. Well, after he gives the oral statement,
5 you allowed him to write a statement on the form?

6 A. That's right.

7 Q. And this is state's 3 for purposes of this hearing.
8 What is that?

9 A. This is his statement that he wrote, his handwritten
10 statement.

11 Q. Okay. And he wrote that in Spanish?

12 A. Yes, sir.

13 Q. And Boris Alvarado was present during that?

14 A. Yes, sir, he was.

15 Q. And did you offer him any reward or leniency or did
16 you threaten him in any way to obtain that statement?

17 A. No, sir, not at all.

18 Q. And again, as far as you could observe he seemed to
19 understand these rights he was given?

20 A. That's right.

21 Q. At any time did he say, no, I'm done speaking?

22 A. No, sir.

23 Q. He didn't attempt to end the interview at any
24 time?

25 A. No, sir.

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1 MR. SCOTT: Okay. Thank you. Answer any questions
2 of Mr. Pinilla.

3 MR. PINILLA: May it please the Court, Your Honor.

4 THE COURT: Mm-hmm.

5 CROSS EXAMINATION

6 BY MR. PINILLA:

7 Q. Investigator Goodman, good afternoon.

8 A. How are you?

9 Q. Good. How are you?

10 A. Good.

11 Q. All right. Let's take it from the beginning here --

12 A. All right.

13 Q. -- Investigator Goodman. 6/30/2013 you were called
14 by Sergeant Rowe; is that correct?

15 A. Yes, sir. 6/30, yes, sir.

16 Q. When you arrived, had Sergeant Rowe already began
17 his investigation? Had he already questioned the parties?

18 A. He was in the midsts of talking with Mr. Hernandez.
19 So he had finally gotten Mr. Hernandez to come outside and
20 when I got there, the rights had already been read and
21 translated to him to the best of my knowledge and they were
22 in the midsts of the conversation, yes.

23 Q. Okay. Now what exactly did you hear coming out of
24 Mr. Hernandez's mouth? Did you hear him say I was sorry?

25 A. That was translated. Coming out of his mouth was --

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1 Q. Something?

2 A. -- something.

3 Q. And you relied on who?

4 A. I relied on Ms. Rivera.

5 Q. Okay. And was Ms. Rivera contacted by Newberry
6 police department?

7 A. On that particular night, no, sir. She -- When I
8 got there, she was already there. It was my understanding
9 from speaking with the officers on the scene that she had -
10 was already there when they got there so I'm not real sure
11 and I don't want to say how she got there, how she was
12 contacted because I'm not a hundred percent sure. I just
13 know that they were there when I got there.

14 Q. Did you ever find out how she became - how she got
15 there?

16 A. From just speaking with her, Ms. Rivera, apparently
17 the young lady went and got her somehow. I don't know if she
18 called her or went to her house. I'm not sure. But somehow
19 they made contact and she came because she knew everyone
20 involved and apparently was close with everyone in the
21 house.

22 Q. Thank you. Now, knowing that did you think it was
23 still proper to use her as a translator when she had a
24 relationship with the people involved in this thing?

25 A. We use her in CDV court every Monday. So I had no

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1 reason to doubt that she would translate things correctly.
2 I'm sure there's plenty of times when on Mondays that there
3 are several people that come through that she knows from her
4 community because she is a translator. There's not very
5 many, I would assume, that she wouldn't know.

6 Q. Why didn't we contact Officer Alvarado that night?

7 A. Because we had someone that we felt was dependable
8 to translate that, yes.

9 Q. And you think as an impartial investigator it's okay
10 to use somebody that knows the people involved, the
11 complainant?

12 A. I think that at that particular time that night
13 being from what we understood, she's close with the young
14 lady and Mr. Hernandez, there wouldn't have been a reason for
15 her to lie on anyone or to change their story as to what
16 happened. We felt comfortable with that. But again, we went
17 back on July 1st to go back over --

18 Q. Yes, sir.

19 A. -- things that happened.

20 Q. And we'll get there. So that night on 6/30 you
21 completely relied on Liz?

22 A. That's right.

23 Q. Thank you. Now, two days later on July 1st you
24 brought him into your office; is that correct? You brought
25 Mr. Hernandez into your office?

1 A. That's right.

2 Q. Now, we went through state's exhibit 1 and 2. He
3 was read the Miranda Rights. And as you explained it, you
4 read one line and one line was read by Officer Alvarado.
5 Now, in your questioning of him was it the same way? Did you
6 ask him a question, let Mr. - let Officer Alvarado translate
7 it, let Mr. Hernandez answer it, let Alvarado translate it
8 back to you?

9 A. That's right.

10 Q. Or was it paraphrased?

11 A. Was it paraphrased back to me?

12 Q. That's correct.

13 A. That would be an assumption on my part because I
14 don't know what Mr. Hernandez said to Alvarado.

15 Q. You have no idea what he said?

16 A. I have no idea.

17 Q. And you completely relied on Alvarado to tell you?

18 A. Yes, sir, I did.

19 Q. Thank you. That evening, going to state's exhibit
20 3, you say in this Mario says that --

21 A. What's state's exhibit 3? I'm sorry.

22 Q. The handwriting. I'm sorry. I apologize. It's
23 that one.

24 A. This one?

25 Q. Yes, sir. In that statement or at least in your

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1 notes from 7/1 it says --

2 MR. SCOTT: Let me just object because I think it's
3 a misstatement of the testimony. He talked about an
4 oral statement being given first and that's what he was
5 testifying to. He didn't testify to the contents of the
6 written statement.

7 MR. PINILLA: Your Honor, the state has brought the
8 statement in and listed it as an exhibit and showed it
9 to him and asked him is this the handwritten statement.

10 MR. SCOTT: That's correct. I didn't ask him about
11 the contents though because he's not qualified to
12 interpret what the contents are.

13 THE COURT: I think y'all are characterizing the
14 question correctly.

15 MR. PINILLA: Thank you, Judge.

16 THE COURT: I mean, it's a written statement in
17 Spanish.

18 BY MR. PINILLA:

19 Q. Final question, Investigator Goodman. You relied
20 completely on Alvarado for all - everything that you asked?

21 A. Everything that I asked I relied on Alvarado,
22 Officer Alvarado to translate it back to me.

23 MR. PINILLA: No further questions. Thank you,
24 Judge.

25 MR. SCOTT: I have nothing further, Your Honor.

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1 THE COURT: Step down.

2 MR. SCOTT: The last, Boris Alvarado.

3 Thereupon,

4 BORIS ALVARADO

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please state your name.

7 THE WITNESS: Boris Alvarado.

8 MR. SCOTT: May it please the Court.

9 DIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q. Officer Alvarado, how long have you been with the
12 Newberry police department?

13 A. Over five and a half years.

14 Q. And let me go ahead and ask you, what was the first
15 language you began speaking?

16 A. Spanish.

17 Q. That's your first language?

18 A. Yes, sir.

19 Q. And when did you learn English?

20 A. When I relocated from the country I was born to New
21 York City and I went through the New York City Public School
22 System.

23 Q. Okay. Well, where are you from?

24 A. I was born in Bolivia, South America.

25 Q. And we were talking about dialects earlier. Is

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1 there a dialect that you spoke that was different from, I
2 guess, Spanish?

3 A. Every Spanish speaking country has its own dialect.
4 Spain speaks Spanish in a different way from people from
5 Mexico speak Spanish a certain way. Certain - certain words
6 they have different, are pronounced differently or said
7 different. It's just the dialects depending on the country
8 and the region that you were born.

9 Q. Not completely unlike a southerner talking to
10 somebody from New York? We might have different terms,
11 different words for certain things?

12 A. Exactly like that. You know, here in the south
13 there are certain words for in the north. People from the
14 north may not understand what you're saying, but they might
15 know what you mean, but they have a certain other word for
16 it.

17 Q. But we still communicate?

18 A. Yes, sir, you can still communicate.

19 Q. June 29th, well, June 29th, 2013, this was the 1903
20 River Street address. You didn't go out there that night,
21 did you?

22 A. No, sir, I did not.

23 Q. All right. Now, this case though regarding
24 Mr. Hernandez, when did you become involved with it?

25 A. I became involved with it on July 1st, 2013.

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1 Q. And where was that?

2 A. At the police department.

3 Q. Where did you first meet him?

4 A. I met Mr. Hernandez at the jail. I was given the
5 call to transport Mr. Hernandez from the Newberry Detention
6 Center to the police department.

7 Q. Okay. And what was the purpose of taking him over
8 there to the police department?

9 A. The purpose of taking him Mr. Hernandez to the
10 police department was Mr. Hernandez was going to speak to the
11 Investigator Kevin Goodman and I was going to translate for
12 Mr. Hernandez.

13 Q. Okay. Did you take him into Officer Goodman's
14 office there?

15 A. Yes, sir.

16 Q. And he's in handcuffs at this time because you're
17 bringing him from the detention center?

18 A. Yes, sir. He's in full shackles.

19 Q. Okay. Did you explain to him why he was being
20 brought over to the police department?

21 A. Yes, sir. Investigator Kevin Goodman asked me to
22 introduce himself to him and as he spoke I translated in
23 Spanish so Mr. Hernandez could understand.

24 Q. Okay. Let me show you state's number 1 and see if
25 you recognize that.

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1 A. Yes, sir. This is the Miranda Warnings in Spanish
2 form that the Newberry police department uses.

3 Q. Is that what was given to Mr. Hernandez before
4 questioning him?

5 A. Yes, sir.

6 Q. Okay. The middle part, it was already testified to,
7 those are the Miranda Warnings one through six. Did he have
8 -- Were you present when Investigator Goodman read him his
9 Miranda Rights?

10 A. Yes.

11 Q. So Investigator Goodman only speaks English,
12 correct?

13 A. Yes, sir.

14 Q. So he would read the Miranda Warning in English?

15 A. And I would translate for him and Mr. Hernandez had
16 the Spanish form in front of him.

17 Q. Okay. So he's sitting there looking at it reading
18 it while you're orally giving him the warnings in Spanish?

19 A. Yes, sir.

20 Q. And then would he indicate after each one that he
21 understood it?

22 A. Yes, sir. We asked him if he understood the warning
23 and he was instructed at the beginning that if he understood,
24 to initial on the line provided on each line on each section
25 of the Miranda Warnings.

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1 Q. Okay. In fact, as you read them to him and he read
2 them to himself, did he, in fact, initial each one of those
3 rights?

4 A. Yes, sir, he did.

5 Q. And did he have any trouble communicating with
6 you?

7 A. No, sir. He didn't.

8 Q. Did you have any trouble communicating with him?

9 A. No. I did not.

10 Q. Did at any time during the questioning, did he
11 indicate that he wished to stop talking and wanted a
12 lawyer?

13 A. If I could refer to my notes, Your Honor, because
14 this happened quite -- To answer that question, Mr. Scott,
15 no, I don't recall him asking for an attorney.

16 Q. Okay. Did he -- How did the interview happen? Did
17 y'all have a conversation and then he wrote it down or did he
18 just begin writing a statement out? What was your
19 recollection?

20 A. When we arrived at the police department,
21 Investigator Kevin Goodman's office, Mr. Goodman introduced
22 himself to Mr. Hernandez and we explained the reason he was
23 there. We immediately selected the forms needed for that
24 with the Miranda Warnings. After the Miranda Warnings and
25 his acknowledgment he understood his rights, Investigator

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1 Goodman asked him to give a statement form and explain the
2 events that happened that night.

3 Q. Okay. Do you recall what was his explanation of
4 what happened that night?

5 A. I recall briefly what he said. That there was some
6 touching and there was some touching in some private parts
7 and there was also a denial of any intercourse and some of
8 that stuff that I remember if I'm just referring back to my
9 notes.

10 Q. Let me ask you this: This is state's 3. Do you
11 recognize that?

12 A. Yes, sir. This is a voluntary - this is a statement
13 made by Mr. Hernandez.

14 Q. Okay. And he has written that out in Spanish?

15 A. Yes, sir.

16 Q. Okay. Would you read it and just kind of refresh
17 your memory as to what he wrote down?

18 A. Sure. On this statement Mr. Hernandez is stating
19 that they came in to live with him at his residence at 1903
20 River Street in September 2010. It's also saying that there
21 was some touching in the buttocks private areas. Also that
22 the process started slowly and as the young lady started
23 getting more confidence, then there was more touching. Also
24 some tickling on the body of the torso part. And it's also
25 stating that the incident that happened on the Saturday

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1 evening about him being fully clothed. And then that the
2 young lady still being clothed going to the bathroom. And if
3 you like, I could always read it out for the court, but I'm
4 just trying to pick up certain parts of whatever from what I
5 recall from the day that he made that statement.

6 Q. Well, let me ask you, you have translated this into
7 English before; is that correct?

8 A. Yes, sir.

9 (Whereupon, State's exhibit #4 marked and received
10 in evidence.)

11 BY MR. SCOTT:

12 Q. And you actually did that at the request of
13 Solicitor Taylor Daniel; is that correct?

14 A. Yes, sir.

15 Q. Let me show you state's 4. Is that what that is?

16 Is that your translation that you prepared for our office?

17 A. Yes, sir.

18 Q. Okay. So what does it say?

19 THE COURT: We don't have to read it, do we?

20 MR. SCOTT: You don't want to do that?

21 THE COURT: No. I mean, let's keep going. I can
22 read, so I'm told.

23 MR. SCOTT: That's introduced then so I think we're
24 done, Judge. Yeah, I think I've established what I
25 needed to then.

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1 THE COURT: Okay. The fact that I didn't make him
2 publish it doesn't mean I haven't ruled on it, it's
3 admissible. Okay?

4 MR. PINILLA: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. PINILLA:

8 Q. Officer Alvarado, how are you?

9 A. Pretty good. How are you, sir?

10 Q. Good. A quick question. A few questions actually.
11 The day that you were there with Mario and the statements and
12 Investigator Goodman, Mr. Hernandez and yourself, did
13 Investigator Goodman only rely on you? Did Investigator
14 Goodman know what was going on, what was being said or was it
15 only coming from you? The information was coming just from
16 you?

17 A. The information was coming from me because I was in
18 the room with Investigator Goodman and Mr. Hernandez.

19 Q. So Investigator Goodman only relied on you?

20 A. Yes, sir.

21 Q. Thank you. Now, was this ever videotaped?

22 A. No, sir.

23 Q. Was it ever audio recorded?

24 A. No, sir. Not to my knowledge.

25 Q. Now, besides you, Investigator Goodman and

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1 Mr. Hernandez, how do we know what happened that day? How do
2 we know that he said the things that your notes reflect?

3 A. Because of what he had, Mr. Hernandez wrote himself
4 on this statement.

5 Q. Okay.

6 A. Everything that was written in this statement was
7 related to Investigator Goodman.

8 Q. Officer Alvarado, how do you say the word
9 merry-go-round in Spanish?

10 A. Merry go around?

11 Q. Yes, sir.

12 A. I haven't used that word in quite a long time. Like
13 I said, I relocated from New York City so...

14 Q. No merry-go-rounds in New York City?

15 A. Well, there are some merry go arounds. I was - the
16 last I spoke to my family in Spanish was in 2000.

17 Q. So do you use Spanish on a daily basis? Do you use
18 it on a normal basis?

19 A. No, sir, I don't.

20 Q. Okay. And did you go to school to translate? Do
21 you have any certificates to translate?

22 A. No. I'm not a certified translator.

23 Q. Are you a certified interpreter?

24 A. Not a certified interpreter, but when it's needed,
25 that somebody that needs something to say to translate it

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1 from Spanish to English and if I'm available, I can assist
2 them.

3 Q. So the police department has somebody that hasn't
4 used Spanish on a regular basis for 14 years to translate and
5 interpret to do these important things?

6 A. The police department has used people before.

7 Q. Why didn't they use them that night?

8 A. I did not -- I can't -- I was not there present on
9 that time.

10 Q. Why did they not use it on the 1st of July when you
11 were there?

12 A. I was on duty. I came in and then this is what they
13 requested. Mr. Hernandez was advised. The statements and
14 Miranda Rights were advised to him.

15 Q. Thank you. Now, you said earlier and you looked at
16 your notes and you said that, and I'm just going from what
17 Goodman wrote because he relied on what you said, and it says
18 that they would touch each others private parts. Looking at
19 exhibit 3 for the state, can you tell me where it says
20 private parts?

21 A. The private parts that Investigator Goodman wrote on
22 these notes is from the verbal statement that Mr. - that the
23 statement was made from Mr. Hernandez. On the statement that
24 he written in there, he's talking about the buttocks area.

25 Q. I understand that. So but it was not audio

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1 recorded?

2 A. No. It was not audio recorded.

3 Q. After Mr. Hernandez wrote this statement, did you
4 read it?

5 A. I read it. I read the statement and I made that
6 translation from that to Investigator Goodman, also to the
7 Solicitor's Office.

8 Q. Did you see any inconsistencies though? You just
9 said that he said private parts written or spoken, he said
10 private parts, but he didn't write it?

11 A. I -- The -- I was -- I was given his statement to
12 translate. I was not given any notes from the
13 investigator.

14 Q. But you were present when he wrote the statement,
15 Mr. Hernandez wrote the statement; is that correct?

16 A. I was present.

17 Q. Okay. But it doesn't say private parts?

18 A. I the statement it does not say private parts.

19 Okay? This investigative statement was written by
20 Investigator Goodman.

21 Q. Who relied on you?

22 A. On the events what was said in the room and this is
23 not --

24 Q. That was translated by you; is that correct?

25 A. No. This -- this is -- this part of the note where

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1 the investigator wrote the statement, that happened in that
2 room that day.

3 Q. If you would, Officer Alvarado, that first line, can
4 you read that out for the Court, please, starting with I at
5 CPO?

6 A. Corporal Alvarado transport Mario to the police
7 department where I spoke with Mario again with Alvarado
8 translating.

9 Q. So you were there to translate?

10 A. I was there to translate what was said so
11 Mr. Hernandez knew and he understood what was said.

12 Q. I guess my point, Officer Alvarado, is if he said
13 this, then what he memorialized in his writing should be the
14 same; is that correct?

15 A. You are correct on that. But I cannot --

16 Q. But is it the same?

17 THE COURT: Wait a minute. I don't think it's fair
18 for you to say you translated accurately. Well, yes.
19 Well, did Goodman write it down accurately? That's not
20 a fair question to him. That's what you're asking as I
21 understand it. What Goodman wrote down and what
22 Alvarado was doing is separate things.

23 MR. McMULLEN: Okay.

24 MR. PINILLA: Okay, Judge.

25 BY THE WITNESS:

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1 A. And, Judge, thank you for that. And I want to make
2 myself a little clearer so you understand that I translated
3 what was said during. What Investigator Kevin Goodman wrote
4 on his notes, that is something that he made so I was not
5 present when he made these notes.

6 BY MR. PINILLA:

7 Q. Thank you. But you were present when Mr. Hernandez
8 wrote the statement?

9 A. I was there present when he wrote this statement and
10 when the statement was given to me for translating, I
11 presented the Solicitor's Office with a copy.

12 MR. PINILLA: My last question, Your Honor, if I
13 may.

14 BY MR. PINILLA:

15 Q. What was written by Mr. Hernandez and you said that
16 you read it at the time that he wrote it, did you read it
17 back to Investigator Goodman?

18 A. I read it to Investigator Goodman.

19 Q. Didn't write it out? Just read it to him?

20 A. I read it to him.

21 Q. And you didn't see any differences?

22 A. There was no differences because this is the
23 statement that he wrote and this is what I read to him..

24 MR. PINILLA: I understand. Thank you. No further
25 questions, Judge.

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1 MR. SCOTT: Nothing further, Your Honor.

2 THE COURT: Okay. You can step down, Mr. Alvarado.
3 That it?

4 MR. SCOTT: That's all, yes, sir.

5 THE COURT: All right. As I understand it, y'all
6 identified four documents. The third one being the one
7 written by the defendant after he was orally advised and
8 in writing advised of his rights --

9 MR. SCOTT: Yes, sir.

10 THE COURT: -- under Miranda in Spanish.

11 MR. SCOTT: Yes, sir. I probably should have passed
12 them up to you.

13 THE COURT: Through a document written in Spanish
14 not in English.

15 MR. SCOTT: Yes, sir. This would be state's number
16 1. That would be the Spanish Miranda form. The
17 testimony was that he had that in front of him as he was
18 verbally given those rights in Spanish by Officer
19 Alvarado. I don't know why, but they do have the
20 English Miranda form that they filled out as well.
21 Probably Kevin Goodman had that in front of him as he
22 read. This is number 3. This would be the written
23 statement. And number 4 is Alvarado's translation.

24 THE COURT: All right. Let me hear y'all gentlemen
25 on the oral statements first and then the written

1 statements second.

2 MR. PINILLA: Your Honor, on the oral statements,
3 Judge, you heard Sergeant Rowe testify that he did not
4 know what was going on. No one contacted the
5 interpreter that night. No one from police law
6 enforcement. No one asked how she knew the family.
7 Investigator Goodman said that she knew the family real
8 well. She knew the child really well and she knew the
9 party, but we never went into the bias, Your Honor.

10 Those statements were not heard first hand. Those
11 statements were heard through a translator. And
12 furthermore, they were heard from the mother. The
13 mother told the translator, the translator told the
14 officer responding that night which was Sergeant Rowe.

15 What we ask, Your Honor, is that Sergeant Rowe not
16 be allowed to testify that my client said these things
17 that night when they came from the mother through the
18 translator to the officer.

19 THE COURT: All right. Now, I thought Rowe
20 testified to two things both from mother to Rowe through
21 the translator and then from Hernandez to translator to
22 Rowe. Those are separate lines.

23 MR. PINILLA: Judge, the issue is the bias on the
24 translator.

25 THE COURT: Okay.

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1 MR. PINILLA: Sergeant Rowe cannot testify that he
2 heard these things first hand because he didn't know
3 what he was saying. He didn't know if he was saying
4 something completely unrelated. Now, if they come from
5 the translator, Your Honor, I would concede that's
6 something different and we can work on that on cross.
7 But for Sergeant Rowe to say that he heard these things
8 or he heard these things from the translator, the
9 translator is going to be here for the trial, Your
10 Honor. I just don't think -- I think that the value is
11 outweighed when the officer is saying he heard my client
12 say these things.

13 THE COURT: All right. What I think that under
14 Jackson v. Denno in light of the translation and the
15 translator is credibility is an issue subject to cross
16 examination, but consistently Rowe said three things;
17 that the defendant said that the women dressed
18 provocatively; he was a man and had the type of feelings
19 men have; he denied sexual relations, but admitted
20 touching and not some other verb. I think that would
21 come in under Jackson v. Denno and the questioning that
22 night.

23 MR. PINILLA: I agree, Your Honor.

24 THE COURT: All right. That's what I believe. The
25 state is allowed to get admissions orally through what

1 was told to Sergeant Rowe or some other rank, but at
2 that time Sergeant Rowe, subject to whatever cross
3 examination you like of the lady used for the
4 translating. That's free game.

5 MR. PINILLA: I understand, Your Honor. So just to
6 understand and be clear, it's just limited to the word
7 touching and not something else.

8 THE COURT: Touching. The translators both were
9 very clear and they used touching every time.

10 MR. PINILLA: Thank you, Judge.

11 THE COURT: And I think they would be limited to
12 that because the translator consistently said that word.
13 I picked up on that and had written notes before I
14 realized it was an issue. That was the exact word they
15 used. All right. Go ahead.

16 MR. PINILLA: Briefly, Your Honor. The words
17 provocatively and enticing is at issue here because the
18 interpreter didn't know those words in Spanish.

19 THE COURT: No, I think she did. I don't think she
20 knew enticing. She knew provocative. She repeated that
21 word back.

22 MR. PINILLA: Okay.

23 THE COURT: I think. And obviously subject to your
24 cross examination. But I think the two questions were
25 asked: One was provocative and one was enticing. And

1 enticing was not the - there was hesitation on that
2 word. You can argue, Mr. McMullen. This is Jackson v.
3 Denno.

4 MR. McMULLEN: Thank you. May I argue respectively
5 that the probative value of how he characterized the way
6 they dressed I would say is very limited. I don't know
7 why it's necessarily an admission of anything and I
8 would tend to say, Your Honor, that the probative value
9 of how they dressed and whether they were enticing or
10 provocative, that that really does not advance the ball
11 about criminal sexual conduct, but it does, I would say,
12 prejudice the defendant in the sense that their
13 eliciting these statements really is not an admission
14 that he had any kind of sexual relationship. I would
15 say that the touching is some sort of an admission and
16 we need to deal with that, but I would ask under 403
17 that this be excluded because it's prejudicial without
18 really proving anything. Not relevant either. I guess
19 that's 403 as well or 402.

20 THE COURT: 403 is prejudicial versus probative.
21 All right. What do you say, Mr. Scott?

22 MR. SCOTT: Judge, it's highly probative. It's him
23 at the time giving his state of mind. He's trying to
24 explain what's going on. He's shifting the blame to
25 some degree. Judge, he offers, yeah, I did this, but

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1 it's because, my, God, they're dressing in these short
2 shorts, these provocative clothes. That comes out of
3 his mouth. It's highly probative I think.

4 MR. McMULLEN: But there is no, yeah, I did this.
5 He just for some reason --

6 MR. SCOTT: No, it tends to prove though what his
7 state of mind is at the time and would provide some
8 explanation.

9 THE COURT: I think on a prejudicial probative 403
10 analysis it will come in as a completeness type of
11 statement given to the translator subject to your cross
12 examination. The translator can utilize her memory as
13 to what was said by him that night. That's all she's
14 got. She didn't take notes.

15 MR. McMULLEN: Let me just also respectfully put on
16 the record rule 402, that I know all relevant evidence
17 is admissible, but evidence which is not relevant is not
18 admissible, and I would just respectfully contend that
19 this isn't relevant.

20 THE COURT: All right. I'll protect you on the
21 record on that issue, but I'm going to overrule you.

22 MR. McMULLEN: Thank you, sir.

23 THE COURT: All right. Now, are we on written
24 statements now?

25 MR. PINILLA: Judge, I believe the second was Liz

1 Rivera.

2 THE COURT: Ms. Rivera?

3 MR. PINILLA: I'm just going in chronological order.
4 Yeah. Yes. I'm sorry, Your Honor. Yes, a written
5 statement and I guess the spoken statement to
6 Alvarado.

7 THE COURT: All right. On first blush the English
8 version of the translation of understanding of rights
9 written which are basically the city's version, this
10 would be exhibits state's 1 and 2, do you all believe
11 those statements, the Miranda Rights are prejudicial
12 including the English version that Goodman was following
13 along?

14 MR. PINILLA: Your Honor, if I may.

15 THE COURT: It looks like the same signatures.
16 Looks like the same handwriting in the top portion with
17 the name, year, address, education, and people present.
18 English and Spanish look identical as to who the author
19 was.

20 MR. PINILLA: No problem with those two, Your Honor.

21 THE COURT: Those two can come in. All right. My
22 thinking on the Spanish statement, those are
23 Mr. Hernandez' words in Spanish prose and if he was
24 advised of his rights, those are his words. They come
25 in. How you interpret those is a little different. I

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1 think that would be interpreted by someone. And are
2 y'all planning to offer a different witness to interpret
3 these? Translate these? I'm sorry. The distinguishing
4 thing is the interpreter interprets oral and the
5 translator translates written; is that correct?

6 MR. PINILLA: That's correct.

7 MR. McMULLEN: Yes, sir. That would be ideal if we
8 could find somebody. Of course, they are the proponents
9 of the statement and if somebody is going to get it in,
10 I would like them to probably get the witness to.

11 MR. DANIEL: Oh, we've got somebody who can
12 translate it.

13 THE COURT: I think you're going to be limited to
14 handing this to a translating witness and say here is a
15 statement written by whom, because you can't read
16 Spanish either, and let them translate it on the stand,
17 get cross examined. Patrolman Alvarado is not certified
18 so I think his version of it would not come in because
19 he's not certified. That's my thinking. So the Spanish
20 version is in. It will come in if offered.

21 MR. PINILLA: Your Honor, that's exactly fair.

22 MR. McMULLEN: Fair enough.

23 THE COURT: Because y'all got to do that either way,
24 correct? You've got to provide somebody to translate
25 this either way, don't you?

1 MR. SCOTT: Yes, sir. If we intend to introduce it,
2 we have to have it certified.

3 MR. PINILLA: Judge, if we may briefly discuss the
4 oral statements made to Officer Alvarado.

5 THE COURT: All right. Let's talk about the oral
6 statements with Goodman and Alvarado in Goodman's
7 office.

8 MR. PINILLA: In Goodman's office, Your Honor, again
9 this was coming through Alvarado who said he hadn't used
10 Spanish in 14 years since the year 2000; that he didn't
11 know a simple word such as merry-go-round. It's a kids
12 word. Your Honor, I just think the oral translation of
13 the private parts things that he says that my client
14 said are not retorted in any form, not able to disprove
15 that other than questioning him, I think that those
16 things are outside of the scope of the handwritten
17 declaration that Your Honor said can come in.

18 THE COURT: Now, I don't think Alvarado said that he
19 hasn't spoken Spanish in 14 years until that night. I
20 don't believe he said that.

21 MR. SCOTT: I believe he said he hadn't spoke to his
22 family in Spanish since 2000 and if the court reporter
23 would --

24 THE COURT: I agree with that. But I think he said
25 something to the effect that he uses Spanish on a daily

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1 basis working for the City of Newberry as a patrolman.

2 MR. PINILLA: I thought it was backwards, Your
3 Honor. I asked him if he used it on a daily basis and
4 he told me no.

5 THE COURT: I thought he did.

6 MR. SCOTT: My recollection is that he regularly
7 translates for Newberry police department on a regular
8 basis. In fact, I asked him if he tends to translate a
9 lot for that department.

10 MR. McMULLEN: May I throw my recollection out
11 there?

12 THE COURT: Mm-hmm.

13 MR. McMULLEN: And I know the court reporter
14 probably has it right, but my recollection was he said I
15 haven't spoken Spanish on a daily basis since I lived at
16 home in New York in the year 2000. I do it from time to
17 time for the department, but I haven't spoken it on a
18 daily basis since I lived in New York. It was in the
19 context of the merry-go-round. I remember thinking they
20 have those at Coney Island. But anyway, that's my take
21 on it.

22 MR. SCOTT: I think that's accurate. Judge, that
23 was slick, the merry-go-round, but I think like Eskimos
24 have like fifty different words for something.

25 THE COURT: I don't know whether there is a Spanish

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1 word for merry-go-round because he said it twice. He
2 called it merry go around twice, not merry-go-round. He
3 called it a merry go around.

4 MR. PINILLA: It's the New York accent, I guess.

5 THE COURT: Oh. I'm not -- You may have given him a
6 trick question.

7 MR. PINILLA: It wasn't my intention, Your Honor.

8 MR. McMULLEN: It's a lot like the word carousel.
9 The carouselo.

10 THE COURT: Well, I think that Alvarado is qualified
11 to interpret Spanish because it's his native language,
12 his first language. He grew up in Bolivia. Learned
13 English when he got to New York. Certainly it's subject
14 to cross examination. He can translate the Spanish that
15 he understands. I don't think he would be allowed to
16 translate the Spanish prose. I think that's kind of
17 outside the scope of his expertise, but I think clearly
18 he's demonstrated to me a comfort zone in speaking
19 Spanish as well as translating it to, I'm sorry,
20 interpreting it to English so he would be allowed to
21 repeat the Spanish spoken by Mr. Hernandez back to
22 Officer Goodman. I don't want him, Officer Goodman to
23 be allowed to say his version of what was said in
24 Spanish that he could not understand. So Goodman can't
25 say anything that was told by Hernandez. He can say I

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1 was present. He looked lucid. He looked comfortable.
2 He didn't appear threatened. He can describe his
3 observations, but two people downstream translating
4 Spanish to English, English to Goodman's English, no,
5 I'm not going to allow that.

6 MR. PINILLA: Thank you, Judge.

7 THE COURT: All right. Y'all understand my ruling?
8 Alvarado can say what was said to him.

9 MR. SCOTT: Okay.

10 THE COURT: Goodman can't tell what Alvarado said to
11 him.

12 MR. SCOTT: I guess the way we'll handle Goodman is
13 what questions did you ask him without going into what
14 the response was, then when Alvarado comes up, what was
15 the response, something like that.

16 THE COURT: That's basically what you've got to do.

17 MR. SCOTT: We can do that.

18 THE COURT: All right. Anything else?

19 MR. PINILLA: Your Honor, just a brief oral motion
20 going along the same lines of calling the child a
21 victim. Can we not refer to Mr. Hernandez as a Pastor?
22 I think it's inciting. I think it's something that the
23 jury will find prejudicial if we keep calling him
24 Pastor, Pastor, Pastor, knowing what some things have
25 happened in the church. Can we just call him

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1 Mr. Hernandez? We can call him the defendant. We can
2 call him anything.

3 THE COURT: Okay. Will y'all call him
4 Mr. Hernandez?

5 MR. SCOTT: Yes, sir. Honestly I think that's how
6 they know him so they generally call him that. I think
7 I even referred to him as that at one time. We'll
8 refrain from doing that.

9 THE COURT: No El Padre.

10 MR. PINILLA: Thank you, your Honor. Gracias.

11 THE COURT: Abogado. I know a little.

12 MR. PINILLA: More than Alvarado.

13 THE COURT: I heard that. All right. Was that all
14 we've got to do today on this?

15 MR. SCOTT: Yes, sir, on this.

16 THE COURT: All right. I've got an issue to deal
17 with. I'm going to step outside and hopefully cool off.
18 It's hot in here.

19 MR. McMULLEN: Thank you, Your Honor.

20 MR. SCOTT: Thank you, Judge.

21 * * * * *

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

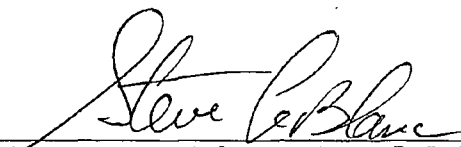
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Court Reporter for the Eleventh Judicial Circuit
7 of the State of South Carolina, do hereby certify that I
8 reported the proceedings in the before captioned case in the
9 Court of General Sessions in and for the State of South
10 Carolina on the 27 day of October, 2014.

11 I FURTHER CERTIFY that the forgoing 127 pages
12 constitute a true, accurate and complete transcript of said
13 hearing.

14 I FURTHER CERTIFY that I am neither related,
15 counsel to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 28 day of January, 2015.

18
19
20 
21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
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P.O. Box 184, Lexington, South Carolina 29071

state of South Carolina)
) Court of General Sessions
County of Newberry) 2013-GS-36-00500

State of South Carolina)
) Transcript of Record
)
Mario Valerio-Gonzalez)
Hernandez)
)
) DEFENDANT)

October 28, 2014
Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Dale Scott, Deputy Solicitor
Taylor Daniel, Assistant Solicitor
Attorney for the State

Mike Pinilla, Esq.
Michael D. McMullen, Esq.
Attorneys for the Defendant

Joy E. Holston
Official Court Reporter

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(DW) - Denotes Defense Witness
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EXHIBITS

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October 28, 2014

(Whereupon, Steven LeBlanc was the Court Reporter for the first day of trial including jury voir dire on October 27, 2014.)

(Whereupon, three interpreters presided during the case, Laura Cahue, Defendant's Interpreter; Ruby Stephens, Court's Interpreter; Elizabeth Rivera, Victim's Interpreter.)

(Whereupon, Court's exhibits 1 through 4 were marked for identification by Court Reporter, Steven LeBlanc, on October 27, 2014.)

THE COURT: Are we ready to go?

MR. PINILLA: Judge, we have one matter of housekeeping that I mentioned to Mr. Scott and Mr. Daniel. One of our witnesses has changed on our list, Judge. And I don't know if you want to provide a quick voir dire to the jury. She is from Newberry County School District, substitute the records custodian.

THE COURT: Records custodian of the County school?

MR. PINILLA: Yes, sir.

THE COURT: What is her name?

MR. PINILLA: Toni Jenkins.

THE COURT: Records custodian.

MR. SCOTT: I don't have any problem, when we get to that I don't have a problem substituting it.

1 THE COURT: Okay. Tell me, so we know, Ms. Stephens,
2 Ruby Stephens, she is going to be the interpreter for the
3 Court?

4 MR. SCOTT: So Tomasa will be our first witness.
5 Tomasa's testimony will be translated, interpreted into
6 English through Ruby Stephens for the Court.

7 THE COURT: Okay. Well, I just want to, any
8 interpreter that is not inside the rail. Y'all be very
9 aware of that, try to whisper and use a low tone of voice.
10 That way we all can get through this. I could hear her
11 yesterday. This is going to be a struggle for the jury
12 and it is distracting to hear that. But it is a
13 necessity, I understand that. So, another thing,
14 everybody stay seated until we take breaks. I don't like
15 people getting up, this courtroom is tiny, you need to
16 stay put until the jury is in and out. We don't need a
17 lot of roaming, not between witnesses, we are not doing
18 that because it is distracting to me and particularly is
19 distracting to the jury. We have got close quarters here,
20 that is the jury box over there. So, we have got plenty
21 of time. Okay. Another thing, Ms. Chappell is very
22 animated, she uses her hands a lot to talk. The lawyers
23 don't do it. You give away a lot of what is going on
24 there when I am talking. That is just something people
25 do. Just be aware of it. Are we ready to go.

1 MR. SCOTT: Yes, sir.

2 THE COURT: Bring them in, please, ma'am.

3 (Whereupon, the jury came into open court at
4 approximately 9:43 a.m.)

5 THE COURT: All right, ladies and gentlemen, we are
6 using the family courtroom. This is a makeshift. That is
7 your jury box. The lawyers won't come through there while
8 y'all are in here, the witnesses will come around to get
9 to the witness stand. If y'all want to spread out, this
10 trial is going to move a little slower than normal because
11 it involves Hispanic/English translation. And so we have
12 got to be making sure the testimony is clear for y'all's
13 consideration. If you will notice, there are some
14 interpreters around, they are talking to the people. If
15 you hear that low murmur, they have got to do it. We have
16 a Spanish witness, we have an interpreter standing. We
17 have got a different court reporter today, Ms. Holston.
18 She is the one that is generally with me. She was out
19 yesterday so we had a substitute so she is back and she
20 will hopefully finish the trial with us. That is the
21 plan. Just so y'all know, I told you a little bit about
22 the case. The indictment is the formal charges made by
23 the State to Mr. Hernandez to tell him what to be prepared
24 to come into court to defend himself for, they are
25 allegations, that is it. This is handed down by the Grand

1 Jury. We had pretrial discussion and the two charges that
2 Mr. Hernandez is accused of doing is criminal sexual
3 conduct with a minor second degree and criminal sexual
4 conduct first degree. And the difference is age. You are
5 a certain age or below is first degree, a certain age or
6 above becomes second degree. And you see the blue
7 writing, we amended it, the victim's birthdate correct.
8 Because once she turned one age to the next the crime
9 changed. So there was, the State is making allegations
10 that there was an event that occurred during some period
11 of time. Other than that the minor change is based upon
12 her birthdate. I wanted to explain that to you, that was
13 discussed by the lawyers, agreed by the lawyers that her
14 birthday was, I think [REDACTED]. And so once that occurred
15 that is what changed the way the indictment was written.
16 So, that is my handwriting in blue. It has nothing to do
17 with anything other than her birthdate and the way our
18 laws are written. Not proof of anything other than we can
19 agree that her birthdate is [REDACTED]. Now, the way the
20 trial will work, the State goes first, they sit closer to
21 you. They call their witnesses, they present their
22 evidence for your consideration. I don't know what order
23 they will call the witnesses in, it doesn't matter to me.
24 I know a little more about the case now. The defense
25 doesn't have to prove anything. Mr. Hernandez is presumed

1 innocent under our constitution and he can sit during the
2 entire trial and never say a word. And the fact that he
3 doesn't testify, we can't talk about that or discuss or
4 anything. It is not an issue if he doesn't testify. That
5 is his constitutional right. And so at the close of all
6 of the testimony and evidence and arguments I will,
7 probably the last thing I will say to you is, if he
8 decides not to testify y'all can't discuss him not
9 testifying in the jury room. Now, any criminal case, in
10 the court of general sessions is what we are in, the State
11 has the burden of proof to prove their case beyond a
12 reasonable doubt. What that means is, the preponderance
13 of the evidence is a civil case, that is just slightly
14 more than half, the little scales tip. Reasonable doubt
15 is beyond any reasonable doubt to hesitate to act. We
16 will define that later. Now, here is the key. I told you
17 I didn't want you to get on Facebook, don't do any
18 research on the computer or looking up terms that I am
19 using. The computer, wikipedia and all of those things
20 have definitions that are placed by people that may amount
21 to here in South Carolina. South Carolina has an unusual
22 definitions of laws. And some of ours are a little more
23 defined than other states and it has been that way a long
24 time. South Carolina is a conservative State and our
25 General Assembly passed the laws and our Supreme Court

1 interprets the laws and those laws are my job to instruct
2 you on. So, if you have an idea of what the law might be
3 of what you heard it was on TV or on NCIS, those don't
4 matter. It is what I tell you the law. So part of my
5 instruction is, forget about those other laws, use my
6 instructions to you. Don't buy in to what you hear on the
7 street, let me tell you what the law is on this case. I
8 ask y'all to be good listeners. I have candy for y'all,
9 that is your box and I will refill it. We will take a
10 break after opening arguments. Ms. Ringer will be our
11 Foreperson. Once we take the first break you, please,
12 find out who wants notepads. Y'all can take notes, you
13 are not required to but if you want to you can. It is
14 allowed but not required. If you want to sit and listen,
15 you can take notes. Y'all are welcome to bring the notes
16 back and forth. If you need a break and we can take a
17 break. We will normally take a break between witnesses.
18 All right, y'all's job are going to be to answer questions
19 of fact. Did so and so happen, did so and so do
20 something, yes or no. The State is going to call its
21 witnesses first, the defense may or may not call any
22 witnesses, that is up to them. Y'all, during the breaks
23 are not allowed to discuss the testimony, y'all can't go
24 back and discuss the testimony until you hear all. It is
25 not fair to start discussing and make a decision based

1 upon the first witness or the second witness or the fifth
2 witness. It is off limits discussion wise until I say
3 okay, now you have heard the law of South Carolina, go
4 back and start deliberating. Until then you can talk
5 about the weather, whatever you want, but not about the
6 case until the very end when I say begin deliberating.
7 Now, no one is required to sit in any particular chair
8 except Ms. Ringer, you need to sit there. I think that is
9 it. We will begin, the State will open first. Y'all
10 stand, Ms. Folk will place you under oath.

11 (Whereupon, the jury was sworn at approximately 10:03
12 a.m.)

13 THE COURT: All right, Mr. Daniel:

14 MR. DANIEL: Thank you, Your Honor, if it please the
15 Court. I want to apologize on the front end, this weather
16 has kind of got my sinuses aggravated. Ladies and
17 gentlemen, pure and simple, this is a child sex abuse
18 case. Another way I can phrase that is a statutory rape
19 case, a lot of states refer to the offenses we are dealing
20 with as statutory rape. As the Judge kind of indicated,
21 it is all based upon the age of the child. And the State
22 of South Carolina and in all states, children, minors are
23 incapable of consenting to sexual activity with an adult.
24 Children are incapable of that and that is for a very good
25 reason, obviously, we protect children. They cannot

1 consent to sexual activity with an adult. And the reason
2 for that is to protect them from sexual predators. We
3 understand children are vulnerable, we understand they are
4 easily exploited and they are naive. But in this case
5 Mario Hernandez stands before you on trial for
6 perpetrating such acts on a child. The child in this case
7 is MINOR . She was 9 years old when this first
8 started. And at that age that is why you are hearing a
9 criminal sexual conduct in the first degree charge. That
10 is when she remembers it started. Mario Hernandez
11 engaging in sexual intercourse with her. This all takes
12 place at a residence, [REDACTED] in the City of
13 Newberry, not far from this court house obviously. And it
14 wasn't just one event, it was a series of events, all the
15 way up until the watershed event of June 29th of last
16 year, 2013. That is when all of this came to life.
17 Everything surfaced and that is because the facts of this
18 case are a little different than a typical child sex abuse
19 case, where only the child and the abuser, the adult
20 abuser knows what is going on in this case. We have an
21 eyewitness to the sexual encounter and that eyewitness is
22 MINOR mother, Tomasa. Tomasa walked in during
23 the act on that June 29th date. She walked in her
24 daughter's room, turned on the light and discovered Mario
25 Hernandez in between her 12-year-old daughter's legs. She

1 was 12 at this time, in between her legs, her daughter had
2 no underwear on. Mario Hernandez was exposed, his private
3 area exposed. So, caught in the act so to speak. It is
4 difficult facts, I know we don't like to think of these
5 things, the details are grim, obviously we are dealing
6 with a child. But these are the facts that we have to
7 present to you. So, as I stated [REDACTED], the
8 incident location where these different sexual encounters
9 took place over a number of years. Tomasa, the mother,
10 lived at this residence with her two children, MINOR and
11 her, MINOR little brother. Mario Hernandez was
12 essentially her landlord, Tomasa's landlord, she was
13 living there, paying a little bit of rent. Also attended,
14 Mr. Hernandez is apparently a pastor, was attending his
15 church and I believe at one point Tomasa, the mother, was
16 romantically involved with Mr. Hernandez. And you will
17 hear testimony from the mother, eyewitness, which is like
18 I said, highly unusual in these type of cases. You will
19 hear testimony from the officers who arrived on the scene,
20 that June 29th night, it was at night. Tomasa basically
21 instructed her daughter to call the police, that she had
22 discovered, caught in the act. So that is kind of the
23 focal point of this trial on June 29th night, even though
24 this case dates back to 2011 when MINOR was 9 years old.
25 So that is what we are dealing with. And once MINOR

1 turned 11 then it becomes criminal sexual conduct with a
2 minor in the second degree. Because once a child is 11 it
3 is a different offense, it is all age. But the testimony,
4 you can't take one piece of evidence and determine guilt.
5 It is a sum of the parts, it is the eyewitness, it is
6 MINOR testimony. She is going to tell you when this
7 all started. It is statements that Mr. Hernandez made on
8 the scene that night. And Mr. Hernandez is not fluent in
9 English. There was a translator, an interpreter I should
10 say, on the scene that night, Liz Rivera. She is well
11 known in the Hispanic community here in Newberry. She is
12 also, helps out law enforcement, she is court certified.
13 She was on the scene, the police used Liz Rivera to
14 interpret what Mario Hernandez says on the scene. You
15 will hear from Officer Andy Rowe who was the first
16 responding officer with the City of Newberry, has
17 jurisdiction of this case. You will hear testimony, like
18 I said, from the mother, from the child, MINOR. You
19 will hear testimony from the investigating officer. A
20 nightgown was seized that MINOR was wearing on that June
21 29th night. There is some, a little bit of forensic
22 evidence from the bodily fluid sample taken and analyzed
23 by the State Law Enforcement Agency. They did the male
24 DNA profile so you will hear testimony from the DNA
25 analyst. So we have got independent evidence, why would a

1 male DNA profile be developed on a young girl. But, you
2 know, I am building a house, I don't stop with a roof.
3 The foundation of the house is MINOR . Well, what reason
4 does she have to fabricate this, she doesn't. The
5 testimony will bear that out, the evidence from this
6 witness stand will bear that out. So that is essentially
7 kind of a roadmap, obviously everything is going to play
8 out at trial. I am not going to speak on stuff that could
9 come out, but that is what we intend to present. And
10 briefly, firmly convinced. At the conclusion of the trial
11 the State, we do have the burden of proving Mr. Hernandez
12 guilty beyond a reasonable doubt. That just means that we
13 need to leave you firmly convinced that Mario Hernandez
14 did engage in sexual intercourse with MINOR starting
15 when she was 9, ending on that June 29th, 2013 night. And
16 we gladly accept that burden in this case. This is how
17 justice is administered in this country. Obviously, this
18 case is important to Mario Hernandez, he deserves a fair
19 trial, a day in court and he is getting that today. There
20 are rules in place to make sure everything is fair, rules
21 of evidence. You have got the U.S. Constitution, you have
22 got the Judge sitting here making rulings on what is
23 admissible, what you are doing here. This case is also
24 important to the State of South Carolina, important to
25 MINOR . It is important to all parties concerned. That

1 is kind of the search for justice. When you are searching
2 for justice you can't ignore the search for the truth
3 because they are one in the same really. Truth, what
4 really happened. When you return and deliberate in the
5 jury room, you are going to be asked to return a verdict
6 which means to speak the truth, tell us what happened, you
7 are the finder of facts. That is why we want everything
8 coming from this witness stand to be truthful. That is
9 why people are sworn in, they have to put their hand on
10 the bible and swear to tell the truth because we want to
11 make sure what they are saying is accurate. So, that is
12 why I ask you to stay focused, keep your attention on what
13 really happened. Now, the defense, they don't have to
14 prove anything. The Judge told you that in his
15 preliminary instructions. But I suspect what they are
16 trying to do or what they will do is to perhaps get you
17 distracted on a side issue, kind of misdirection tactics.
18 The old adage or the old saying is you can't see the
19 forest for the trees. You get bogged down in the minor
20 details and you miss the big picture. I ask you not to do
21 that. I ask you to focus on what happened on that night
22 in question, June 29th of 2013. That is kind of, like I
23 said, our focal point, what really happened. What is
24 relevant. And if the defense is asking certain questions
25 that aren't relevant, keep that in your mind, focus on

1 what really happened. If this is going to help me
2 determine guilt or innocence because that is your job.
3 Your job, you live in Newberry County, is to determine
4 people that are accused of crimes in Newberry County
5 really did commit them, that is your job. It is also a
6 responsibility, we understand that. So our job is kind of
7 meaningless until you decide and you get the case. And
8 you have got to use your common sense. The common sense
9 you had before you were ever on this jury. You have got
10 to use it and evaluate the evidence. It doesn't end when
11 you come to this courtroom. You need it now more than
12 ever. So, if something doesn't make sense to you out in
13 the real world, shouldn't make sense to you when you are
14 here hearing the testimony. Briefly, I am Taylor Daniel,
15 I am one of the Assistant Solicitor's here in Newberry
16 County. I am going to be trying this case with Dale
17 Scott; our Investigator, Wendy Chappell to assist us. We
18 are prosecutors, we enforce the criminal laws of this
19 State. The rubber meets the road at trial, an arrest, all
20 the stuff that the police do doesn't mean anything until
21 someone has their day in court. So, it is really up to
22 you guys to tell us what happened. And I will submit to
23 you the evidence is only going to lead you to one logical
24 conclusion that he is guilty. I just ask you to take a
25 fair look at the evidence and what makes sense and at the

1 end we will ask you to return a verdict of guilty to both
2 of these counts. Thank you.

3 THE COURT: Mr. McMullen.

4 MR. MCMULLEN: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. MCMULLEN: Madam Forelady and ladies and
7 gentlemen of the jury, it is an honor to be here in
8 Newberry County even if we are not in the big nice
9 beautiful court house you have up the hill. I always
10 wanted to try a case in there, have done other work in
11 there over the years but unfortunately leaks have made
12 that impossible now. I want to start by talking just a
13 minute about the burden of proof and reasonable doubt that
14 we are cloaked with as members of this society. And when
15 we come into this legal system, the greatest one in the
16 world, we are all cloaked with this shroud of innocence.
17 And I have thought of it like, maybe in this manner, if I
18 walk out in the morning and get the newspaper and I see
19 that John Smith robbed the doughnut shop down the street I
20 say that is probably what happened. But if I saw that my
21 brother, Paul McMullen, robbed that store I would say,
22 that can't be true, you are going to have to prove that to
23 me. That I submit to you, ladies and gentlemen, is the
24 presumption of innocence and the burden of proof the State
25 has. The State is asking you at the end of this trial to

1 find Mario Hernandez guilty of forcibly raping MINOR

2 . Now, they don't have to show by force, by virtue of
3 her age, as you were told. If they had sex, if he
4 penetrated her then, as the Judge will instruct you,
5 because of her age at the time he is guilty of criminal
6 sexual conduct. If it happened before she was 11 years
7 old he is guilty of criminal sexual conduct with a minor,
8 criminal sexual conduct in the first degree. If it
9 happened after she was 11 then it is second degree. The
10 first indictment claims one thing, the other claims the
11 second degree. They are consistent, I am not saying they
12 are inconsistent, because of her birthday she turned 11,
13 they say during this four year period when she was being
14 forcibly raped. Now, again, they don't have to prove that
15 she was forcibly raped. But that is the accusation. The
16 police say it was without consent and they say after four
17 years. Now, sometimes they say it was two and a half
18 because the indictments really say, we don't go back to
19 when she was 9, they say, this occurred on June 29th of
20 2013. They go back, for some reason, to January 1st of
21 2011, not back to 2009 like you would expect if they say
22 it happened for four years. Maybe they will explain that,
23 maybe it will be one more thing we never find out.
24 Motive, we don't have to prove motive and neither do they.
25 It doesn't matter what I think but I don't know what their

1 motive might be for these accusations. You may never know
2 either, maybe it will come out, we will see together. But
3 they claim that Mario Hernandez repeatedly raped this
4 little girl for over a great length of time. And the
5 allegations doesn't get much more serious than that. Now,
6 we all know if we are accused of something horrible, we
7 better have some pretty good reasons for doing it. Things
8 have to add up, other explanations should be considered
9 and ruled out. That is what you have before you jump to,
10 rush to judgment and accusations. If I am on a camping
11 trip with my buddy's and I accuse one of them of taking
12 the last soda pop out of the cooler, that is one thing, I
13 might even be holding the last one in my hand when I do
14 it. But common sense in our life experiences tell us not
15 to accuse people of something like having sex with a
16 9-year-old child for the next four years of her life or
17 two and a half without quite an investigation. You heard
18 that she was, MINOR was being raped by Mario and that
19 MINOR mother caught this happening, caught Mario in
20 that act. You will hear testimony that one version of
21 several, one version that the mother tells, Tomasa tells
22 police or tells investigations is that she was lying down
23 in one room in this mobile home, she sees a shadow going
24 by, Mario she says. She gets up and walks down the hall
25 and finds Mario in the act, in the time that it takes to

1 walk from one end of the mobile home to the other. That
2 is the eyewitness. I submit to you that you are going to
3 be astounded by the lack of facts to back up these serious
4 allegations. What I am going to ask you to do, please, is
5 look for this, the physical evidence. That is some kind
6 of proof of these horrible accusations. If this was a
7 freely committed act and they rush this girl to the
8 hospital you might expect that they would find bruises,
9 since it is forceable rape. You might expect his DNA
10 inside her and they tested her vagina, they tested her
11 anus, they didn't find his DNA or anybody else's in there
12 except her's. Sometimes testimony is enough to persuade
13 y'all by itself because it is details, specific and
14 compellable. Here you are not going to hear the specifics
15 unless we all hear for the same time off of this witness
16 stand. If someone were being raped by force for four
17 years you would think there would be some proof of that,
18 some indications of it, perhaps that person would be
19 confronted or questioned by a school counselor or a
20 teacher or a friend or maybe they would have told any of
21 those people. Maybe they would have gone to the police
22 during that four year period of time. On June 29th about
23 11:18 p.m. police get a phone call and they were there by
24 11:22, Newberry County police get there in four minutes.
25 That is impressive but I am afraid it goes downhill from

1 there. The testimony will show that for some reason a
2 friend that, the interpreter, her name is Liz, she is
3 already there. Four minutes for the police to arrive but
4 for some reason at 11:22 at night Liz is already there and
5 she is dressed and she is ready to interpret, in fact she
6 has already told police what has gone on before they get
7 there. So, it is amazing. This acquaintance is suppose
8 to be an impartial interpreter but you are going to hear
9 testimony that she got a phone call from either, from
10 Tomasa, the mother, or from somebody else. I don't know.
11 But somehow she gets there that fast. So four mintues
12 after the call police get there, Mario is in the house, he
13 comes out peacefully, they slap on the cuffs, they take
14 him into custody, they take him to jail, he is gone. The
15 police then write down whatever the Mom's friend, Liz,
16 interprets and says she was told by Tomasa that, that
17 whatever she says Mario says. They just write down their
18 summary. I am going to tell you a quick story. There is
19 a bank robbery and the suspect only speaks Spanish. The
20 police says \$5 million dollars was stolen so they go get
21 an interpreter. They sit down with the interpreter and
22 the suspect and they asked him, did you steal the money.
23 There is a conference between the interpreter and the
24 suspect, the interpreter says, yes, he stole the money.
25 They ask how much was taken. There is a short conference

1 between the two. The interpreter says, he says \$5 million
2 dollars. They say where is it, you tell us where it is
3 and we will help you out. There is a longer conference
4 between the two. The interpreter says, you will have to
5 send him to jail, he would go to prison than tell you
6 where he hid that money. The point is, the interpreter
7 can say what the interpreter, what serves the
8 interpreter's interest. So, the police talked to Liz who
9 says Tomasa says this, says Mario says that or MINOR
10 says this. The police, Investigator Goodman you will hear
11 get that information and then Goodman tells another
12 officer then that officer goes and gets a warrant from
13 Judge Partridge all before July 1st. When Liz gets up
14 here, pay careful attention whether she followed the
15 rules. There is no such thing as a perfect crime, there
16 is no such thing as a perfect setup. But for some reason
17 ask yourselves, please, why was Liz already there.
18 Perhaps there is a motive there. Don't know what it is
19 going to be to get Mario out of the house. Listen to what
20 a U Visa is, a U Visa. So, evidence, don't be fooled,
21 please by the word. Evidence is only as good as the
22 weight that is placed upon it. It is only as good as it
23 is trustworthy. Did the police take a few shortcuts here.
24 They seized things from Mario's house without a warrant,
25 things that we could probably keep out if we wanted to.

1 The police failed to follow the law such so we could do
2 that perhaps. They handcuffed Mario, all the alleged
3 victims and witnesses are outside and yet they go in the
4 house without a warrant and they take what they want. The
5 photographs, clothes, a blanket. We won't object when
6 that evidence comes in because whatever evidence there is
7 helps us. Mario, you will hear, after he has already been
8 arrested, gave the police an interview on July 1st, he
9 consented for them to go back and search the house. He
10 said, no, this is what I was wearing that night. The
11 police go to the house, you will hear, and MINOR and her
12 mother are sitting there in the house that Mario lets them
13 stay in and they say yes, that is what he was wearing that
14 night. Mario gives them, voluntarily without a warning,
15 gives them a swab of his cheek, saliva inside, a buccal
16 swab. And you will hear that happen. Now, we are not
17 going to object to any of that. We may object if they
18 bring in an expert from SLED who says anything other than
19 what is in the report which is inconclusive. We tested,
20 we tried all of our test and the best we can say is, we
21 don't know. Now, the test ought to do what their name
22 employs, they should pass or fail, they should win or lose
23 or they should tell you what something about the
24 information they are seeking. These tests are
25 inconclusive and if the State tries to put up a chart that

1 shows a bunch of numbers it is not going to change the
2 fact that the experts say inconclusive. So we would
3 object to some chart that has only going to be met to try
4 to28 confuse people. There is going to be very little
5 detail, there is going to be no DNA, there is going to be
6 items of evidence that they took such as a blanket that
7 were analyzed. They say these rapes happened for four
8 years on this blanket, they take the blanket and then they
9 don't analyze it. They take very limited brief statements
10 about this four-year ongoing pattern. There is little or
11 no investigation and when the reports and accusations
12 come, you will see I think, from unreliable sources.
13 Interpreters you will hear disclose conflicts of interest.
14 They are not suppose to be a lawyer for the defendant,
15 they are not suppose to have friends that they interpret
16 for in court. They have to translate exactly word for
17 word. The State says Liz is certified, Liz is not, we
18 will see that. Liz is, what's the word, there is
19 certification and then there is a lower standard and that
20 lower standard, it allows you to translate, I am sorry,
21 allows you to interpret words, language but not the
22 written word. And there is apparently some distinction
23 between translating and interpreting. Interpreting is the
24 spoken word, translating is the written word. Either way
25 Liz is authorized to do one thing but not the written

1 word. Maybe you will believe that translators and
2 interpreters should record the things that they are being
3 ask to interpret or translate. So there is no question
4 and if there ever is you just play back the video or
5 replay the tape. Same thing would be great if the
6 investigators do that with Mario's statement or anybody
7 who speaks English, if we could watch a video and see
8 exactly what was said. That didn't happen. When you have
9 heard all the evidence we only ask for a fair trial. I
10 ask that you be ready to have the courage to take to rule
11 that the State, that the State meets its burden of proof.
12 But be open to the chance and have the courage to be ready
13 to obey your oath, be ready to go into your jury room and
14 deliberate and have the courage to say the State can't
15 prove its case, can't return a good conscious, any other
16 verdict than not guilty. Thank you.

17 THE COURT: All right. Let's take a brief break.
18 Y'all get your note pads. When y'all are ready let us
19 know because we will probably, we will be waiting on you.
20 Y'all step in the jury room, don't discuss the case.

21 (Whereupon, the jury was excused from open court for
22 a short break.)

23 THE COURT: We will take a break.

24 (Whereupon, a short break was taken.)

25 THE COURT: Let's bring them in.

1 (Whereupon, the jury came into open court at
2 approximately 10:45 a.m.)

3 THE COURT: I am told the first witness is going to
4 require a translator. I can't remember another trial that
5 I have had that requires a translator. I have had pleas
6 and other civil matters but the translator is going to
7 stand over here and she is going to speak this way, toward
8 Joy, my court reporter. And I am going to really make the
9 question and answer take turns so there is no
10 interrupting. If y'all don't hear the translator's
11 interpretation give me the sign and she will repeat it.
12 Okay. All right. Call your witness.

13 MR. SCOTT: Judge, my first witness is going to be
14 Tomas Aguirre-Cruz.

15 TOMASA AGUIRRE-CRUZ, being
16 first duly sworn, testified as follows:

17 MR. SCOTT: Judge, at this point can the interpreter
18 be sworn in?

19 THE COURT: Yes.

20 RUBY STEPHENS as Interpreter being
21 first duly sworn, testified as follows:

22 (Whereupon, Ruby Stephens was the interpreter for the
23 testimony of Tomas Aguirre-Cruz.)

24 DIRECT EXAMINATION

25 By Mr. Scott:

1 Q Okay. Tomasá, where do you live right now?

2 A In North Carolina.

3 Q Tomasá, where in North Carolina are you living right
4 now?

5 A In the City of Greensboro.

6 Q How long have you lived up there?

7 A Since two months.

8 Q Where did you move from?

9 A From Newberry.

10 Q How long did you live in Newberry?

11 A Seven years.

12 Q And were you living in Newberry on June 29th of 2013?

13 A Yes.

14 Q Do you remember the address you lived at on that
15 date?

16 A [REDACTED].

17 Q Tomasá, who lived in that home with you?

18 A The pastor, Mario Gonzalez.

19 Q Anyone else?

20 A And I and my children, and one other person.

21 Q And who are your children?

22 A MINOR, S.M.

23 Q How old was MINOR in 2013?

24 A Twelve years.

25 Q What's her birthday?

1 A [REDACTED] 2001.

2 Q The -- okay. So, Mario Hernandez, MINOR and S.M. I
3 and Tomasá lived at the residence?

4 A And another person whose name is Salo Martínez also.

5 Q Who is Salo Martínez?

6 A He's a guy that I lived with before.

7 Q Okay. How old is Salo Martínez?

8 A Of age?

9 Q Yes.

10 A Like 27 years.

11 Q Did I understand that your son's name is S.M. I

12 ?

13 A Yes.

14 Q Was Salo Martínez the father of your son?

15 A No.

16 Q Why do they have the same name?

17 A Because when my son was born, he decided to give him
18 his last name.

19 Q Where is the father of your son?

20 A The father of my son died in Mexico.

21 Q Okay. Did you pay rent at [REDACTED] ?

22 A The young man paid my rent and of my son.

23 Q Why?

24 A Because he said that he was going to help me.

25 Q Okay. Why?

1 A Because that's what he decided. He came to an
2 arrangement with the pastor.

3 Q Did -- did he adopt MINOR as well?

4 A He did not adopt her, but he loved her as his
5 daughter.

6 Q Okay. And did you have a relationship with Salo
7 Martinez?

8 A Yes, I had a relationship with him.

9 Q Did you have a relationship with him June 29th of
10 2013?

11 A No.

12 Q Who did you have a relationship with on that date?

13 A I had relations with Pastor Mario Gonzales.

14 Q How long had you---

15 THE COURT: Mr. Scott, one point of order. We
16 hadn't, let me talk with the lawyers.

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

20 Q Tomasa, we, I'm going to ask you please to call, when
21 you refer to Mr. Hernandez, refer to him as mister instead
22 of pastor.

23 A Okay.

24 Q And just to avoid any confusion so we know who we're
25 talking about.

1 A Okay.

2 Q Did you pay your rent to Mr. Hernandez?

3 A Yes.

4 Q Okay. And you were in a relationship with Mr.

5 Hernandez at June -- on June 29th of 2013?

6 A I had relations with him.

7 Q Okay. And how long had you been in a relationship
8 with him on that date?

9 A Ever since we had come to live there with him.

10 Q Okay. When did your relationship with Salo Martinez
11 end?

12 A It had been about six months that I had not had a
13 relationship with him -- I had not had relations with him.

14 Q Okay. On June 29th, 2013, how long had you lived in
15 that home?

16 A Four years.

17 Q So at some point were you in a relationship with both
18 men at the same time?

19 A No, only with Mario Gonzales, with Mr. Mario
20 Gonzales.

21 Q Okay. When did your relationship with Salo Martinez
22 end?

23 A Like six months didn't have any relation.

24 Q Okay. I am talking about a sexual relationship.

25 A But I didn't have relations with him anymore.

1 Q Six months before June 29th, 2013 would have been
2 December 2012?

3 A Can you repeat the question again?

4 Q You said you ended your relationship with Salo
5 Martinez six months before June 29th, 2013, correct?

6 A Yes.

7 Q But you said you had been in a relationship with Mr.
8 Hernandez for four years, correct?

9 A Yes.

10 Q So you had to have been dating both men at the same
11 time, correct?

12 A No.

13 Q Please explain.

14 A When we came to live with Mr. Hernandez like two,
15 three days after that, he began to touch me. And since I
16 was -- and also I was alone when he began to touch me. I
17 thought he wanted to do something bad to me. And I closed
18 myself in my room and he came out and said that I should
19 forgive him, that he was not going to begin to do that
20 again.

21 Q Okay. At this time, were you dating Salo Martinez?

22 A No.

23 Q No. When did you begin a relationship with Salo
24 Martinez?

25 A It was about -- oh, I don't remember. I don't

1 remember when I got to know him. No, I don't remember.

2 Q I need an estimate of about how long had you lived in
3 the house when you started seeing Salo Martinez?

4 A Because we had lived in another place with him
5 before.

6 Q Okay. All right. At some point were you in a sexual
7 relationship with Salo Martinez?

8 A No.

9 Q Describe your relationship with Salo Martinez then?

10 A I lived in Atlanta and I knew him, and he told me to
11 come live here in Newberry. And by then, my daughter she
12 was born in Atlanta too. She was about three years old.
13 And so I came with Salo Martinez in Newberry, and I lived
14 with him.

15 Q But it was not a sexual relationship?

16 A Well, he was my other half. I lived with him.

17 Q Were you married?

18 A No.

19 Q Okay. Okay. Approximately 2009 is when you moved in
20 with Mario Hernandez?

21 A Yes.

22 Q And you moved in with your other half and your
23 children?

24 A Yes.

25 Q And you said Mr. Hernandez approached you sexually

1 within three days of moving in?

2 A Yes.

3 Q And did he know Salo Martinez was your other half?

4 A Yes, he knew.

5 Q Is that why he apologized for touching you?

6 A I think that, because of that.

7 Q Did you tell Salo Martinez what Mr. Hernandez had
8 done?

9 A Yes, I told him.

10 Q Okay. Did they have a confrontation?

11 A No, he didn't say anything.

12 Q Who was the landlord of that home?

13 A The owner was Senor Mario Hernandez.

14 Q Okay. Let me show you State's number three. Do you
15 recognize this?

16 A Yes.

17 Q What is this?

18 A It's the car of Senor Mario Hernandez.

19 Q What is the home?

20 A That's a trailer.

21 Q [REDACTED] ?

22 A Yes.

23 MR. SCOTT: Your Honor, the State offers number three
24 for admission.

25 THE COURT: Any objection?

1 MR. PINILLO: No objection, Your Honor.

2 THE COURT: It's admitted without objection.

3 (Whereupon, State's exhibit number 3 was admitted
4 into evidence.)

5 Q Ms. Tomasa, where was your room in the trailer?

6 A In the first entrance.

7 Q Okay. If that's the front door, would you point to
8 where your bedroom would be?

9 A Here in the corner.

10 Q It's in the back corner?

11 A Yes.

12 Q Who was in that bedroom with you?

13 A My daughter.

14 Q MINOR ?

15 A Yeah, MINOR .

16 Q What was your son's name?

17 A S.M. ..

18 Q Where was his bedroom?

19 A From where there is the living room and then
20 following the kitchen and then beyond is the other room on
21 this side over here.

22 Q Would you point to where his room would be?

23 A Like that here.

24 Q In the corner?

25 A Yeah, where the kitchen is.

1 Q Where was Mario Hernandez's room?

2 A Here in this corner.

3 Q Who was in the room with S.M. ?

4 A Only he, he slept there alone.

5 Q Salo Martinez, where was his room?

6 A He slept in this room where my son was.

7 Q I thought you said your son had that room alone?

8 A That room, Salo Martinez rented it from the pastor --
9 from Mr. Mario Hernandez. Pardon.

10 Q So S.M. , your son, and Salo Martinez shared
11 that room together?

12 A Yes.

13 Q Did anyone else stay in the room with Mario
14 Hernandez?

15 A I slept there.

16 Q Okay. I thought you said you slept in the room with
17 Tomasá -- I mean MINOR ?

18 A Sometimes I slept there.

19 Q Do you remember June 29th of 2013?

20 A Yes. Yes, I remember.

21 Q What was going on that night?

22 A That night, I -- I have diabetes. I've always been
23 ill, and I've always had a lot of pain in my head. That
24 night I had already told Mr. Mario Hernandez that I didn't
25 want to have any relations with him. But he insisted like

1 he -- just like he didn't want to break off that relation.
2 He always -- like he pressured me all the time. And so
3 that night I had -- I had slept -- I slept with my son. I
4 took some pills for the headache. But he was, Mr. Mario
5 Hernandez was washing some clothes, and so--

6 MS. STEPHENS: Permission to clarify?

7 A --and so he was in the living room with the
8 television turned on. And I entered into the, my, into my
9 daughter's room. I told her to take a bath so that she
10 could go to sleep. And then I went to my son's room and I
11 lay down, but I couldn't sleep. I felt something in my
12 heart like something was going on. And so I got up. And
13 I saw when a shadow went by toward the living room. And I
14 went into the room with Mr. Mario Hernandez and he was not
15 there. And so I went to the living room. There wasn't
16 anyone there either. And so I went into my daughter's
17 room. I turned on the light and there was a blanket on
18 the floor, on the rug. And my daughter was lying down
19 there without underwear. And my daughter got up quickly
20 and went to the bathroom. And he got up really quickly
21 like that too. And I asked him what was going on and he
22 told me that nothing was going on. And then my daughter
23 came out of the bathroom and I asked her what was going
24 on. And that was when -- and I told her not to be afraid.
25 And she began to cry. And she told me that he abused her.

1 And then he told me that yes he had touched her and that
2 he had had relations with my daughter. And then my
3 daughter said -- and I said, well why had she never told
4 me. And she said because she was afraid that I wouldn't
5 believe her. Because my daughter knew that I had a
6 relationship with Mr. Mario Hernandez. Then I told her
7 that I was going to believe her, that she should not be
8 afraid. That he said that -- or that he threatened
9 because he said that he was a pastor and that no one was
10 going to believe her. And so I told her to call the
11 police. He bent down and he began to cry and said he was
12 going to kill himself, that he has a family in Guatemala
13 and that should do it for his daughter. That he has a
14 daughter that has -- that is about 18 years old I think.
15 And so I asked him, well, why did he do it to my daughter
16 if he had me as a woman. He just said he was going to
17 kill himself if we called the police. And he told me that
18 -- he confessed to me that a case like that had happened
19 in North Carolina the same.

20 Q Did you call the police?

21 A He took away my cell phone. And I told my daughter
22 to run over to the nextdoor neighbor who is a detective
23 also. So my daughter ran through the backdoor and asked
24 for a telephone from the wife of the policeman. She would
25 call the police, my daughter.

1 Q Where was -- where was S.M. ?

2 A He was sleeping in the room. But when he heard, he
3 began to cry and he asked me what was going on.

4 Q Well,--

5 A He told me that--

6 Q Can't -- can't talk about what other people say.

7 Where was Salo Martinez?

8 A He did not live there anymore.

9 Q Okay. Okay. So he was not living there June 29th of
10 2013?

11 A No, he was no longer living there.

12 Q Oh, I was confused earlier. When did Salo Martinez
13 move out?

14 A When he became aware that I and Senor Hernandez had a
15 relationship.

16 Q Okay. I mean what -- what was MINOR wearing when
17 you turned the lights on in her room?

18 A She was wearing a gown like that to sleep.

19 Q Was she wearing underwear?

20 A Yes, she had on underwear.

21 Q She was wearing underwear when Hernandez was lying on
22 top of her?

23 A No.

24 Q Okay. Well, that's what I'm asking. What was she
25 wearing when you came into the room when Mario Hernandez

1 was in there?

2 A Well, she had on her clothes but not her
3 underclothes.

4 Q Okay. Was she wearing pants?

5 A Who, my daughter?

6 Q MINOR ?

7 A No.

8 Q What was Mr. Hernandez wearing?

9 A He had on some shorts and a white t-shirt.

10 Q Was his penis exposed?

11 A Everything was fast, but it seems that -- yes, it
12 could be seen.

13 Q You saw his penis?

14 A Yes, I looked at it.

15 Q And he was lying on top of MINOR when you turned
16 the lights on?

17 A Yes.

18 Q Do you know how long he had been in the room with
19 her?

20 A Since I was in my daughter's room, I couldn't tell
21 you how long he had been in the room with my daughter.

22 Q You were in your son's room you mean?

23 A Yes. Yes.

24 Q I'm going to show you States number 1.

25 A That's the room where my daughter sleeps and I.

1 Q Okay. That -- that would be this room?

2 A Yeah.

3 Q Let me show you State's number 2.

4 A That's the room where my son sleeps.

5 Q Is this not the same room?

6 A Yes. Yes, this is the same room.

7 Q Who's room is it?

8 A Where I sleep and my daughter.

9 Q Do you share the bed?

10 A Yes, and we share the bed with my daughter.

11 Q In State's number 2, do you see where you saw MINOR
12 and Mr. Hernandez on June 29th, 2013?

13 A In this part right here.

14 MR. SCOTT: Your Honor, the State would offer State's
15 number 1 and 2 for admission.

16 MR. PINILLO: And no objection, Your Honor.

17 THE COURT: State's 1 and 2 will be admitted without
18 objection.

19 (Whereupon, State's exhibits 1 and 2 were admitted
20 into evidence.)

21 MR. SCOTT: And, Judge, permission to publish to the
22 jury?

23 THE COURT: Certainly. Are you going to do it on the
24 overhead?

25 MR. SCOTT: Yes, sir.

1 THE COURT: All right. Ms. Ringer and ladies and
2 gentlemen of the jury, the exhibits that are introduced,
3 thus far we've had two or three, y'all will have those in
4 the jury room so you can look at them. Mr. Scott wants to
5 ask questions about them. They're welcome to testify
6 about them. Y'all will have those to look at in the jury
7 room as long as you want. So you don't have to commit
8 them to memory, they'll be with you during deliberations.
9 So they're now admitted. Go ahead, Mr. Scott.

10 By MR. SCOTT:

11 Q Okay. Ms. Cruz, would you turn towards the picture?

12 A Yes.

13 Q Okay. This is the room that you share with MINOR ?

14 A Yes.

15 Q And this is where you saw Mr. Hernández lying on top
16 of MINOR , June 29, 2013?

17 A Yes.

18 Q And how old was MINOR that night?

19 A She was 12 years.

20 Q And you said from the stand that this is the area?

21 A Yeah.

22 Q That's where they were lying on the floor?

23 A Yes. They had the sheet and the blanket thrown down
24 there on the rug.

25 Q Okay. And you said MINOR was naked from the waist

1 down?

2 MR. PINILLA: Objection, Your Honor.

3 THE COURT: Well, hang on. Hang on. Hang on.

4 MR. PINILLA: Objection, leading.

5 THE COURT: All right. Rephrase it, Mr. Scott, don't
6 lead.

7 Q What was MINOR wearing?

8 A She was wearing a pajama -- like a little dress, a
9 pajama that was kind of a pinkish-color.

10 Q Okay. And was she wearing underwear?

11 A No, she did not have underwear.

12 Q What did she say when you turned the light on and
13 caught them?

14 A She just said, Mama, and she just yelled.

15 Q And where did she run?

16 A The bathroom.

17 Q Tomasá, do you remember when the police arrived?

18 A It took about twenty minutes for the police to
19 arrive.

20 Q Do you remember when they got there?

21 A Yes, I remember.

22 Q And where was Mario Hernandez when they arrived?

23 A In his room.

24 Q Where were you when the police arrived?

25 A Outside on the patio of the trailer.

1 Q And where was S.M. .?

2 A He was with Ms. Liz Rivera in her car.

3 Q And where was MINOR ?

4 A She was also in the car of Liz Rivera.

5 Q And tell, who is Liz Rivera?

6 A She's a lady that interprets -- she's a lady that
7 interprets.

8 Q Okay. You don't speak English?

9 A I don't speak much.

10 Q MINOR speaks English?

11 A Yeah. Yeah.

12 Q Where does Liz Rivera live?

13 A She lives about two blocks from where I was living.

14 Q Who called Liz Rivera?

15 A I called her.

16 Q Why did you call her?

17 A So that she would help me to interpret when the
18 police arrived.

19 Q Okay. And did she get to your house before the
20 police?

21 A Yes, she arrived about three minutes before, about
22 three minutes before the police arrived.

23 Q Well, you said she lives very close to you?

24 A But she -- she got up because she was sleeping.

25 Q Okay. Do you remember about what time it was at

1 night?

2 A It was going to be about 11:00.

3 Q And when the police got there, what did you tell Liz
4 to tell them?

5 A Well, we waited for the police to get there so that
6 she could tell -- so she could tell the police what had
7 happened. And also the wife of the police where my
8 daughter had gone was there also. She was there with me,
9 because I was bad because of all that was going on.

10 Q And did you tell the police what had happened?

11 A Yes, I told them.

12 Q And did Liz Rivera translate for you?

13 A Yes.

14 Q Where was Mario Hernandez while the police were
15 there?

16 A He was inside.

17 Q Did he come outside?

18 A The police knocked on the door so that he would come
19 out.

20 Q Do you know if the doors were locked or unlocked?

21 A The door in the back and in the front, yes, they were
22 keyed.

23 Q They were locked?

24 A Well, they had a key. I don't know if they had the
25 lock.

1 Q Did Mario Hernandez come outside eventually to speak
2 with the police?

3 A Yes, he came out.

4 Q Did he speak with the police?

5 A Yes, he spoke with the police.

6 Q Did you hear what he said?

7 A He told them that yes, he had touched my daughter.

8 MR. PINILLA: Your Honor, may we approach?

9 THE COURT: Sure. Let's take a quick break. Ms.
10 Ringer, y'all step in the jury room. I need a break at
11 this time. Step in the jury room and leave your notepads
12 in your seat. We'll have you back in here in a few
13 minutes.

14 (Whereupon, the jury was excused from open court for
15 a break.)

16 (Whereupon, a bench conference was held with the
17 Court and the Attorneys.)

18 THE COURT: Okay.

19 (Whereupon, the jury came into open court at
20 approximately 11:51 p.m.)

21 MR. SCOTT: Thank you, Your Honor.

22 By MR. SCOTT:

23 Q Okay. Tomasa, I think the last question I asked you
24 was, did you hear what Mario Hernandez said to the police?

25 A Yes.

1 Q And what did he say?

2 A He recognized that he had touched my daughter.

3 Q Where did Mario Hernandez go after that?

4 A The police took him in handcuffs.

5 Q What happened to you and your family after that
6 night?

7 A We took my daughter to the hospital in Columbia. The
8 hospital in Richard--

9 Q Richland?

10 A --Richland.

11 Q And did MINOR see a doctor?

12 A A female doctor checked her out.

13 Q And did you go home that night?

14 A No, it was Sunday, Sunday about 11:00 in the morning
15 that we returned.

16 Q And did you return to [REDACTED]?

17 A Yes.

18 Q Did you continue to live in [REDACTED] after
19 that night?

20 A Yes.

21 Q How long did you live there?

22 A It was about four weeks or five weeks. I don't
23 remember very well.

24 Q And then did you have to move somewhere else?

25 A Yes, because the trailer was in the name of Mr. Mario

1 Hernandez. And then we spoke with the owner, the female
2 owner who had sold the trailer to him. And she told us
3 that we couldn't be there. I knew that we couldn't be
4 there because it was a place where we couldn't be. And
5 with the money that I had to pay the rent, I looked for
6 another place to move to to live with my children.

7 Q So when Mario Hernandez went to jail, you could no
8 longer afford to live at [REDACTED]?

9 A No. No, he destroyed my life and that of my daughter
10 and I had no one that could help me.

11 Q Tomasa, I want to show you what's been marked State's
12 exhibit number 4, and do you recognize this?

13 A Yes.

14 Q What is this?

15 A That is the clothing that my daughter had on.

16 Q On June 29, 2013?

17 A Yes.

18 Q And will you ever forget that night?

19 MR. PINILLA: Objection, Your Honor. It's leading.

20 A No.

21 THE COURT: All right. Don't lead.

22 MR. SCOTT: Nothing further, Your Honor.

23 THE COURT: All right.

24 MR. PINILLA: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

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BY MR. PINILLA:

Q Ms. Tomasa, good afternoon. How are you?

A Bad.

Q Ms. Tomasa, did you -- isn't it true that you just testified that you lived in Newberry for seven years?

A Yes.

Q So would that be from 2007 until 2014 and you recently moved to North Carolina?

A Yes.

Q Where did you live in 2007?

A I was living here in Newberry.

Q Do you recall the address?

A Yes, it's -- I don't remember exactly the address, but it's over by the Glenn or something like that. I don't remember the address.

Q And who did you live there with?

A I lived with Mr. Salo Martinez.

Q And is it true that you moved from Atlanta to be with Mr. Salo Martinez?

A Yes.

Q So you lived with Salo Martinez in 2007, is that correct?

A Yes.

Q And who lived together at that time? Who was in that

1 household with you?

2 A The father of Mr. Salo Martinez, his father and his
3 brother.

4 Q Where did your daughter live at that time?

5 A With me.

6 Q And Salo and his father lived there also?

7 A Yes.

8 Q And you said that you moved in with Mr. Hernandez in
9 2009, is that correct?

10 A Yes.

11 Q So you, Salo, S.M. -- S.M. ., your son, and
12 you moved in with Mr. Hernandez, is that correct?

13 A Yes.

14 Q When was your son born?

15 A In 2007.

16 Q Was he also born in Georgia?

17 A No, he was born here in Newberry.

18 Q And who is listed as the father of this child?

19 A Mr. Salo Martinez.

20 Q The gentleman that you were living with at the time
21 that you moved in?

22 A Yes.

23 Q Do your -- does your daughter and your son have
24 different fathers?

25 A Yes.

1 Q In 2007 when you lived with Salo Martinez, did you
2 work?

3 A Yes, I worked.

4 Q And what was your job?

5 A In the restaurant that's here, the buffet, the
6 Chinese restaurant.

7 Q Now, in 2007 when you lived with Salo, who would
8 watch the children while you worked?

9 A The father of him, his -- his father.

10 Q Did you ever receive child support from Salo
11 Martinez?

12 A Yes, one time here in this court.

13 Q Do you recall when that was?

14 A No, I don't remember. More or less, no, I don't
15 remember.

16 Q Was it last year, was it two years ago?

17 A No, it was about -- no, I don't remember. I don't
18 remember.

19 Q All right. Let's fast-forward a little bit, Ms.

20 Tomasa. So you moved into Mr. Hernandez's home with S.M.,
21 two-year-old son, and your daughter, and yourself, is that
22 correct?

23 A Yes.

24 Q Do you recall how many rooms were in that trailer?

25 A Three.

1 Q I'm counting five people living there at that time,
2 is that correct?

3 A Yes.

4 Q And now you said earlier that your son had his own
5 room, is that correct?

6 A Yes.

7 Q And you said that Mr. Hernandez had his own room, is
8 that correct?

9 A Yes.

10 Q And MINOR had her own room as well?

11 A Yes, where she slept with me.

12 Q And how often did you and she share the room?

13 A We always shared the room.

14 Q So on June 29th of 2013 did you not stay in the room
15 with your daughter?

16 A I would wait until my son would go to sleep, and then
17 I would go to sleep with her.

18 Q Now, you shared a room with your daughter, your son
19 had his own room, and Mr. Hernandez had his own room.
20 Where did Salo Martinez, the 27, 28-year-old gentleman
21 sleep?

22 A He did not live there any longer.

23 Q Okay. So you moved in with all your children and
24 Salo Martinez into Mr. Hernandez's home in 2009?

25 A Yes.

1 Q How long did Mr. Martinez, Mr. Salo Martinez, the
2 28-year-old gentleman, live there?

3 A For the time that we rented there.

4 Q Ms. Tomasa, how long is that?

5 A Four years.

6 Q So Salo lived there the entire four years that you
7 were there?

8 A Yes.

9 Q Ms. Tomasa, why did you just tell me and this Court
10 that Salo no longer lived there when you are describing
11 the arrangement of the trailer?

12 A He lived there but when he found out that I had a
13 relationship with Mr. Hernandez, he got out of there.

14 Q And when was that?

15 A No, I don't remember. No, I don't remember.

16 Q Ms. Tomasa, it's a little confusing. I'm just trying
17 to understand. You say he lived there for four years but
18 that he moved out when you had, when he found out that
19 there was a relationship between you and Mr. Hernandez?

20 A Yes, he lived there. Yes, he lived there, but when
21 he found us, when he found Mr. Hernandez and me, he found
22 us in Mr. Hernandez's room having sex then he got upset
23 and left.

24 Q And you do not recall that date 2012, 2013?

25 A No, no, I don't remember.

1 Q How long did your relationship last with Mr.
2 Hernandez?

3 A Well, all the time that I was living there.

4 Q Ms. Tomasa, how much did you pay Mr. Hernandez when
5 you moved in with Salo Martinez, your son and your
6 daughter?

7 A He paid \$300.00 dollars for the two rooms.

8 Q Who is he?

9 A Salo Martinez, he paid the rent.

10 Q And why would he do that?

11 A Because he said that he would help me, because he
12 loved my son, S.M. . . like his own son.

13 Q So it's true that he loved a son that was not his?

14 A Yes, he loves him as his son.

15 Q But he didn't care about you in the same way?

16 A No.

17 Q He brought you from Atlanta, is that correct?

18 A Yes.

19 Q He gave your child his last name, is that correct?

20 A Yes.

21 Q He would pay the rent for you and your family, is
22 that correct?

23 A Yes.

24 Q But you were not in some type of relationship with
25 him?

1 A No.

2 Q He was a really good Samaritan?

3 A He is a good person.

4 Q And this stopped when he found you and Mr. Hernandez
5 in the bed together?

6 A Yes.

7 Q And you were working at that time?

8 A No.

9 Q So Mr. Salo Martinez paid for everything related to
10 you and your children?

11 A Yes.

12 Q He left and isn't it true that you asked for child
13 support?

14 A Yes, I asked for it.

15 Q But you knew that he was not the father of your
16 child?

17 A Yes, but he had also come to that agreement.

18 Q Did he come to court and say, I wanted to pay child
19 support, or did you go and get it?

20 A We talked and we came to an agreement and he came
21 here also.

22 Q So it was a really good relationship between you and
23 Salo?

24 A We remained friends.

25 Q Isn't it true that you had an order of protection

1 filed against Mr. Salo Martinez?

2 A Yes.

3 Q And why was that if this was a good relationship?

4 A Because at the beginning he treated me poorly, too.

5 MR. PINILLA: I beg the Court's indulgence.

6 MR. SCOTT: Judge, I would just request a sidebar.

7 THE COURT: All right.

8 (Whereupon, a bench conference was held in the
9 presence of the jury but out of the hearing of the
10 jury.)

11 Q Thank you for your patience, Ms. Tomasa.

12 MR. PINILLA: I'm all over the place, Judge.

13 Q Ms. Tomasa, I believe you were saying that Mr. Salo
14 Martinez was a good guy and that you two had a good
15 relationship and that you were friends, is that correct?

16 A Yes.

17 Q But you also said that you had an order of protection
18 filed against him to protect you and your children, is
19 that correct?

20 A Yes.

21 Q Do you recall when you got that order of protection?

22 A No, no I don't remember.

23 Q Was it last year? Was it this year?

24 A It was in last year, because--

25 Q Because what?

1 A And now I don't remember very well.

2 MR. PINILLA: Your Honor, may I approach.

3 THE COURT: Can you show her a copy of the order,
4 perhaps to refresh her memory.

5 Q Ms. Tomas, did you ever call the police on Salo
6 Martinez?

7 A Yes.

8 Q And why was that?

9 A Can I ask a question? Can I ask something of you?

10 Q I apologize. I think I'm the one asking questions
11 right now, Ms. Tomas.

12 A I think--

13 MR. SCOTT: I'm not sure where it's going, but I'm
14 going to object just on relevancy at this point. This is
15 a -- an obvious third-party guilt type thing or what
16 exactly this is the, I'm not following the direction of
17 cross.

18 THE COURT: Come back over here.

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

22 MR. PINILLA: Thank you, Judge.

23 Q Ms. Tomas, had you called the police on Salo?

24 A Yes.

25 Q How many times?

1 A Like three times or four. I don't remember.

2 Q And in those three or four times, did you call an
3 interpreter first?

4 A No.

5 Q Ms. Tomasa, why then on June 29, 2013, after you saw
6 what you describe as a devastating incident, did you first
7 call Liz Rivera?

8 A First, I called the police or my daughter called the
9 police.

10 Q I'm sorry. Did you say you called the police?

11 A My daughter called them.

12 Q Which one is it, Ms. Tomasa?

13 A My daughter called the police.

14 Q Which phone did she use to call the police?

15 A That of the neighbor.

16 Q And who contacted Ms. Rivera that night?

17 A The police also called her.

18 Q That's not what I'm asking. Who called Liz Rivera
19 that night, Ms. Tomasa?

20 A I called her.

21 Q You called her from which phone?

22 A From mine.

23 Q So you called her first -- no, your daughter ran out
24 the door first and called the police?

25 A Yes.

1 Q And then you called the translator?

2 A Yes, I entered the trailer and I grabbed my telephone
3 and I called her.

4 Q So you were outside at the time?

5 A Yes, I was. Yes, I was already out with the neighbor
6 on the -- next-door.

7 Q Ms. Tomasa, did you not testify when asked by the
8 State here that the doors were locked?

9 A They had a key.

10 Q So how did you get inside?

11 A Because the door in the front was opened.

12 Q Ms. Tomasa, did you not earlier testify that the
13 front and the back doors were locked and that police could
14 not get in and had to knock on the door?

15 A Yes, I went out and when Mr. Hernandez knew that I
16 had called the police, he closed the doors and went into
17 his room.

18 Q Did you lock the doors on the way out?

19 A No.

20 Q Ms. Tomasa, I apologize, did you tell the police
21 about Salo Martinez living there previously?

22 A No, I didn't tell them anything.

23 Q You didn't think it was important?

24 A No.

25 Q Why not?

1 A And because if I had said anything, then he probably
2 would have wanted to do something to Senor Hernandez, so I
3 didn't say anything.

4 Q Ms. Tomasa, didn't you say earlier that my client,
5 Mr. Hernandez, had touched you inappropriately and that
6 you told Salo, but then Salo did nothing about it?

7 A Yes, I told him.

8 Q So I'm trying to understand here, Ms. Tomasa. So you
9 didn't think it was important to tell the police because
10 you didn't want the police to tell Salo so that Salo
11 wouldn't do something to harm Mr. Hernandez?

12 A I didn't say anything, because I didn't think that it
13 was anything that I needed to say to him.

14 Q To who?

15 A To Salo, because that I didn't say anything.

16 Q But did you tell the Newberry Police Department that
17 another man had lived in the house for at least two years
18 if not more?

19 A Where I lived?

20 Q [REDACTED], Ms. Tomasa.

21 A Yes, Mr. Martinez lived there.

22 Q My question is, did you tell the Newberry Police
23 Department that?

24 A No, I didn't tell them.

25 Q Why not?

1 A Well, because I thought that it wasn't necessary.

2 Q But you believe that your daughter was sexually
3 assaulted for four years?

4 A She told me that. And I think that all that, that
5 went on that she suffered, that she should say what
6 happened to her.

7 Q But if your daughter had told you this happened for
8 four years why did you not find it important to tell the
9 police that another man lived there for at least two years
10 if not more, another man not being Mr. Hernandez?

11 A I know that Senor Salo Martinez is incapable -- he's
12 incapable of touching my daughter.

13 Q How do you know?

14 A Because ever since she was little, since she was
15 about five years, since she was little he has loved her as
16 his own daughter.

17 Q But you didn't tell the police this?

18 A No, no I didn't tell them.

19 Q Ms. Tomasa when you went back in the house to get
20 your phone, how did you get it back?

21 A Because it was on the furniture in my room.

22 Q So did Mr. Hernandez take it from you?

23 A Yes, he took it from me.

24 Q So you're telling us today that he took your phone so
25 you wouldn't call the police, but he left it on the couch?

1 A Yes. Yes.

2 Q Ms. Tomasa, do you believe your daughter?

3 MR. SCOTT: Objection, Your Honor.

4 THE COURT: Don't pit the witnesses. Don't pit the
5 witnesses.

6 MR. PINILLA: Thank you, Judge.

7 THE COURT: Let me just explain to the jury.

8 Witnesses, any question where they can't say do you
9 believe that witness, you can't challenge the witness to
10 comment on the other witness' testimony. And for that, so
11 y'all know, the witnesses who are testifying aren't in the
12 courtroom. They're sequestered, so they don't get the
13 benefit of hearing each other's testimony. And so y'all
14 may not know that yet, but that's what's going on. We
15 agreed to that ahead of time. That's one of the things we
16 did yesterday. All right. Continue.

17 MR. PINILLA: Thank you, Judge.

18 Q Ms. Tomasa, does your daughter have behavioral
19 problems?

20 INTERPRETER STEPHENS: Permission to clarify. Ms.
21 Laura, could you explain that term to me?

22 INTERPRETER CAHUE: Hyperactive.

23 A Yes, she has always had problems, because my daughter
24 has a problem with being hyperactive. She took medicine.
25 She always had trouble with her, just problems that she's

1 just very hyperactive. Yes, she's a little like that but
2 just like all the children, she's like that.

3 Q Do you believe your daughter can be dishonest at
4 times?

5 A I think that she is not telling lies.

6 Q That's not what I'm asking you, Ms. Tomas. My
7 question is, do you know if your daughter has ever been
8 dishonest?

9 A Yes.

10 Q Thank you. Ms. Tomas, isn't it true that you moved
11 away to Atlanta for a period of time?

12 A Yes.

13 Q And when was that?

14 A I don't remember.

15 Q Do you remember how long you lived in Atlanta?

16 A Like six, seven months.

17 Q And this was while you were living at [REDACTED]
18 [REDACTED]?

19 A Yes.

20 Q So you moved away for six or seven months while you
21 lived at [REDACTED]?

22 A Yes.

23 Q Did you tell the police that?

24 A No.

25 Q Why not?

1 A I don't understand very well your -- in your
2 question.

3 Q I'll rephrase, Ms. Tomasa. Did you believe it was
4 important to tell the police that you moved away for six
5 or seven months to Atlanta?

6 A No.

7 Q Ms. Tomasa, you realize the allegations are that Mr.
8 Hernandez had continuously, repeatedly sexually assaulted
9 your daughter nonstop for four years and you as well for
10 four years while living at [REDACTED]?

11 A I didn't know that he was abusing my daughter.

12 Q Ms. Tomasa, did you not say that he started
13 inappropriate touching you two or three days after moving
14 in?

15 A Yes.

16 Q And isn't it true that your daughter is saying that
17 this has gone on for four years?

18 A But I didn't know.

19 Q That's not my question, Ms. Tomasa. Do you
20 understand the allegations here today?

21 A Yes, I understand.

22 Q And didn't you tell Solicitor Scott and the police
23 that you lived at [REDACTED] for four years?

24 A Yes.

25 Q But you just said that you left for maybe six to

1 seven months. That's more than half-a-year, Ms. Tomasa?

2 A Yes, but I didn't know he was abusing my daughter.

3 Q But don't you think it's important for a complete
4 investigation to find out the truth of what happened to
5 your daughter, that you tell them that you didn't live
6 there for four years continuously?

7 A I did go to Atlanta, yes, because I did not want to
8 have a steady sexual relationship with Mr. Hernandez.

9 Q Okay. So you removed yourself from a bad
10 environment, and your children?

11 A Yes.

12 Q Who did you live with in Atlanta?

13 A With a friend.

14 Q What's her name?

15 A Her name is Lulas Vegas.

16 Q When you came back from Atlanta, Ms. Tomasa, where
17 did you come back to live?

18 A At the address on [REDACTED].

19 Q That's 1903?

20 A Yes.

21 Q Ms. Tomasa, why would you ever come back to a bad
22 environment for you?

23 A Because Mr. Hernandez would call me every day telling
24 me to come back and live with him.

25 Q Did you change your phone number?

1 A Yes.

2 Q So how did he get your new phone number?

3 A Oh, no, no, I didn't change it. It was the same.

4 Pardon. My phone, he knew it well, because he had the
5 contract for the telephone.

6 Q So he paid for your telephone?

7 A He took out the contracts for the phone. It was his
8 and mine and Mr. Salo Martinez.

9 Q So receiving several phone calls is enough for you to
10 come back to a bad environment?

11 A I came back because, well, maybe you're not going to
12 believe it. But I came back because -- well, I believe in
13 God and God showed me that Senor Hernandez is someone that
14 does bad things to children.

15 Q So you came back to that house because he did bad
16 things to children?

17 A Yes, because of that I came back so that justice
18 would be done.

19 Q But I don't understand, Ms. Tomasa. You said that --
20 Ms. Tomasa, you said that you didn't know that your
21 daughter was being abused in this timeframe that we're
22 talking about today. But you went to Atlanta and God told
23 you to come back into the same bad environment and so that
24 justice can be done. Is that what you're saying to me?

25 A And we were in Atlanta, my daughter also -- my

1 daughter also told me.

2 Q Did you testify earlier that your daughter never told
3 you?

4 A Well, when we were in Atlanta she confessed to my
5 friend that he had abused her. And so for that, I came
6 back to the same -- to here to the same address to see
7 what he was doing to my daughter.

8 Q So it's true that you purposely brought your daughter
9 to a supposed dangerous environment?

10 A I didn't do it on purpose. I came back because Senor
11 Hernandez told me to come back. And Mr. Salo Martinez
12 said that he was going to help support me and take care of
13 me and told me to come.

14 Q Ms. Tomasa, who did your daughter tell? Who was the
15 friend that your daughter told in Atlanta?

16 A With my friend, Lulas Vegas.

17 Q Who was also your roommate?

18 A Yes, I rented a room there.

19 Q So what did you do when you heard that news?

20 A Well, I -- I never imagined that he would have done
21 that to my daughter.

22 Q Should you have called the Atlanta Police Department?

23 A No. No, I didn't call them.

24 Q Do you recall what year your daughter first told you
25 about this in Atlanta?

1 A It was when we'd been in Atlanta, about two weeks
2 after we got to Atlanta that she told me and told my
3 friend.

4 Q And then you packed up your car and you told your
5 daughter we're going back to [REDACTED]?

6 A Salo told us to come back, and Mr. Hernandez also
7 went for us.

8 Q Ms. Tomasa, how did you get to Atlanta?

9 A We -- I went in a taxi.

10 Q From Newberry to Atlanta?

11 A Yes.

12 Q How much did that cost you?

13 A \$200.00 dollars.

14 Q That's a good deal. How did you get those \$200.00
15 dollars if you were not working at the time?

16 A My friend lend them to me.

17 Q And what's her name?

18 A The same person that I was telling you, the one
19 that's called Lulas Vegas.

20 Q The same person that your daughter told that she was
21 being abused by Mr. Hernandez?

22 A Yes.

23 Q And you said that this happened two weeks after you
24 arrived in Atlanta by taxi?

25 A Yes.

1 Q But you stayed in Atlanta for about six or seven
2 months?

3 A Yes, because Mr. Salo Martinez told me to wait so
4 that he could go for me.

5 Q So then he went for you and brought you back to [REDACTED]
6 [REDACTED]?

7 A Yes.

8 Q Ms. Tomasa, are you lying here today?

9 MR. SCOTT: Objection, Your Honor.

10 MR. PINILLA: I retract, Your Honor. I apologize.

11 THE COURT: That's an improper question. That will
12 be removed for the record.

13 MR. SCOTT: Thank you, Judge.

14 Q Ms. Tomasa, in the two weeks you learned this, did
15 you tell the police that your daughter told you while you
16 were in Atlanta that she experienced this?

17 A No.

18 Q Why not?

19 A No, because I wanted to wait for a while until I came
20 back to Newberry so that Senor Hernandez would pay for
21 what he did to my daughter.

22 Q Pay what he did to your daughter?

23 A Yes, for raping her.

24 Q So you came to Newberry and called the police
25 immediately?

1 A No. It was when I discovered them that day when all
2 that happened.

3 Q But you just said your daughter told you at least six
4 or seven months before this incident?

5 A Yes, she told me.

6 Q And that you wanted Mr. Hernandez to pay?

7 A Yes.

8 Q But you wanted to wait until you walk in and flip the
9 lights on?

10 A I wanted to see it with my own eyes.

11 Q You wanted to see what with your own eyes?

12 A What my daughter was telling me.

13 Q But you said earlier, Ms. Hernandez[sic], that you
14 didn't believe your daughter was lying. Why would you
15 want to see something like that?

16 A I wanted to be sure. Not because I don't believe my
17 daughter. But I wanted to be sure about what she was
18 telling me.

19 Q So you hatched the plan to come back and wait and see
20 what happened?

21 A It's not that I planned it. It's how things happened
22 that I came back here to Newberry.

23 Q But you wanted Mr. Hernandez to pay?

24 A On one part yes, that's why I came back so that
25 justice would come.

1 Q What's the other part?

2 A What do you mean? What part, I don't understand?

3 Q Ms. Tomasa, when you learned about this two weeks in
4 Atlanta, did you ever get your daughter any psychologist,
5 any kind of help, any kind of treatment?

6 A Yes.

7 Q And where did you go?

8 A To the resources place there where they take people
9 that have been raped.

10 Q What's the name of that place?

11 A It's the place where it, I don't remember the place,
12 but it's a place where they give therapy to little girls
13 that have been raped.

14 Q Where is it located?

15 A Well, Atlanta is very big. It's there kind of in the
16 center.

17 Q Did those therapists ever tell you to call the
18 police?

19 A Yes, they told me.

20 Q And you didn't do it?

21 A No, I didn't do it.

22 Q Walk me through this, Ms. Tomasa. How did this go?
23 You sat your daughter down and you said -- so you told me
24 these horrible things that had been happening. I am
25 taking you to therapy. But pack your things up because

1 we're going back to [REDACTED]. Is that what
2 happened?

3 A Yes, because I spoke with Salo Martinez and he said
4 that I should wait, that he was going to talk with Mr.
5 Hernandez, and they were going to go for me.

6 Q Did you tell the people at therapy in Atlanta that
7 you were going to move back to the supposed location where
8 this bad stuff was happening?

9 A No, I didn't tell them anything.

10 Q You don't think it was important for them to know?

11 A Yes, I knew that it was important but because of that
12 I wanted to return here.

13 Q And you never told the police that your daughter told
14 you this in Atlanta?

15 A No.

16 Q Ms. Tomasa, do you know what a U Visa is?

17 A No, I've heard, but I don't know.

18 Q Is it true that you looked for help to get one?

19 A No.

20 Q Never contacted any attorneys?

21 A No.

22 MR. PINILLA: I beg the Court's indulgence real
23 quick.

24 Q Ms. Tomasa, can you explain to me what you have heard
25 of a U Visa.

1 A I've heard lots of things. I've heard that -- I
2 don't know. I've heard that it helps people when they are
3 mistreated or when the little girls are raped.

4 Q So it's true that you can get a U Visa if you've had
5 a little girl who's been raped?

6 A They have told me that.

7 Q Who has told you that?

8 A People from DSS or other people have told me.

9 Q Why would DSS tell you this?

10 MR. SCOTT: Well, I don't know that, can't testify to
11 what somebody else knows.

12 THE COURT: I agree with you, how would she know.

13 MR. PINILLA: Thank you, Judge.

14 Q Ms. Tomas, what is your understanding of what you
15 can do with a U Visa?

16 A Well, I've been told by friends, both male and female
17 that have them that -- with that you can get a permit to
18 work.

19 Q Did your friends encourage you to get a U Visa?

20 MR. SCOTT: Judge, it's hard for me to object to
21 hearsay when I don't know--

22 THE COURT: Yes.

23 MR. PINILLA: No further questions. Thank you.

24 THE COURT: We have dealt with that.

25 MR. PINILLA: Thank you, Judge.

1 THE COURT: All right. Any redirect from Mr. Scott?

2 MR. SCOTT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q Ms. Tomasá, you said June 29th Mr. Hernandez had
6 taken the phone from you?

7 A Yes.

8 Q And then where did you go?

9 A With the nextdoor neighbor.

10 Q And where did MINOR go?

11 A Also with the nextdoor neighbor.

12 Q And when did you go back inside to get the phone?

13 A When Mr. Hernandez was already inside in his room, I
14 entered to grab my telephone.

15 Q And then you went back outside?

16 A Yes, outside.

17 Q Did you ever go to Mr. Hernandez's church?

18 A Yes.

19 Q Did Salo Martinez go to Mr. Hernandez's church?

20 A Sometimes.

21 Q Did you have a lot of respect for Mr. Hernandez?

22 A Yes, because he was a pastor.

23 Q And so how did you feel when he began to touch you?

24 MR. PINILLA: Your Honor, I object.

25 THE COURT: What basis?

1 MR. PINILLA: Your Honor, we're not, Your Honor,
2 404(b). We are not here for touching of Ms. Tomasa.
3 We're here for a matter relating to her daughter.

4 THE COURT: I'm going to allow a little latitude.
5 You went into pretty good detail about that on your cross.

6 MR. PINILLA: Thank you, Judge.

7 THE COURT: Rephrase your question, Mr. Scott.

8 Q When did Mr. Hernandez begin touching you?

9 A When we arrived there, like three days after we
10 arrived in his home and in his house.

11 Q How did this make you feel?

12 A I am, well, I felt bad because I had had respect for
13 him as a pastor. And I thought he was going to do other
14 things to me when he began to touch me. And later he
15 entered into the room and began to kiss me. And then he
16 went out and then he began to call me and ask me to ask
17 for -- I mean to give him forgiveness.

18 Q But you did begin to voluntarily have sex with him?

19 A Well, not so voluntarily. But yes, I did have
20 relations with him.

21 Q While you were living in his house?

22 A Yes.

23 Q And what did Salo Martinez do when he found this out?

24 A He was there and he left.

25 Q And he had gone to Mr. Hernandez's church as well?

1 A Yes.

2 Q Do you remember when you went to Atlanta?

3 A No, no I don't remember very well. I don't remember.

4 Q Would you testify you were there for six months?

5 A Yes, about six months or seven, around there.

6 Q How did -- did things go well in Atlanta?

7 A Yes, they went -- they went -- it was peaceful with
8 the help of my friend.

9 Q Tomasa, do you make a lot of money?

10 A No.

11 Q How do you support yourself?

12 A Well, I get a lot of help from the State. They give
13 me stamps for my children and sometimes I work. I have
14 got diabetes and migraines, too.

15 Q Do you rely on friends for money sometimes?

16 A No, I sometimes ask for help from the churches.

17 Q How are you paying for your trip to be here this week
18 from North Carolina?

19 A My cousin that lives in North Carolina, he brought me
20 here without charging me even a five dollar bill. And he
21 brought me here to be here for court.

22 Q How are you paying for food while you're here?

23 A With the food stamps that they give me for my
24 children.

25 Q Before June 29, 2013, did you suspect that Mr.

1 Hernandez was doing anything with MINOR ?

2 A There were strange things that I noticed like
3 whenever I'd go outside to the patio of the trailer, he'd
4 be in my daughter's room. He always had her on his legs.
5 And whenever I would look, my daughter would grab her
6 blouse like that. And I saw things -- and my son, too,
7 saw when he would kiss her on the mouth.

8 Q Did you want to believe what you were seeing?

9 A One time I thought -- no, no I didn't believe. I
10 didn't believe because he said that he loved my children
11 as if they were his children.

12 Q Do you feel guilt for having MINOR in that house?

13 A Yes, yes I feel guilty.

14 Q Tomasa, was Salo Martinez living in the house June
15 29, 2013?

16 A No.

17 Q Was it Salo Martinez you saw lying on top of your
18 daughter?

19 A No.

20 Q Who did you see lying on top of your daughter?

21 A Mr. Hernandez.

22 Q Thank you.

23 THE COURT: Any re-cross?

24 MR. PINILLA: No further questions, Your Honor.

25 THE COURT: Very good. She may step down. All

1 right. We are going to take a lunch break. It's a few
2 minutes after 1:00. I tell jurys this a lot, but the
3 first witness is generally longer and the latter witnesses
4 will get shorter. I wanted to get her testimony in before
5 we broke for lunch and that's why I went ahead and did
6 that. Let's break till -- I'd like to start back at 2:30
7 promptly. So if y'all can be back in the jury room before
8 2:30, that'll be great and we'll go with our next witness.
9 Remember, you can't discuss the case until we get all the
10 testimony and evidence presented. So enjoy your lunch, go
11 wherever you like, y'all can go as groups if you would
12 like, do whatever you want and be back in the jury room by
13 2:30.

14 (Whereupon, the jury was excused from open court for
15 a lunch break.)

16 (Whereupon, a lunch break was taken.)

17 THE COURT: Let's get the jury in, please.

18 (Whereupon, the jury came into open court at
19 approximately 2:30 p.m.)

20 THE COURT: All right, folks. Welcome back. I told
21 the lawyers off the record, will put on the record, one of
22 the jurors told Ms. Wardlaw that we need to break about
23 quarter-till or ten minutes till 5:00 and we're going to
24 do that just so everybody knows. All right. Continue,
25 call your next witness.

1 JURORS: We didn't get it. They didn't hear it.

2 THE COURT: Oh, I'm sorry. One of the jurors told
3 Ms. Wardlaw, Ms. Georgia back there, the bailiff, she
4 needed to be somewhere at 5:00 o'clock sharp and so I'm
5 going to break about 10 minutes, somewhere around fifteen
6 to ten minutes till, wherever I get a stopping point, to
7 adjourn for the day. So just so y'all know and the Court
8 Reporter now knows. All right. Call your next witness.

9 MR. DANIEL: Thank you, Your Honor. The State calls
10 Andrew Rowe.

11 ANDREW ROWE, JR., being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DANIEL:

15 Q All right. Mr. Rowe, where are you currently
16 employed?

17 A Lexington Medical Center, Public Safety.

18 Q And were you just hired on there?

19 A Yes, sir.

20 Q Where were you employed just before getting that job?

21 A Newberry City Police Department.

22 Q How long were you with Newberry City Police
23 Department?

24 A About 13 years.

25 Q And you were a police officer?

1 A Yes.

2 Q Okay. June of -- June 29th of last year, of 2013,
3 were you still on active duty for the Newberry Police
4 Department?

5 A Yes sir, I was.

6 Q Okay. On that date, did you have an occasion to
7 respond to a call coming from the [REDACTED]
8 address?

9 A Yes, sir.

10 Q Is that in -- here in the City of Newberry?

11 A It is.

12 Q Newberry County?

13 A Yes, sir.

14 Q And what was that call in reference to?

15 A The initial call was a criminal sexual conduct call
16 involving a juvenile.

17 Q And that's just the information you would have
18 received from dispatch?

19 A Yes, sir.

20 Q About what time of night were you dispatched out to
21 this residence?

22 A It's about -- I was dispatched at about 11:18 p.m.

23 Q Were you the first, I guess, responding officer?

24 A Yes, sir.

25 Q All right. So you arrive at this [REDACTED]

1 address, house, apartment, trailer; what was it?

2 A It was a trailer.

3 Q A trailer?

4 A Yes, sir.

5 Q When you first arrived, what'd you observe, who were
6 you greeted by?

7 A When I first arrived on the scene, I was met by the
8 juvenile's mother and the translator, Liz. The juvenile
9 was also present but she was sitting in a car.

10 Q You said translator, Liz. Is this someone you are
11 familiar with?

12 A Am very familiar with, yes.

13 Q And how do you know Liz Rivera?

14 A Yes.

15 Q Is that right?

16 A Yes, sir.

17 Q How do you know Liz Rivera?

18 A She's a -- ever since I've been there, she is a
19 translator for the City Court.

20 Q So when y'all hold City Court, she translates for
21 witnesses on the stand?

22 A Well, just any kind of -- if we encounter Hispanic
23 people that can't speak English, she assists them through
24 traffic court and things like that as well.

25 Q Is she also known to go to crime scenes as well and

1 assist law enforcement with any interpreters needed?

2 A She has.

3 Q All right. So you get there and you said there was
4 Liz Rivera, juvenile and the mother on the scene?

5 A Yes, sir.

6 Q And where are they on the property?

7 A We're outside near the road when you pull into the
8 driveway. As you pull up in front of the house, we're
9 kind of standing in the front yard in front of the
10 trailer. The juvenile is in the driveway in a car that's
11 parked in the driveway.

12 Q And what information did you receive when you first
13 arrived?

14 A I was told that the person who had committed the
15 crime, that they were---

16 MR. PINILLA: Objection.

17 THE COURT: Object to, first, give me your objection?

18 MR. PINILLA: I object to the characterization as the
19 person who committed the crime.

20 THE COURT: All right. Rephrase your question and
21 characterize the perpetrator or alleged victim, the
22 accused.

23 Q Alleged suspect, was the alleged suspect on the scene
24 to your knowledge?

25 A Yes, sir. The alleged suspect was -- I was told that

1 they were locked in the trailer. He was, locked himself
2 in the trailer and he had made statements that he was
3 wanting to kill himself.

4 Q And who was it, did you have a name for this suspect
5 at this time?

6 A Mario, I believe, but they just said the person who's
7 the alleged suspect is in there.

8 Q Did you -- were you concerned about weapons, anything
9 of that nature?

10 A Yes sir, I was. Once I hear that someone's in there
11 and they're alleging suicide, my first instinct is do they
12 have guns and knives, anything like that that can hurt
13 them or us who's outside.

14 Q And Liz was interpreting for Tomasa, is that correct?

15 A That's correct.

16 Q All right. Did you knock and announce your presence
17 at this trailer looking for the suspect?

18 A Yes sir, we did.

19 Q Okay. Someone come to the door when you knocked?

20 A Not initially.

21 Q And you were announcing your -- how are you knocking,
22 just Newberry Police Department kind of thing, you're
23 knocking?

24 A Right. We walked up. We found out that he was
25 inside. That he was, you know, attempted suicide. So,

1 what we did is we walked up, knocked on the front door and
2 didn't get an answer. We checked the lock. It was
3 locked. Walked to the backdoor and, of course, we did
4 say, you know, police department, come out. No response.
5 We walked to the backdoor. The same thing. Knocked on
6 the door and found that the door was locked and announced
7 our presence again. We kept someone at the front and back
8 of it. And then just a couple of moments, he finally come
9 out the front door.

10 Q So all doors were locked when you were -- when you
11 tried to open them?

12 A Yes, sir.

13 Q About how long did this go on -- when did he finally
14 come out? How long did this go on?

15 A Just a couple of minutes.

16 Q Did you hear anything inside the trailer during this
17 time?

18 A No, sir.

19 Q All right. So Mario Hernandez would exit the trailer
20 eventually?

21 A Yes, sir.

22 Q And then take us from there, what happens at that
23 point?

24 A Well, based on the information that I've given and
25 not being able to immediately make contact with him. As

1 soon as he came out, went ahead and placed him in
2 handcuffs for an investigative detention so we could
3 question him to make sure he didn't have any weapons on
4 him.

5 Q All right. Now, Mario Hernandez, is he an English
6 speaker?

7 A No, sir.

8 Q All right. So and Liz Rivera is already on the scene
9 interpreting for the mother you said?

10 A That's correct.

11 Q Did Liz Rivera assist you in interpreting for Mario
12 Hernandez?

13 A She did. Once I placed him in handcuffs before any
14 questions, I'd read him his Miranda rights and she
15 assisted me by translating the Miranda rights to him.

16 Q Did Liz volunteer her assistance or did you ask Liz?

17 A She volunteered. She was there. She was present and
18 she was willing.

19 Q So how did you administer these Miranda rights?

20 A I keep a card in my wallet and I read it verbatim to
21 whoever I'm questioning.

22 Q Do you still have that card---

23 A Yes, sir.

24 Q ---with you today that you had on June 29th?

25 A Yes, sir.

1 Q Do you mind reading how you administered these
2 Miranda rights?

3 A Sure. Okay. You are under arrest for DUI -- or I'm
4 sorry. Wrong side. Excuse me. You have the right to
5 remain silent. Anything you say can and will be used
6 against you in a court of law. You have the right to talk
7 to an attorney and have him or her present with you while
8 you're being questioned. If you cannot afford to hire an
9 attorney one will be appointed to represent you before any
10 questioning if you wish. You can decide at anytime to
11 exercise these rights and not answer any questions or make
12 any statements. And do you understand each of these
13 rights as I have explained to you. Having these rights in
14 mind, do you wish to talk with us now? And they're
15 actually separated into seven different parts.

16 MR. DANIEL: Can I mark this as an exhibit?

17 (Whereupon, Plaintiff's Exhibit 5 was marked for
18 identification only.)

19 Q So it's separating the seven different sections or
20 portions---

21 A Yes, sir.

22 Q ---of what you just read? And tell us kind of the
23 mechanics of how you administered these Miranda rights
24 given the fact that Mario Hernandez is not fluent in
25 English?

1 A Okay. I told Liz and told her that I had to read him
2 his Miranda rights before I could ask him any questions.
3 And she agreed to translate each and every set of
4 questions for me. So I would start, for example, and be
5 like ask -- inform him that, you know, you have the right
6 to remain silent. And then she would do so. And then I
7 would proceed to the next one, anything you say can and
8 will be used against you in a court of law. And she would
9 proceed to do so. And we would go all the way down until,
10 you know, do you want me to go through all of them again?

11 Q Okay. So she -- you were going line by line, you
12 were pausing, Liz was then relaying that to him in
13 Spanish?

14 A Yes, sir.

15 Q Did Mr. Hernandez appear to understand those Miranda
16 rights in Spanish?

17 A Yes, sir.

18 Q Did he gesture, anything like that?

19 A Yes, sir.

20 Q Did he choose to speak with you after those rights
21 were relayed to him via Liz Rivera?

22 A Yes sir, he did.

23 Q Okay. What questions did you ask Mario Hernandez
24 related to this -- these allegations?

25 A Well, my first question was just a blanket question,

1 did you sexually or did you rape this juvenile. And that
2 was my first initial question.

3 COURT REPORTER: I need him to move up and talk
4 louder and just be still instead of going like this.

5 MR. ROWE: Sorry.

6 Q Repeat that, Officer Rowe?

7 A Okay. My first question was out, it was just the
8 outright question, did you rape a 12-year-old.

9 Q And the response or at least what Liz Rivera
10 interpreted to you in English? What was it?

11 MR. PINILLA: Your Honor, objection.

12 THE COURT: Y'all approach.

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

16 THE COURT: If I could point out to the jury what
17 we're talking about, because it will help them understand.

18 MR. DANIEL: Yes, sir.

19 THE COURT: All right. All right. Ms. Stephens, if
20 you can keep your tone of voice as low as possible. The
21 jury can hear you. I can hear you, too, and my Court
22 Reporter can hear you.

23 MS. RIVERA: I am sorry.

24 THE COURT: And she's the one I'm worried about.

25 Anyway just be aware that that's going on. All right. So

1 y'all understand the issue I'm having. Normally, the
2 police officer talked to somebody. What did that person
3 tell you. And we have got a real person in there that's
4 translating. And the lawyers want to make certain that
5 they have an opportunity to question Officer Rowe about
6 what was said to him and the interpreter on what she was
7 interpreting to him. And they're going to have that
8 latitude. So ya'll know that's what we're talking about,
9 is we kind of protect everybody. And so that's how we're
10 trying to manage things. So all he's going to be able to
11 testify to is what the interpreter repeated back to him.
12 All right. Fair enough. Continue on.

13 MR. DANIEL: Thank you, Your Honor.

14 Q Just to backtrack. I'm going to show you State's --
15 State's number 5 marked for ID purposes. Do you recognize
16 what that is?

17 A Yes sir, my Miranda card.

18 Q And is that a photocopy of the Miranda card you keep?

19 A It is.

20 Q And are those the rights that you just recited, that
21 you read, administered to Mario Hernandez?

22 A They are.

23 MR. DANIEL: Your Honor, I'd offer State's number 5
24 for admission into evidence?

25 THE COURT: Any objection?

1 MR. PINILLA: No objection, Your Honor.

2 THE COURT: State's 5 will be Officer Rowe's Miranda
3 card admitted without objection.

4 (Whereupon, State's Exhibit 5 was admitted into
5 evidence.)

6 Q Okay. So we're at the point Mr. Hernandez was just
7 administering his Miranda rights. And you posed the
8 question which was interpreted to Mr. Hernandez and start
9 from there again. What question did you ask?

10 A I asked Liz if she would ask him, I said, ask him if
11 he has been forcibly raping the juvenile.

12 Q And what was the response that he gave---

13 A He---

14 Q ---or what Liz interpreted to you is probably the
15 better question.

16 A Okay. The response that I was given was that he
17 admitted to -- can I refer to my incident report?

18 Q Did you generate an incident report in this case?

19 A I did.

20 Q And that's what you're referring to?

21 A Yes, sir.

22 Q That's fine.

23 A Okay. The subject or I was advised that the subject
24 stated that he admitted to appropriate -- inappropriately
25 touching the juvenile on several occasions. And that she

1 walks around the house, has been walking around the house
2 in provocative clothing which enticed him. He said that
3 he was a pastor, but he was also a man. And he responded
4 to that enticement as any man would but denied actual
5 sexual intercourse with the juvenile.

6 Q And that juvenile he's referring to is MINOR ?

7 A That's correct.

8 Q He's not referring to any other---

9 THE COURT: Don't lead.

10 Q Was there a possibility he was referring to any other
11 occupant of that trailer?

12 A Oh, sure, sure. And it's written, it says that --
13 that he also said that the mother was also walking around
14 in provocative clothing as well.

15 Q So Liz relayed that to you in English?

16 MR. PINILLA: Your Honor, objection. That's leading.

17 THE COURT: Rephrase your, try not to lead.

18 MR. DANIEL: Yes, sir.

19 Q And Liz is obviously the only way you knew what Mario
20 Hernandez is saying at this point?

21 A That's correct.

22 Q So you're trusting her English interpretations, is
23 that right?

24 A Right, absolutely.

25 Q And so where did this interview take place?

1 A This interview took place outside in the yard.

2 Q And this is -- you said what -- you said you were
3 dispatched there around 11:00 p.m.?

4 THE COURT: Leading.

5 A Okay. I was dispatched there at 11:18. And it was
6 -- I got there about 11:22. And within the few minutes it
7 took me to get him outside and to get him in investigative
8 detention and read him his rights, best guess would
9 probably be around 11:40, 45.

10 Q And how long did this interview -- how long did this
11 take, how long did this last?

12 A That didn't last long, the initial interview with me.
13 An investigator was actually called on the scene then but
14 that didn't take me but a few minutes to go over that
15 part.

16 Q So other officers arrive on scene at that point?

17 A Yes, I'd requested Investigator Goodman to come.

18 Q Was that the extent of your role that night?

19 A Yes, sir. Well, actually not, not the extent. I
20 went back there after the fact and took some pictures and
21 things of that nature.

22 Q Was Mario Hernandez taken into custody at that point?

23 A Yes sir, he was.

24 Q I assume transported to the jail?

25 A He was.

1 Q Did you transport Mario Hernandez to the jail?

2 A I did not. We had another officer that was on the
3 scene as well that transported him for me.

4 Q Now, while you were interviewing Mario Hernandez with
5 the assistance of Liz Rivera, did Mario Hernandez appear
6 intoxicated and under the influence of any type of
7 substance, drugs, alcohol?

8 A He didn't appear under the influence to me.

9 Q So he looked sober?

10 A Yes, sir..

11 Q Were any threats made to Mr. Hernandez to get him to
12 talk?

13 A No, sir.

14 Q Any offers of leniency in exchange for statements?

15 A No, sir.

16 MR. DANIEL: I beg the Court's indulgence.

17 Q Did you interview the victims? Or excuse me,
18 apologize. Did you interview the child or the mother?

19 A With the -- like a formal interview with the child,
20 no sir, I did not. I just was present with Liz and by
21 this time Investigator Goodman had came on the scene as
22 well. I talked to the mother when I first got there and
23 she was talking with Liz and Liz was telling me what was
24 going on. And that's kind of how I knew what was
25 happening when I first got there. I gathered information

1 when I first arrived on the scene to see what we had to
2 work with then. And then after, you know, we gather that
3 information we finally got him to come outside and we
4 interviewed him. And that was kind of the extent of my
5 role.

6 Q Did you receive any information about what Mr.
7 Hernandez was doing inside that trailer while you were
8 knocking and announcing your presence?

9 MR. PINILLA: Your Honor, objection. Has he laid a
10 foundation for this?

11 THE COURT: Recharacterize your question, please.

12 Q What was -- do you have any knowledge of what Mr.
13 Hernandez was wearing when he came out of that trailer?

14 A I was advised that he had changed his clothes from
15 what he was previously wearing. Actually, I can't
16 recollect what he was exactly wearing when he came out
17 that day.

18 Q Whose decision was it to arrest Mario Hernandez?

19 A It was my decision.

20 Q Okay. No further questions. Please answer any
21 questions that Mr. Pinilla has for you.

22 MR. PINILLA: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION

25 BY MR. PINILLA:

1 Q Officer Rowe, good afternoon.

2 A Good afternoon.

3 Q Officer Rowe, do you speak any other languages
4 besides English?

5 A I do not.

6 Q Do you speak any Spanish?

7 A No, sir.

8 Q So you -- today you're telling us that you completely
9 relied on Ms. Rivera?

10 A I did.

11 Q Wholeheartedly believed her?

12 A Yes, sir.

13 Q Now, you testified that you were dispatched at 11:18,
14 is that correct?

15 A That's correct.

16 Q Do you recall when you actually arrived to the
17 trailer?

18 A At 11:22.

19 Q Approximately four minutes later?

20 A Yes, sir.

21 Q And Ms. Rivera was already there?

22 A Yes, sir.

23 Q So she beat you in four minutes? She beat you to the
24 location in four minutes?

25 A Now, I don't---

1 Q She arrived at the location before you?

2 A I don't -- I mean I don't know if she -- I don't know
3 if she was called at 11:18. I was called at 11:18.

4 Q Do you know who contacted Liz Rivera?

5 A The juvenile's mother, I assume.

6 Q Officer Rowe, when you're experiencing, and I
7 apologize, you said you were with the Newberry Police
8 Department how long?

9 A Going on 13 years.

10 Q In your experience, does Newberry Police Department
11 make it a habit to use anybody that is there to translate?

12 A Yes, sir.

13 Q They do?

14 A Yes, sir.

15 Q Are there any Spanish-speaking officers at Newberry
16 Police Department?

17 A Yes, sir.

18 Q Would you have used somebody like that instead?

19 A If they were available.

20 Q Officer Rowe, you testified that you went back and
21 took pictures and took some items. Who gave you that
22 permission?

23 A That's just a part of my job duties to go in and
24 collect evidence and photograph the scene.

25 Q Did you have a warrant to go back?

1 A At the time, we didn't. We had the, I guess, the
2 permission of the complainant, the mother.

3 Q Officer Rowe, I'm trying to understand, when does an
4 establishment, a house or a trailer, when does that become
5 a crime scene?

6 A At that point since it was freshly committed and we
7 first got there, it became a crime scene when the actual
8 incident occurred. It just became prevalent that it was a
9 crime scene once that we were called and got to go in
10 there and look for evidence.

11 Q Would it be standard to tape it off?

12 A I mean in some instances. It wasn't necessary that
13 night.

14 MR. PINILLA: State's Exhibit 3, Your Honor.

15 Q Mr. Rowe, can you identify this picture right here?

16 A Yes, sir. That's the trailer, the incident location.

17 Q Any tape on that trailer?

18 A No, sir.

19 Q Do you know whether the mother and her daughter went
20 back to that trailer afterwards?

21 A They were there while we were there and left. As far
22 as went back after we left, I'm not sure.

23 Q Should they have gone back to that location?

24 A They lived there. Yes, sir.

25 Q Even though it's a crime scene?

1 A Sure. I mean we'd already processed what we needed
2 for evidence.

3 Q Officer Rowe, did you investigate whether Liz had a
4 friendship with the complainant?

5 A I don't know their relationship. When I got there,
6 I've never met the complainant before. I've met Liz.
7 When I got there Liz was there. So I don't know what
8 their relationship was.

9 Q Did you ask Liz, what are you doing here at 11:20 at
10 night?

11 A I just kind of assumed that she was there. She's
12 always translated for us.

13 Q When she does translate for you at the request of
14 Newberry Police Department, do you know if she's paid?

15 A I don't know.

16 MR. PINILLA: Beg the Court's indulgence.

17 Q Officer Rowe, when you arrived do you remember who
18 was there? Again, can you repeat that to me, please?

19 A When I arrived, the complainant or the juvenile's
20 mother, Liz was there. And we actually, another officer
21 had showed up too, near the same time I was.

22 Q Do you recall seeing a small child, the complainant's
23 son?

24 A There was another child in the car with the juvenile,
25 I believe, one or two.

1 Q Did you put that in your report?

2 A I did not.

3 Q Officer Rowe, when you came back the second time to
4 take pictures and take items, who was in the house?

5 A It was then Investigator Goodman, I believe the
6 complainant and the juvenile was also in there.

7 Q And the complainant gave you permission to come in,
8 the child's mother gave you permission to come take these
9 things?

10 A Yes.

11 MR. PINILLA: No further questions, Your Honor.

12 THE COURT: Any redirect?

13 MR. DANIEL: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. DANIEL:

16 Q Once an arrest is made, going back to that night,
17 whose duty was it to do any kind of follow-up
18 investigation?

19 A At that night since I was the highest ranking officer
20 there and in charge of the shift, when I got there, I had
21 called the investigator. And I also was the shift
22 investigator as well. We take pictures and things of that
23 nature. But ultimately the investigator will take over
24 investigations.

25 Q And who was the investigator?

1 A Investigator Kevin Goodman.

2 Q No further questions.

3 THE COURT: Anything else?

4 MR. PINILLA: Nothing further, Your Honor.

5 THE COURT: All right. All right. You may step
6 down. Call your next witness.

7 MR. DANIEL: Liz Rivera, the State calls, Your Honor.

8 THE COURT: Come on, Ms. Rivera. Keep coming.

9 ELIZABETH RIVERA, being
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. DANIEL:

13 Q Ms. Rivera, what do you do for a living?

14 A I interpret.

15 Q That's your occupation?

16 A Yes.

17 Q And where are you employed?

18 A I just do it. It's my own business, what,
19 self-employed.

20 Q Okay. Self-independent contractor kind of thing?

21 A Right.

22 Q Are you -- do you have any qualifications,
23 certifications from any entity?

24 A I'm qualified for the State of South Carolina to
25 interpret in courts.

1 Q So you interpret in court proceedings?

2 A Yes.

3 Q Like this one today?

4 A Yes.

5 Q You'll interpret for witnesses?

6 A For witnesses. Whoever needs to be interpreted for.

7 Q How long have you been doing this?

8 A I've been qualified since about 2008-2009, around
9 there.

10 Q Did you go to school for this, any degrees?

11 A I don't have degrees, but I did go to a course for
12 this.

13 Q Are you a -- was Spanish your first language growing
14 up?

15 A No, English.

16 Q And where are you from, Ms. Rivera?

17 A I was born in California but I grew up in Texas.

18 Q And how many languages are you fluent in?

19 A Two.

20 Q English and Spanish?

21 A English and Spanish.

22 Q Where are you living right now?

23 A In Newberry, South Carolina.

24 Q And how long have you been living here in Newberry?

25 A About 18 years.

1 Q Okay. Where in relation to [REDACTED] do you
2 live?

3 A Well, I live on 2017 Rivers Street, so it's about a
4 block apart.

5 Q And do you know a lot of members of the Hispanic
6 community?

7 A Yes. Well, maybe like eighty percent.

8 Q Do you do a lot of volunteer work or do you get
9 mostly, I mean how, well, what's---

10 A A lot of volunteer. Whenever someone needs help or
11 assistance in interpreting, a lot of volunteer. Sometimes
12 they pay me.

13 Q Do you assist any law enforcement agencies in
14 interpreting?

15 A Yes, I do.

16 Q What all do you do for them?

17 A Well, they will call me out and ask can you come, we
18 have maybe at a roadblock. We need your assistance to
19 either pick up a car or at the police department if they
20 have somebody there who's -- doesn't speak English and
21 none of the officers who speak Spanish are available,
22 they'll call me in court for police. Wherever they need,
23 they usually, they'll call me.

24 Q You go out to crime scenes?

25 A Sometimes.

1 Q Okay. June 29 of 2013, did you go out to [REDACTED]

2 [REDACTED]?

3 A Yes, I did.

4 Q And how did you end up there, why did you go out
5 there?

6 A Ms. Tomasa Aguirre called me at home.

7 Q Called you at home. How do you know Tomasa?

8 A From the community and I've assisted -- she's called
9 me before for rides, if I could give her a ride to the
10 store or to the doctor. She had some other court cases
11 and I went to those court cases. Just an acquaintance
12 from the community.

13 Q So you go out there after receiving a call from
14 Tomasa?

15 A Yes.

16 Q And does she, does Tomasa or did she live at [REDACTED]
17 [REDACTED]?

18 A Yes.

19 Q And would you, how would you characterize your
20 relationship with Tomasa, social friends, I mean how?

21 A Acquaintance. Just if she needed a favor, she needed
22 a ride, she would call me. We've never socialized. It
23 was more of a, you know, if she needed something she would
24 call me.

25 Q So why did you go out there on June 29th to Tomasa's

1 house?

2 A Because she called me hysterical saying, he raped
3 her. He raped her. At first -- it was in the evening. I
4 was already resting, ready to go to bed, so I did not
5 really understand what was going on. So I asked her, you
6 know, calm down, what are you saying? Can you come over
7 here? Can you come over here, because he raped her? So I
8 just went and I got in my car, put on some shoes, got in
9 my car and I went over there to her house.

10 Q And you're saying, is that close by, is that what
11 you're saying?

12 A Yes, Glenn Street is in between our homes, so it's
13 like four or five houses in between.

14 Q Okay. So I assume you got there fairly quickly?

15 A Pretty quick, yes.

16 Q So who was this, he, that Tomasa was referring to?

17 A And when I got -- and when she called me, I didn't
18 know. When I got to the house, she was hysterical. I'm
19 like, what happened? What's going on. And she said, he
20 was on top of her. And then, I said well, she said, the
21 pastor. I said, who. The pastor. Then I knew what she
22 was talking about.

23 Q And who is the pastor?

24 A The Pastor Hernandez that lived, that was landlord of
25 her home.

1 Q His name?

2 A Now I know it's Mario Hernandez. At the time I just
3 knew he was Pastor Hernandez.

4 Q And her, you were saying he raped her. Who is her?

5 A Her, she was referring to her daughter. After I got
6 there, I found out who she was referring to, her daughter.

7 Q So you go out there in the evening. How late in the
8 evening?

9 A I really don't know. It must have, it was after 9:00
10 o'clock, I believe. It was a, it was a Saturday evening.

11 Q Dark?

12 A Oh, yes.

13 Q So you go out there and who -- who's on the scene
14 when you get there?

15 A When I pulled up into the driveway at first I didn't
16 see anyone. I pulled up into the driveway and they came
17 running around my car. Tomasa, her son Miguel, and her
18 daughter, MINOR came running to my car when I got out.

19 Q All three of them?

20 A Yes.

21 Q What was -- I guess describe their demeanor?

22 A Well, Tomasa was crying, hysterical, crying and the
23 children were just like scared. They were all just, they
24 were all huddled and the children were just scared.

25 Q Where was Mario Hernandez?

1 A Inside the trailer.

2 Q Were the police on the scene at any point?

3 A They got there maybe five, ten minutes after I do.

4 Q So what happened in that intervening time between you
5 arriving and the police getting there?

6 A Well, I was trying to calm her to find out what she
7 was talking about. So I put the children inside my car
8 because I thought, there was just too much going on. And
9 I figured they didn't need to be hearing or just to calm
10 them, so I put them in my car. It was hot, because it was
11 in June, but I put them in my car. And then I stood out
12 there talking to her, and then that's when the police
13 officers arrived.

14 Q And the children being?

15 A The children, Miguel and MINOR.

16 Q Okay. Did you see Mario Hernandez at any point
17 before the police got there?

18 A No.

19 Q All right. So the police get there. Are you
20 familiar with a lot of the police officers in Newberry?

21 A Yes, I am.

22 Q Do you work with them as an interpreter?

23 A Yes.

24 Q Did you know any of the responding officers?

25 A I don't know a lot of them by name, but I knew Kevin

1 by name. He was one that I knew by name.

2 Q Okay. Well, the police officers get there. At any
3 point at that time, did you see Mario Hernandez?

4 A Until they brought him out. Until they made him come
5 out of the trailer.

6 Q How did he come out of the trailer? How did Mario
7 Hernandez come out of the trailer?

8 A Well, they went, they went around and they were
9 knocking on the door and yelling, come out, we are the
10 police. They went to the front door and then they went
11 also to the backdoor. And they kept yelling for him to
12 come out and he wouldn't come out maybe five minutes or
13 so. And then finally, he came out the front door and,
14 well, he just came out after they called him a couple of
15 times. He finally came out.

16 Q Was Mr. Hernandez handcuffed by the police?

17 A Yes, he was after he came out.

18 Q Did you offer your services to interpret to anyone
19 else besides Tomasa?

20 A Well, they asked me to ask -- ask him what had
21 happened.

22 Q One of the police officers asked you to ask---

23 A And one of the officers. I don't recall who asked me
24 but when they started talking to him, they asked me to
25 help him.

1 Q And where are they interviewing him or where do they?

2 A Outside, right outside the trailer in front of a red
3 car.

4 Q Did they ask you to advise Mr. Hernandez of any of
5 his rights?

6 A Yes, they did.

7 Q So you're relaying rights to him in Spanish?

8 A Yes, I did.

9 Q I'm going to show you what's been admitted into
10 evidence as State's number 5. Do you recognize that?

11 A No, I've never -- I know what it is right now that
12 I'm seeing it, but I didn't see at that time.

13 Q Was the officer who was interviewing Mr. Hernandez,
14 he administered Miranda rights but you're interpreting for
15 him, correct?

16 A Right. He would say one phrase and then I would
17 interpret it in Spanish to Mr. Hernandez. And then the
18 officer would say another phrase and that's how we did it
19 simultaneously.

20 Q So are you giving a verbatim interpretation in
21 Spanish of what the officer is saying?

22 A Yes.

23 Q Did Mr. Hernandez understand the rights you relayed
24 to him in Spanish?

25 A He said he did. I couldn't say for sure, but he said

1 he did.

2 Q Did he choose to waive his rights and speak to the
3 police?

4 A Yes, he did.

5 Q What statements did Mr. Hernandez make to you in
6 Spanish?

7 A That I interpreted to the police?

8 Q Yes. That you interpreted to the police?

9 A He said that I'm sorry. And then he went on to say,
10 I'm a man. Even though I'm a pastor, I'm a man. They
11 used to walk around in provocative clothing. And I'm a
12 man and I have feelings like any other man.

13 Q Was there any admission related to assaulting or
14 touching MINOR by Mr. Hernandez?

15 A He kept saying, I'm sorry. I did touch her. I'm
16 sorry.

17 Q And what questions were asked of Mr. Hernandez that
18 you had to interpret?

19 A Well, they asked him what happened. To give his side
20 what happened. And that's what he just said, you know,
21 I'm sorry. Nothing happened. We were just -- I was just
22 touching. Nothing happened.

23 Q So, Mario Hernandez, is he present in court today?

24 A Yes, he is.

25 Q Where is he?

1 A Sitting right over there in the suit and glasses.

2 Q At defense table?

3 A Yes.

4 Q Was that the extent of the statements Mario Hernandez
5 made?

6 A That I can remember. It was, it wasn't a very long
7 interrogation, I guess, or that's what I can remember.

8 Q So is everything that you interpreted on the scene
9 that night true and accurate?

10 A Yes.

11 Q Did you have any reason to misrepresent to the
12 officers what Mr. Hernandez was saying at the time?

13 A No.

14 Q Do you have any ill-will towards Mr. Hernandez?

15 A No.

16 Q And any animosity whatsoever?

17 A No.

18 Q Was Tomasa paying you to be out there that night?

19 A No.

20 Q Is there any reason that Mr. Hernandez misunderstood
21 what you were interpreting?

22 A I interpreted what the officers told me. So I can't
23 say he understood or didn't understand, but he said that
24 he did understand.

25 Q He acknowledged he understood everything?

1 A Yes.

2 Q Mr. Hernandez, was anyone, you or anyone threaten Mr.
3 Hernandez into, coerce him into making any statements?

4 A No.

5 Q Were any offers of leniency made to Mr. Hernandez in
6 exchange for him making a statement?

7 A No.

8 Q And, Mr. Hernandez, did he appear to be under the
9 influence of anything at the time?

10 A No.

11 MR. DANIEL: Beg the Court's indulgence. No further
12 questions. Answer any questions Mr. Pinilla may have.

13 MR. MCMULLEN: May it please the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. MCMULLEN:

17 Q Good afternoon.

18 A Good afternoon.

19 Q How are you?

20 A Fine.

21 Q Ms. Rivera, yesterday you testified in a hearing we
22 had without the jury, did you not?

23 A Yes.

24 Q And do you remember yesterday I showed you a piece of
25 paper about whether you were qualified or certified?

1 A Yes.

2 Q And I asked you then, are you Elizabeth Rivera of
3 2643 Wilson Road and you said yes?

4 A And that's a different address, but yes. That is
5 where I used to live.

6 Q Okay. Did you say that yesterday?

7 A Yes.

8 Q You told me yesterday that's where you used to live?

9 A Right.

10 Q Okay. So you moved from there to what's the address?

11 A 2017 Rivers Street.

12 Q And that is 2017?

13 A 17.

14 Q Rivers. So you live on the very same street as [REDACTED]
15 [REDACTED]?

16 A Yes.

17 Q About a block away?

18 A About.

19 Q And how long have you lived there?

20 A About five years.

21 Q Now, you stated you were self-employed doing
22 interpreting verbal, is that right?

23 A Right.

24 Q And yet you also said you volunteer a lot?

25 A Yes.

1 Q Do you get paid by the police when you -- normally
2 when you get called by them?

3 A No, not by the police.

4 Q So who pays you?

5 A Well, nobody. Sometimes the person that I go, not
6 the officers or anything, but the other person. Sometimes
7 they'll give me \$20.00 dollars, thank you, you know.

8 Q I don't know many self-employed lawyers who don't get
9 paid.

10 A Well, I'm not a lawyer.

11 MR. DANIEL: Objection. Your Honor, that's improper.

12 Q Well, I just don't know how you get, how do you make
13 ends meet being self-employed and not getting paid?

14 A My son lives with me and he, you know, pays a lot of
15 our bills.

16 Q Okay.

17 A Just little bits here and there that people give me.
18 It's, you know, I get by.

19 Q Okay. And you testified earlier that you and Tomasa,
20 you said she's just an acquaintance from the community?

21 A Right.

22 Q She calls me when she needs a favor?

23 A Right.

24 Q When she needs a ride someplace? If she needed
25 something, she'd call me?

- 1 A Right.
- 2 Q Do you ever ask her for anything in return?
- 3 A No.
- 4 Q You ever call her and say, well, I need something
- 5 from you now?
- 6 A No.
- 7 Q You just always the one that she calls for help?
- 8 A Right.
- 9 Q She relies on your kindness?
- 10 A Yeah, sometimes if she had, she had a garden and
- 11 sometimes she would go and take me cucumbers or tomatoes
- 12 or if she made some kind of food she would take me
- 13 something sometimes. It's just how I've been doing it
- 14 here in the community.
- 15 Q Okay. You called MINOR by a different name?
- 16 A MINOR.
- 17 Q MINOR, is that her nickname?
- 18 A Well, that's the way I called her, MINOR.
- 19 Q Okay. How long have you known her?
- 20 A MINOR?
- 21 Q Yes, ma'am.
- 22 A I don't know, maybe four years. Within the community
- 23 and we see each other sometimes and a long time when you
- 24 don't see people.
- 25 Q All right. You grew up in California?

1 A No, I grew up in Texas.

2 Q I'm sorry. You, were you born in California did you
3 say?

4 A Yes, I was born in California.

5 Q And then where in Texas did you grow up?

6 A El Paso.

7 Q And do you know where Mario Hernandez is from?

8 A Guatemala.

9 Q And do they have different dialects in Guatemala than
10 you have in Texas?

11 A I'm sure, yes.

12 Q Do different words mean---

13 A Different words mean different.

14 Q Or the same word means different things sometimes?

15 A Possibly.

16 Q Okay. Did you tape record these statements?

17 A No.

18 Q Do the police ever tape record statements when you're
19 around?

20 A I don't know.

21 Q Okay.

22 A Usually, I haven't seen them, but I don't know.

23 Q Now, you testified that you got this phone call
24 sometime after 9:00. Can you narrow it down a little bit
25 more for us?

1 A Really, I can't. I just know it was already real
2 dark and it was in June in the summer. So it had to be
3 late. It was already dark.

4 Q All right. Now, you testified the police arrived
5 about ten or fifteen minutes after you did?

6 A No, not that, about five or ten minutes after I did.

7 Q Five or ten?

8 A Right.

9 Q All right. And you're sure about that?

10 A About what?

11 Q What I just asked you, whether the police took
12 five---

13 A Oh about when they arrived? Yes.

14 Q Okay. What's the son's name?

15 A Miguelito.

16 Q Miguelito. All right.

17 COURT REPORTER: I want to get, can you please spell
18 that name, please, for me?

19 A Miguelito?

20 COURT REPORTER: Yes.

21 A M-I-G-U-E-L-I-T-O.

22 Q You testified that you got this phone call, were
23 about ready for bed?

24 A Yes.

25 Q You put on some shoes?

- 1 A Right.
- 2 Q Were you dressed for bed?
- 3 A Well, I had some pants on and a t-shirt and I just
- 4 put on some shoes and grabbed my keys and got in my car.
- 5 Q Is that you in State's exhibit 3?
- 6 A Yes.
- 7 Q Well, what are you wearing in that?
- 8 A It's a t-shirt, like a turquoise t-shirt.
- 9 Q That's what you were going to go to sleep in?
- 10 A Well, I was just laying down.
- 11 Q I'm just asking, you know.
- 12 A Yeah, you know---
- 13 Q Okay.
- 14 A ---yeah and sometimes I do.
- 15 Q All right.
- 16 A Yeah.
- 17 Q Now, instead of being able to go to sleep, you ended
- 18 up running or driving as fast as you could to your
- 19 acquaintances house. And did you go to the hospital with
- 20 MINOR and her mother?
- 21 A Yes, I did.
- 22 Q And the police?
- 23 A And the police.
- 24 Q So you end up not going to sleep that night and for a
- 25 long time?

1 A No, we didn't.

2 Q How long were you with them that night?

3 A I think we got back to Newberry about 10:00 o'clock
4 the next morning, Sunday morning.

5 Q And, basically, you did what while---

6 A Just sat there in the hospital and waited. And then
7 they did a, what they were going to do with her, forensic,
8 went in there, waited.

9 Q Did you go in the room when she was, when MINOR was
10 examined by medical people?

11 A Yes, I did.

12 Q You were in the examination room with them?

13 A Yes.

14 Q What is a U Visa?

15 A A U Visa?

16 Q Yes, ma'am.

17 A That's a visa that people apply who have been victims
18 of a crime or an assault, I believe, in the United States.
19 And then they apply that to get a status.

20 MR. DANIEL: Your Honor, I'm going to object just to
21 relevance on this question for this witness.

22 THE COURT: Well, if she knows. Lay some more
23 foundation.

24 Q A U Visa is, correct me if I'm wrong---

25 MR. DANIEL: And, Your Honor, I'm going to object to

1 him -- to Mr. McMullen testifying.

2 MR. MCMULLEN: Okay. All right.

3 Q You and Tomasa hatched a plan---

4 THE COURT: No, no, no. If she knows what a U Visa
5 is was your question and she can answer that.

6 MR. MCMULLEN: All right.

7 Q Do you know what it is?

8 A That's what, that's my understanding of what it is.

9 Q Is that if you're a victim of a crime you get to stay
10 in the country?

11 A No, not necessarily you get to stay. You have to go
12 through the process, the immigration process applying for
13 a U Visa.

14 Q And do witnesses get to stick around, too?

15 A I don't know.

16 Q Okay.

17 A I don't know anything about it. That's all I know
18 about it.

19 Q You want to help Tomasa, don't you?

20 A In what capacity?

21 Q Here.

22 A I just came, the Solicitor subpoenaed me as a witness
23 as to what happened that night. I'm here.

24 Q And that's it?

25 A That's it.

1 Q All right. When you testified earlier, you
2 testified, you summarized what was said, did you not or do
3 you remember?

4 A What was said when?

5 Q What was said that night at the trailer?

6 A Well, I told you what was said that night.

7 Q In other words, what was said that night with the
8 police or with Mario, at that time you testified
9 everything word-for-word, yes?

10 A At that night, yes.

11 Q But today, you're paraphrasing, are you not?

12 A Well, I'm just saying what was said, what he said,
13 what I said.

14 Q I'm asking are you using verbatim exactly what was
15 said?

16 A Yes.

17 Q All right. Without altering or omitting or adding
18 anything?

19 A Right, as well as I can remember, yes.

20 Q And that's, I guess, what we must rely on is what you
21 remember?

22 A Right.

23 Q It's not written down by you?

24 A No.

25 Q Do you ever look at the notes the officers took as a

1 result of what you translated or interpreted, whichever?

2 A I just saw the report yesterday, what they showed me,
3 you know, like the incident report.

4 Q So they showed you yesterday. What was the purpose
5 of that?

6 A I don't know, because just to refresh my memory.

7 Q Okay.

8 A But it was just the incident report.

9 Q Where was Tomasa when the police were interviewing
10 Mario?

11 A She was standing by my car.

12 Q How far away from you?

13 A Let's see, maybe from where they are to over like by
14 where the Judge is or behind the Judge. Because that red
15 car was right there, then my car was over at the driveway.
16 So it was kind of far away.

17 Q In case the Court Reporter or somebody who might read
18 about this later, how far in feet?

19 A Oh, my gosh. I don't know. You know, I really don't
20 know in feet and stuff like that. I'm not good at that.
21 I couldn't tell you.

22 Q Have you been inside that residence at 1903?

23 A I went in there that night.

24 Q For what purpose?

25 A The -- well, after the police went in there to see

1 where everything had happened, the set up. I went in
2 there with them because they were asking Tomasa questions,
3 you know, like where did it happen and what did you see.
4 So, I went in there with them that night.

5 Q So if this courtroom were the trailer, is the trailer
6 about as long as from here to from one wall to the other
7 or bigger?

8 A I suppose -- well no, I don't think it's bigger.
9 It's just a regular single-wide.

10 Q So to walk from one end of the trailer to the other
11 end of the trailer---

12 A No, I didn't. I just stayed right---

13 Q I'm just asking you how big it is.

14 A I don't know, but I guess. Like to here from over
15 that wall to here.

16 Q So how long would it take to walk that distance?

17 A A couple of, a few seconds. I mean, it doesn't take
18 a minute to walk. Not long.

19 Q What was the last part?

20 A It doesn't take a minute to walk from one end to the
21 next, I don't think, maybe a minute.

22 Q Thank you.

23 THE COURT: Anything else?

24 MR. MCMULLEN: Beg your indulgence, Your Honor.

25 Q Does MINOR speak fluent English?

1 A Yes.

2 Q What was the purpose of your presence inside the
3 examining room?

4 A For her mom, because mom was in there too. And to
5 interpret for mom what the procedure that they were going
6 to be doing.

7 Q And how old was MINOR at the time?

8 A I believe she was 11, 12, I don't remember.

9 Q Thank you.

10 THE COURT: Anything else?

11 MR. DANIEL: No further questions, Your Honor.

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

13 All right. Why don't we take ten minutes to find out what
14 bug is over there in the jury box.

15 (Whereupon, the jury was excused from open court for
16 a break.)

17 THE COURT: Let's take ten minutes.

18 (Whereupon, a short break was taken.)

19 THE COURT: All right. Mr. Scott, you said your next
20 witness would be Detective Goodman?

21 MR. SCOTT: Yes, and we just, before we get him up
22 there and start questioning him, I know we talked
23 yesterday about the written statement in so much as that
24 it cannot be translated but except for a certified,
25 qualified translator. There was an oral statement that

1 was taken before that written statement. And, again, what
2 occurred was Kevin would ask a -- Mirandize him, ask a
3 question, Boris Alvarado would do the translating on that
4 one. So really before we start asking, will Kevin Goodman
5 be able to, obviously, he'll be able to testify as to what
6 he asked. Will he be able to testify to what answers he
7 was given?

8 THE COURT: I don't remember the answer. You were
9 dancing around it. What was the answer you're looking
10 for?

11 MR. SCOTT: Yes. Kevin Goodman, we are going to ask
12 him, well, what did you ask him? We'll ask him what
13 happened and what did he say will be the next question.
14 He's getting that information through Boris Alvarado,
15 who's the translator.

16 THE COURT: Who speaks Spanish?

17 MR. SCOTT: Yes. And I'm crystal clear on him not
18 being able to testify to what the written statement is but
19 as far as the oral statement.

20 THE COURT: Right.

21 MR. SCOTT: Is Kevin Goodman going to be able to
22 answer as to what information?

23 THE COURT: I don't remember those questions. That
24 is why I am asking, what questions are we talking about.
25 You are not telling me. Just tell me what you are talking

1 about. I remember there was a conversation with Goodman,
2 Alvarado, Alvarado picked the defendant up from the jail
3 and brought him into Goodman's office and sat down and
4 talked for a while. And eventually rights were advised
5 and there is a English copy, there is a Spanish copy and
6 then there is a Spanish statement given by Mr. Hernandez.
7 And then there is, that translated sometime later on by
8 Officer Alvarado for the Solicitor's office. I don't
9 remember the oral statements we are talking about.

10 MR. SCOTT: Okay.

11 MR. MCMULLEN: My recollection was, Your Honor, that
12 we talked about certified and qualified and all that and
13 he's not those things. And I was trying to show the
14 written statements we know were said. And I thought that
15 the final ruling was Alvarado can't testify as to the oral
16 statements that he translated or Goodman either.

17 THE COURT: I want to hear them first.

18 MR. MCMULLEN: Okay.

19 THE COURT: I want to hear what we're talking about.
20 If it's harmless and already been said, I don't see what's
21 going to be, make a big difference. But what are we
22 talking about?

23 MR. MCMULLEN: Okay.

24 MR. SCOTT: Okay. So here's the incident report.
25 They have him transported to the police department and

1 this is Kevin Goodman's statement, I spoke with Mario
2 again with Alvarado translating. Mario was read his
3 rights by using a Spanish rights form. Mario waived his
4 rights and spoke with the Investigating Officer. I also
5 had Mario sign a waiver of rights form in English as I
6 read the English version and Alvarado translated from the
7 Spanish form. Those were put in--

8 THE COURT: One, two and three is the Court's
9 Exhibits.

10 MR. SCOTT: Mario said, and this is orally at this
11 point. This is before the written statement. Mario said
12 that the inappropriate touching started around December
13 2012. Mario said that he and the victim would touch each
14 other's private parts and all of this would take place in
15 front of the mother. Mario said that the victim would get
16 on top of him while sitting on the couch and the mother
17 would be there watching. Mario noted that their clothes
18 would be on.

19 THE COURT: I don't remember Goodman reading his
20 incident report. That's what you're doing.

21 MR. SCOTT: No, he didn't read it.

22 THE COURT: That's what you're doing.

23 MR. SCOTT: Yes, sir. Well that's essentially what
24 the testimony was yesterday. He talked about an oral
25 interview that took place before he put pen to paper.

1 THE COURT: I just don't remember all of those
2 comments coming out. I don't remember that.

3 MR. MCMULLEN: As I recall your ruling, Your Honor,
4 was---

5 THE COURT: I remember my ruling.

6 MR. MCMULLEN: Okay.

7 THE COURT: I'm talking about those statements by
8 Goodman that Goodman get up and say, Mr. Hernandez said to
9 me that we did this in front of the mother, it was on the
10 couch in front, you know, and we were all that. I don't
11 remember that.

12 MR. SCOTT: Well, that may not have been exactly what
13 he testified to. I'm reading his report.

14 THE COURT: That's where I'm having trouble
15 recollecting.

16 MR. SCOTT: It was pretty much the same thing that he
17 said at the scene. Pretty much denied that there was any
18 intercourse but that there was some touching going on.

19 THE COURT: I think he can say that, because that's
20 been said.

21 MR. SCOTT: Yes, sir.

22 THE COURT: And then that, you know, where we're
23 losing the translation and then the potential
24 embellishment of reducing it to writing and refreshing my
25 memory of what was translated back to me, that's where I'm

1 kind of losing your argument is questions asked by
2 Alvarado in Spanish, repeated in Spanish back to
3 Alvarado's response. Alvarado translates in his
4 versionanl of Spanish back to Goodman and Goodman is
5 taking notes. That's getting a step away.

6 MR. SCOTT: I think what do you, what do you
7 recollect him saying probably is how I would handle it.

8 THE COURT: I don't think y'all had him say all that
9 yesterday in front of me. I just don't remember that.

10 MR. MCMULLEN: Well, I thought your final ruling was
11 that Alvarado's stuff, since he's not certified, couldn't
12 do that but if we got some -- if somebody got in a
13 certified person to read the written statement that our
14 client wrote that that would be admissible. And I
15 remember saying, well, I'm not the one who's the proponent
16 of the statement.

17 THE COURT: I'm very comfortable with that and I
18 don't think he's arguing that.

19 MR. SCOTT: No.

20 THE COURT: You keep going there. Yeah, I said that
21 but this is a preliminary issue to that or an additional
22 issue is an oral admission by Mr. Hernandez prior to
23 writing in Spanish a statement.

24 MR. SCOTT: Yes, sir. And if he gets up there and
25 says, no, we didn't have an oral statement. Then that's

1 kind of, all right, we will shut him down, that's all we
2 have for this witness. We are not going to get into the
3 written statement. I am interested in the pre-interview.

4 THE COURT: Well, you can say he provided a written
5 statement to us in Spanish and I can't translate it.

6 MR. SCOTT: Right.

7 THE COURT: That's truthful and accurate. Exactly
8 what happened.

9 MR. SCOTT: Okay.

10 THE COURT: And, you know, call the certified
11 translator to look at the statement written and put her
12 under oath, translate this please. You can do that.

13 MR. SCOTT: Okay. I think we're clear. We really
14 just going to probably get into the pre-interview oral
15 conversation they had going on.

16 THE COURT: Well, I'm real uncomfortable with those
17 words that Goodman wrote on his incident report that you
18 were just reciting into the record.

19 MR. SCOTT: And I think, Judge, I think I kind of
20 erroneously, I'm jumping to where he's talking about the
21 written statement. Because that's kind of what Boris
22 Alvarado's, my recollection--

23 THE COURT: Well, tell you what to do, just out of an
24 abundance of caution. Let's stick to y'all had a
25 preliminary, oral conversation. He admitted touching.

1 Then we asked him to provide a written statement and he
2 did after given his Miranda rights. And all of that is
3 very consistent with the hearing yesterday.

4 MR. SCOTT: Let's do this with the Court's
5 permission. And it's going to be very short and the rest
6 of our witnesses today are going to be short. Can we just
7 proffer some just quick testimony from Kevin real quick.

8 THE COURT: Sure, let's do that.

9 MR. SCOTT: Yes, sir. Not everything that was stated
10 orally was reduced to writing. And we're just trying to
11 get into what is in that supplemental, the oral statement.
12 Just like we did with Liz Rivera. Andy Rowe testified in
13 the Liz Rivera.

14 THE COURT: All right. We are not going to get into
15 that supplemental incident report where Goodman is writing
16 down his---

17 MR. SCOTT: I think that's from the written
18 statement. I think you're right.

19 THE COURT: Well, I don't care where it's from. Here
20 is the problem. We've got Alvarado who's a
21 Spanish-speaking police officer and he's repeating his
22 Spanish version into English to Goodman and Goodman is
23 writing up that incident report, either writing and then
24 contemporaneously later on. And then the statements
25 you're reading back to me weren't presented to me in that

1 fashion. He never really got that far yesterday, I don't
2 believe.

3 MR. SCOTT: No, sir.

4 THE COURT: I just don't believe he did. I
5 understand. What I don't want y'all to do and I want to
6 be clear on this. Goodman, do you remember exactly what
7 he said. No, if you give me the incident report I can
8 refresh my memory and then he reads that off the incident
9 report. And that's not fair.

10 MR. SCOTT: I think this will be the, let's do it
11 this way. And if we decide, that no, we are not, we will
12 kind of shift gears.

13 THE COURT: Because, I mean, you're going to get the
14 Spanish written statement if you can interpret it,
15 translate it.

16 MR. SCOTT: Yes, sir. All right.

17 THE COURT: All right. Let's bring in Goodman and
18 proffer just briefly what you're going to try to get into
19 so he understands where he's limited.

20 KEVIN GOODMAN, being first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q All right. Investigator Goodman, June 29th, 2013,
25 did you respond to [REDACTED] ?

1 A Yes. Yes sir, I did.

2 Q All right. And did you -- and at that point did you
3 hear any statement from Mario Hernandez?

4 A Through the interpreter, yes sir.

5 Q And that being Liz Rivera?

6 A Yes, that's right.

7 Q And what do you recollect hearing from Mr. Hernandez
8 that night?

9 A If I can refer to my notes. That he had been
10 allowing a young lady and her mom to live there with him
11 in his house for about four years or so and that the young
12 lady and mother walked around the house dressed
13 provocative and enticed him. He's a preacher, but he's
14 also a man and he reacted as a man would.

15 Q All right. Now, fast-forward to July 1st, a couple
16 of days later. Do you have an opportunity to speak with
17 him at the Police Department?

18 A Yes, sir. I did and I had him transported to the
19 Police Department from the jail by Corporal Alvarado.

20 Q Okay. And Alvarado is the officer y'all use to
21 translate Spanish into English and vice-versa?

22 A Yes, sir.

23 Q And the interview took place in your office?

24 A It did.

25 Q And he was Mirandized?

1 A He was.

2 Q Okay. At this point, were you able to interrogate
3 him, question him?

4 A Yes. Question him, yes sir.

5 Q All right. So you were asking him questions and he
6 was giving answers verbally?

7 A Right.

8 Q Okay. At some point, did he give a written
9 statement?

10 A He did.

11 Q Okay. But is it your testimony there was some oral
12 -- there was a conversation back and forth before he put
13 pen to paper?

14 A That's right.

15 Q All right. Well, tell us what you asked him in, I
16 guess, the pre-written statement interview?

17 A Okay. When he first came in, you know, I introduced
18 myself again, obviously. Because we didn't really -- I
19 didn't have much firsthand talking with him on the 29th.
20 That conversation was already been taking place. So I
21 introduced myself. He came in, he sat down, I introduced
22 myself. I told him what he was there for. Read him his
23 rights. He waived them and I took him back to June the
24 30th, I'm sorry, June the 30th, but I took him back to
25 that night and -- June 29th, 29th-30. I took him back to

1 that night and asked him did he remember. And I left out
2 a part, on the 30th, I overheard him saying that he had
3 fondled or touched her inappropriately or whatnot through
4 Ms. Rivera. I took him back to those inappropriate
5 touchings and I asked him exactly what those were, when
6 did they start, how long did they last. We talked about,
7 I asked him, you know, where would this happen at, who
8 would be present. Were they clothed? Were they not
9 clothed? It had been brought to my attention that he had
10 changed clothes, possibly had changed clothes. I asked
11 him had he changed clothes that night before the police
12 arrived. I asked him about the night in question, what
13 happened that night, what took place and where were they
14 at, how were they -- exactly where were they positioned in
15 the room when the mom came into the daughter's room, those
16 things.

17 Q All right. Now, what was this, what do you recall
18 his responses being? What did he tell you?

19 A I documented them as him saying that the
20 inappropriate touching was around -- starting around
21 December, December 2012. He said that he and the young
22 lady would touch each other in their private parts and all
23 would take place in front of the mom. Said that the young
24 lady would get on top of him while sitting on the couch
25 and the mother would be there watching. Mario -- they

1 would have their clothes on. He denies ever putting his
2 penis, mouth or anything inside the victim. The night in
3 question, they both had their clothes on. He said he was
4 sitting on the young lady's bed with the door open and the
5 lights on. The victim was in the bathroom when the mother
6 came in, in the room that night. He did admit to changing
7 clothes before the police arrived that night. He said
8 that he was wearing blue jeans -- blue, white, green
9 shorts and that the clothes he had on that night that he
10 changed out of was in his room back at the incident
11 location in the top of the closet. And I asked for
12 permission to go and get those items or consent to get
13 those items.

14 Q All right. So what you just testified to, is that
15 what he told you verbally or was that a translation from
16 his written statement?

17 A No, that was verbal.

18 Q Okay.

19 A As a procedural thing, I mean, and we always talk. I
20 always talk to people that I'm interviewing. They tell me
21 what happened and we kind of just talk through it. And
22 then they write it for me.

23 Q Okay. Okay. Did Alvarado, did he ever translate the
24 written statement back to you? Do you recall?

25 A No, he did not.

1 Q Okay. Okay. And that -- is that what you testified
2 to yesterday?

3 A Yes, sir.

4 MR. SCOTT: Judge, I guess, that's the, that was the
5 oral statement. I'll call it a pre-interview statement.
6 And as Investigator Goodman says that it's policy, I
7 guess, to sit down and kind of have an oral conversation
8 before they sit down with the pen and the paper and write
9 out what they're going to put on the paper. I don't know
10 that -- if anything it's probably -- it's minimized his
11 role in this statement more than what was testified to at
12 the scene. That's essentially what we'd have him testify
13 to in front of the jury.

14 THE COURT: You want to cross his proffer?

15 MR. MCMULLEN: May I ask one?

16 THE COURT: Sure.

17 CROSS EXAMINATION

18 BY MR. MCMULLEN:

19 Q When did you make these notes?

20 A These would have been typed in. The date entered at
21 the top would have been July the 16th, 2013.

22 Q Fifteen days later?

23 A That would have been when I typed them in.

24 Q All right.

25 A Now, to make sure that I don't forget what is said, I

1 always handwrite stuff so I can go back later.

2 Q May I see those notes?

3 A I don't have those. Once I type them in, I don't
4 keep the handwritten ones.

5 THE COURT: I have notes on all of that, details of
6 the preliminary conversations are written down. I've got
7 notes of what he said and how they went through very
8 detailed all the Miranda in the office. Went through it
9 in Spanish and read it back. Alvarado read it back, the
10 Spanish version, the English version, and he gave a
11 written statement. It's the repeating of what he
12 overheard Sergeant Rowe on the scene, walked around
13 provocatively, act like any man would. I'm just -- I've
14 got a gap and it may have been said, but I just don't
15 remember it.

16 MR. SCOTT: I recall us testifying to, you know, the
17 pre---

18 THE COURT: Just seems more details to me.

19 MR. SCOTT: That's fair enough. Judge, what I would
20 do, I'm fine with him just talking about what he
21 remembered from that night. My fear would be that, you
22 know, the defense would come back and say well you did
23 another interview, you know, and then I'm here stuck
24 saying that---

25 THE COURT: Well, I think that you could say he had

1 the interview, brought him in with Alvarado, explained to
2 him his rights, had a oral conversation about everything.
3 And then he reduced it to writing after that, and then get
4 the writing. And if they open the door and say something,
5 you got him. I don't see any problem with that. That's
6 kind of how I see this thing going.

7 MR. MCMULLEN: For what it's worth, Your Honor, I
8 have a problem with him -- with the officer testifying
9 that Mario said, yeah, I changed clothes that night before
10 y'all got there. I hate to use the word admit. I think
11 he volunteered that, but he changed clothes. He signed a
12 consent to search form, the purpose of which was so that
13 the good officers could go retrieve the clothes he
14 actually was wearing. And then I don't mind his
15 testifying that MINOR and her mother confirmed the
16 clothing was what Mario had on the night of the incident.

17 THE COURT: All right. Let's do this. Let's limit
18 Detective Goodman's testimony to, he had an interview with
19 him, orally went over, advised him his rights, he
20 understood them through Alvarado, he signed two waivers,
21 one in English and one in Spanish. After orally speaking,
22 Hernandez was allowed to write it down. He can't
23 translate it. He's not able to. And he can -- you can
24 ask about the clothes, consent, permission to go get them
25 and I think we will limit it there. I don't know that

1 that other comes in. They open the door and say you
2 didn't do this, you didn't do that, I'll let you call him
3 back for rebuttal witness.

4 MR. SCOTT: Yes, sir.

5 MR. MCMULLEN: Could you give me a little -- what is
6 it I'm not supposed to say?

7 THE COURT: Well, if you come and say you didn't do
8 this and he's done it.

9 MR. MCMULLEN: Oh, you're talking about the
10 interview?

11 THE COURT: Yeah.

12 MR. MCMULLEN: Oh, yes sir.

13 THE COURT: Don't go open the door about what he
14 asked questions about and why didn't you go back and look
15 further and ask him more questions.

16 MR. MCMULLEN: Okay.

17 THE COURT: I think he thoroughly went, tell me when
18 this started, who was there, when it happened, how many
19 times. If you go back into that, then he gets to come
20 back and read his incident report. Okay?

21 MR. MCMULLEN: I think so.

22 THE COURT: All right. I mean, I don't want you
23 unloading the gun at him if your investigation was not
24 thorough. I think he's given a pretty good summary of he
25 asked a lot of questions through Alvarado to your client.

1 MR. MCMULLEN: Yes, sir.

2 THE COURT: And eventually was allowed to write a
3 statement and that he was advised properly of his Miranda
4 rights prior to interrogating him, I mean questioning him.
5 I just don't think it'd be fair of you to say that the
6 City of Newberry's investigation was not thorough and
7 completely based on what this detective did. And if you
8 say you didn't ask very many questions and wait a minute,
9 that's not a very fair posture to put him in.

10 MR. MCMULLEN: Oh, okay and may I? My understanding,
11 Your Honor, is that the written statement that is in
12 Spanish. That apparently it is admissible with the proper
13 foundation.

14 THE COURT: I mean, he can identify it.

15 MR. MCMULLEN: Okay.

16 THE COURT: He could identify that's the written
17 statement given by your client in Spanish. He just can't
18 read it.

19 MR. MCMULLEN: My client says -- and I don't speak
20 Spanish, but it says in December of 2011 until -- I'm
21 sorry -- until July of 2012, MINOR and her mother and
22 her brother moved to Atlanta and came back. If that's the
23 timeframe. And I did want to ask the good officer if he
24 investigated that.

25 THE COURT: Well, that's another fact. Proffer that

1 testimony about the Atlanta incident. You didn't say a
2 thing about Atlanta and it's in the written statement?

3 MR. MCMULLEN: Yes, sir.

4 MR. SCOTT: Oh, he -- well, it's so confusing because
5 Investigator Goodman just testified that he wasn't privy
6 to the written portion.

7 THE COURT: Well, ask him if he asked about that.

8 MR. SCOTT: Oh?

9 THE COURT: He didn't -- I don't know that you've got
10 to that part. Maybe you overlooked it.

11 MR. SCOTT: Yeah, I -- well, admittedly I haven't
12 seen any relevance to it until maybe today.

13 CONTINUE PROFFER

14 BY MR. SCOTT:

15 Q Investigator Goodman, did you have knowledge of
16 Tomasa and her family of relocating to Atlanta, Georgia?

17 A I did.

18 Q And what was your knowledge of that relocation?

19 A Nothing more than when I was talking with the young
20 lady, MINOR, at some point in our conversation either
21 that night or on July 1st, she had mentioned that she had
22 lived in Atlanta. I think maybe her -- I don't know if
23 her dad or somebody had lived in Atlanta. She'd been down
24 to Atlanta and back, but it wasn't relevant to what we
25 were doing. So it was just kind of she was just talking

1 how she ended up -- how they ended up back in the home
2 with or in the home with Mr. Hernandez.

3 Q Did Mr. Hernandez note that they had left and come
4 back?

5 A He didn't say that to me but that doesn't mean he
6 didn't write it in the statement. There are times very
7 often that I interview people, they'll say something, then
8 when they start writing, I don't know if things start to
9 come back to them or not. But they'll write something
10 that they didn't actually tell me. Obviously, most of the
11 times I'm able to read it but, obviously, I can't read
12 that, so I'm not able to and that's the thing -- one of
13 the procedural things that we do is that we let them --
14 let people tell us what happen. Then they write it. We
15 read it and if there is a difference in what they said and
16 what they wrote, then we can go back and ask that.
17 Obviously, I can't read that so I -- I didn't go back and
18 ask him anything about Atlanta.

19 THE COURT: Well, certainly, that takes away the
20 officer's suggesting for him what to put in the statement.

21 MR. MCMULLEN: But just, I don't understand the
22 purpose of taking the statement if you're not going to,
23 you know, read it and go -- you know, we're giving you a
24 chance to give your side of the story. Okay.

25 THE COURT: Oh, no, no, wait a minute now. Here's

1 the problem. He did that and you're objecting to me
2 getting this officer to read it back to him.

3 MR. MCMULLEN: Yeah, I need to just sit down.

4 THE COURT: I can't do that. Yeah, I can't have
5 that.

6 MR. MCMULLEN: All right. Thank you.

7 THE COURT: I mean, if you want me to take his gloves
8 off, I will.

9 MR. MCMULLEN: No, sir.

10 THE COURT: Okay.

11 MR. MCMULLEN: Well, let me just make sure I
12 understand. I'm -- you can tell I am not always up --
13 quick on the uptake. I want to ask this fine man about
14 things that he may have not done at the crime scene, if we
15 could call it that.

16 THE COURT: You want to ask him right now?

17 MR. MCMULLEN: May I?

18 THE COURT: Sure. I'll tell you what I'm going to
19 do. Let's cut the jury loose. Tell them to be back in
20 the morning at 9:30 and we're going to have 30 minutes of
21 testimony. That's not going to be any good. We may have
22 more proffering and one of the jurors have got to be
23 somewhere. Let's just go on and send them home.

24 (Whereupon, the jury was sent home at 4:19 p.m. The
25 jury will return the next morning at 9:30 a.m.)

1 THE COURT: Mr. Goodman, you understand that this
2 being in-camera is, after you walked out yesterday we
3 discussed Corporal Alvarado not being a certified or a
4 licensed or a trained interpreter or translator but he is
5 proficient in Spanish.

6 MR. GOODMAN: Okay.

7 THE COURT: And he was there with you working with
8 the suspect and he didn't translate it back to you, and so
9 that's where the lawyers are exploring as to exactly what
10 you knew as opposed to what Mr. Hernandez was saying to
11 Corporal Alvarado. And you kind of, are out of the loop a
12 little bit because you don't speak Spanish.

13 MR. GOODMAN: Right.

14 THE COURT: So that's what we're trying to explore to
15 make certain that you don't violate any of my rules
16 yesterday volunteering something that you shouldn't.

17 MR. GOODMAN: Right.

18 THE COURT: And so I wanted them to have an
19 opportunity to ask you questions about your investigation,
20 so go ahead.

21 MR. MCMULLEN: Thank you.

22 CONTINUE PROFFER

23 BY MR. MCMULLEN:

24 Q With all respect---

25 A Yes, sir.

1 Q ---good afternoon. The report says MINOR speaks
2 fluent English and you wrote down in the report dated 7/16
3 that she said she had been having sexual intercourse with
4 Mario?

5 A Yes.

6 Q Did she use the word penis and vagina. And now my
7 question, sir, is -- or did you -- did she have a
8 different name for these body parts. I mean, did she say
9 those words, is that her testimony? If you don't
10 remember, that's a fair answer.

11 A I would have to -- I'm going to refer back to her
12 statement, because it was a fairly -- to the best of my
13 recollection it would have been, we had sex. Well, in
14 dealing with juveniles for, since 1999, I want
15 clarification on sex. So from what I can remember, it
16 would have been described or explained, had sex. And it
17 would have been described as such. And I can't sit here
18 and say a hundred percent that she said penis or vagina.
19 But that's what she would have told to me and that's what
20 she would have been referring to. Again, these
21 statements, I didn't put them in quotations in the
22 supplements because she has her own statement. But when
23 I'm talking to clients or talking to anyone that I'm
24 interviewing, my notes are for me and so I can understand
25 them later on. That's why they write their statement in

1 their own words.

2 THE COURT: All right. Now, I want to tell you one
3 thing that came up yesterday just so you know. We were
4 talking about the word initial admission by the defendant
5 was he touched the girl in some fashion. In one of your
6 reports, it said fondled.

7 A Fondled.

8 THE COURT: And the translators were consistent in
9 the Spanish translation of the word used in Spanish as
10 touch. You used the word fondle and that's where it's
11 coming from. All right, and then you kind of explained it
12 just then, but I wanted you to know what we were
13 discussing yesterday after you left.

14 Q Okay.

15 THE COURT: All right. Now, continue on.

16 MR. MCMULLEN: Thank you.

17 A Now, that word fondle, that was given to me.

18 THE COURT: Okay.

19 A That word fondle was given to me by the interpreter.
20 Now, that was given. I don't know obviously what word he
21 used but that's the word that was given.

22 MR. MCMULLEN: And I don't know if you want to do it,
23 question and answer or just proffer?

24 THE COURT: No, keep going. Keep going.

25 MR. MCMULLEN: All right.

1 THE COURT: You got your opportunity.

2 Q Your report says that she explained sex as Mario
3 putting his penis inside of her vagina. Is that the way
4 she phrased that at 12 years of age?

5 A That would have been what she explained to me. Now,
6 did she use those exact words, I can't say yes, that's
7 what she used. Because she has her own statement here.
8 When she would have said sex, I would have clarified that
9 particular portion, did he put his penis inside of you,
10 something else.

11 Q You later say, I also talked with the victim again on
12 Monday, August 1, 2013 in my office. Did you really mean
13 July 1?

14 A Right, that's exactly what I meant, yes sir.

15 Q All right.

16 A That's exactly what I meant. That's a typo.

17 Q Then you say you spoke with the mother. She gives
18 her version. That's through a translator, I imagine?

19 A That's through Ms. Rivera.

20 Q Then it -- you put 7/1/2013, 9:31 a.m. I spoke with
21 MINOR in the presence of Sergeant Moore. MINOR gave
22 me a written statement on the course of events that have
23 been taking place inside their home and an idea of how
24 long it's been going on. See MINOR written statement
25 for details.

1 A Right.

2 Q All right. Then her written statement follows. And
3 I'd like to, you know, ask about that but I'd hate to go
4 through everything today---

5 MR. MCMULLEN: But if you want me to, I will.

6 THE COURT: Well, I mean, we got him in-camera and
7 the jury is not here. They're not back in the back
8 waiting so this is a good opportunity to clear things up
9 with Detective Goodman. I don't think it'd be proper for
10 you to ask him about any questions or any statements
11 written by someone other than him.

12 MR. MCMULLEN: And MINOR is in English.

13 THE COURT: Right. Well, I mean, that's her
14 statement.

15 MR. MCMULLEN: May I approach the witness?

16 THE COURT: Sure.

17 Q Investigator, is this the statement that young
18 MINOR gave you, sir, or a copy of it?

19 A Yes sir, it is.

20 Q Would you publish that please? Would you read that
21 to us, please?

22 A When we moved in the house, he started having sex
23 with me. And my mom never knew because he told if I did,
24 they would not believe me because I lie sometimes and I
25 was 9 or 10 years old when he started having sex with me.

1 Then the second or third time, my mom started suspecting
2 about that. Now my mom knows and knows about and he,
3 Mario, keep doing sex and he keep hurting me. And she
4 says, when I say he, I say Mario Gonzales.

5 Q What does she mean by saying, I lie sometimes?

6 A I -- we talked about that and she -- I asked her
7 about what do you mean about what do you lie about and she
8 said little things like she's not doing good in school or
9 something, just little things like that. Nothing big
10 just, I guess, kids being kids and not telling the truth
11 about everything at times.

12 Q She says my mom started suspecting about the sex or
13 she says about that. Now my mom knows about he, Mario,
14 keep doing sex and kept hurting me. Is that what it says?

15 A That's what it says.

16 Q And as a result of this statement that my mom knows
17 he's doing this, he's been doing this, did you take any
18 action about that or as a result of that?

19 A What do you mean, action about that?

20 Q Did you go reinterview mom and ask her?

21 A I'm pretty sure that was covered with the victim's
22 advocate. The victim's advocate did more speaking with
23 the mom than I did.

24 Q Okay. So you did not take any action---

25 A No, sir.

1 Q ---as a result of that?

2 A No. No.

3 Q All right. And again, she says -- let's see, you
4 prepared the arrest warrant that was served on June 30th,
5 is that correct?

6 A That's right.

7 Q Did you go to Judge Partridge yourself?

8 A I would have talked to Judge Partridge. I think that
9 was a Sunday morning. I think that's right if I'm not
10 mistaken. And I would have talked to him, explained to
11 him what was going on and give an affidavit for him to
12 approve. And then a warrant would have been typed and
13 signed and by him.

14 Q Did you sign the warrant?

15 A Yes, I was the affiant on it, yes sir.

16 Q All right. And then, basically, you -- Tomasa tells
17 Liz, Liz tells things to Rowe or MINOR tells you or
18 tells Rowe and then you go get the warrant. And then you
19 go talk to Mario the next day, July 1st?

20 A Well, I had him brought to me, yes.

21 Q And then when he says, You're basically talking to
22 this man about, you've been accused of having sex with
23 this girl since she was 9.

24 And then he says in his written statement in Spanish,
25 Well, they didn't even live with me for part of this time.

1 And I wanted to ask if there is any kind of follow-up
2 that you did about that?

3 A About them not living?

4 Q Yes, sir. Because your warrant says a continuous
5 amount of time. It doesn't say from here until here and
6 then here until there.

7 A Right.

8 Q It says---

9 A Right.

10 Q ---from January 12th---

11 A Well, she explained to me that at some point she had
12 -- they had moved to Atlanta for a short period of time
13 and came back.

14 Q That was December to the next July and your warrant
15 alleges a two-and-a-half year period and we're talking
16 about eight months right in the middle of that, is that
17 right?

18 A I guess so, right.

19 Q Okay. But they told you about this?

20 A Not they. That conversation was with MINOR .

21 Q Is that documented anywhere in your, any of your
22 reports?

23 A About them being in Atlanta?

24 Q Yes, sir.

25 A No, sir.

1 Q Can you just explain why?

2 A Again, we were concentrating on the incidents, the
3 alleged stuff at River Street.

4 Q Right.

5 A Nothing that she talked about in Atlanta was relevant
6 to what was going on here.

7 Q Now and MINOR had always said this happened for
8 four years, right?

9 A She said when she moved in that they started having
10 sex.

11 Q Does it -- do you have---

12 A And she said she was 9 or 10 years old so.

13 Q So from the age of 9 till - well, do you have the
14 first page of the first incident report?

15 A I have the whole incident report, yes sir.

16 Q And I know Rowe wrote this, but you go on that to
17 launch your investigation, don't you?

18 A Typically, this is the document that launches the
19 investigation. Yes, sir.

20 Q Well, assuming it says four years, did you -- why
21 does the warrant allege January 1, '11 to June 30, '13 and
22 where did you get those dates?

23 A She could not give me a specific date, okay. So we
24 went back to how old she would have been, what year it
25 would have been when she was 9. I covered from day-one of

1 2011 until that day, that particular night. Because she
2 wasn't specific, she didn't have specific dates or times
3 and that was just a broad spectrum to cover it all,
4 because we didn't have a specific date or time other than
5 the incident date.

6 Q Mario had specific dates, didn't he?

7 A Say that again?

8 Q Mario told you specific dates when they were not
9 there?

10 A There may be some dates written in his statement that
11 he put in.

12 Q Okay. Well, I don't want to beat a dead horse.

13 THE COURT: Oh, wait what he's saying is he can't, he
14 can't read a report, a statement given by the defendant.

15 MR. MCMULLEN: Yes, sir.

16 THE COURT: So it's kind of difficult to
17 cross-examine when you're not allowing him to get it
18 translated.

19 MR. MCMULLEN: Well, I guess I'm just thinking in the
20 real world. If you ask a guy to write a statement. And
21 you ask, hey, what's it say and then you go---

22 THE COURT: You can ask him -- you can ask him that
23 but, I mean, if he said he didn't, he just didn't.

24 MR. MCMULLEN: Okay.

25 Q And that's -- is that your testimony, you just didn't

1 read it?

2 A I did not get this translated back to me. No, sir.

3 Q Okay. Thanks.

4 A The only thing that I would have done---

5 Q That's fair enough.

6 A ---would have been just to make sure that this -- his
7 statement is true, it's everything he wanted to say in his
8 own words. And we sign off on it.

9 Q All right. And then you took the blanket that was
10 supposedly used for these rapes for four years. And you
11 basically took whatever you wanted out of his house the
12 night that you showed up on the scene?

13 A No, sir. I didn't take anything out of his house
14 that night.

15 Q Okay.

16 A The blankets and stuff was seized by Sergeant Rowe,
17 I'm pretty sure or someone on the scene that night. Not
18 me.

19 Q Okay. Now, and who would it be that communicates
20 with SLED and says here's what we want tested and here's
21 what we don't need tested. Is that your call?

22 A Well, not necessarily my call. I think we have a
23 protocol on some things that we can and can't send and we
24 send -- typically, I send everything that we think is
25 pertinent and they test and send back their findings.

1 Q And is it your understanding that the complaining
2 witnesses were saying, I caught Mario on top of the young
3 woman on top of this blanket. Is that your understanding
4 of the allegations?

5 A Yes, sir.

6 Q And the blankets are in exhibit 1, for example. I
7 hate to call it a comforter.

8 A Okay.

9 Q But it was on top of that blanket that the
10 allegations are that this sex went on continuously for
11 four years?

12 A Now, I'm not saying they said it went on for four
13 years. I'm -- that blanket was attributed to that night.
14 That particular, on the incident night. Now, I don't know
15 about four years now.

16 Q All right. Did I give you MINOR statement?

17 A Yeah, you gave to me. Here it is.

18 Q May I?

19 A Yes.

20 Q While there I also spoke to, I'm reading, sir, from
21 your report 7/16/2013.

22 A Right.

23 Q And you're, I believe, reflecting back on June 30th.
24 And while there you refer, I believe, there to the scene
25 to 1903 River.

1 While there I also spoke to the victim, and she spoke
2 English very well. The victim said that she had been
3 having sexual intercourse with Mario starting back when
4 she was 9 or 10 years old. Sex was explained as putting
5 his penis inside of her vagina. These acts would take
6 either when mom was in her room asleep or when mom -- or
7 mom---

8 A ...mom will have to go to the doctor.

9 Q Because she's a bad diabetic. The victim said that
10 the sex would happen on the floor and on her bed.

11 A Right.

12 Q And this would be the bed, the top sheet on the --
13 the blanket on the bed, right?

14 A Right. And then it goes on to say, on tonight, the
15 sex took place on the floor in her room on a blanket.

16 So, obviously, I would -- I would assume that since
17 she was 9 or 10 years old that she's changed her sheets a
18 lot.

19 Q And that's the---

20 A ---I wasn't under the impression that the sheets that
21 was on the bed that night were the same sheets that she
22 had on her bed when she was 9 or 10 years old.

23 Q If that's your answer, that's your answer. I'm not
24 going to argue. I just -- the allegation is, though, that
25 that night at least they were having sex on the blanket

1 that's in this box that was taken into evidence by one of
2 your colleagues?

3 A Right.

4 Q And is there any reason that you know of that SLED
5 never looked at that blanket?

6 A I have no idea.

7 Q All right. I'm about there. There were computers in
8 the house. What did you do to analyze the contents of the
9 computers?

10 A I don't remember computers being in the home.

11 Q All right. His telephone, did you take his telephone
12 to see if there were any pictures of the young lady on it?

13 A No.

14 Q That's the kind of cross I wanted to ask without
15 getting into the statements.

16 THE COURT: All right. Well, here's what -- hearing
17 everything now, I think under 402 and 403 and completeness
18 that he be allowed to testify to what Alvarado said and
19 then to transmit -- the translation of the written
20 statement, I think you get it all.

21 MR. MCMULLEN: All or nothing.

22 THE COURT: Or it's going to really confuse the jury
23 because the testimony has been inconsistent thus far and
24 this albeit, his version of what he was told through a
25 translator and through a victim is yet again consistently

1 inconsistent. I think you get it all. I think he's got
2 to be able to say it all and you get to cross-examine just
3 like you have.

4 MR. MCMULLEN: All right.

5 THE COURT: I haven't found a question you've asked
6 yet that I wouldn't allow on cross-examination.

7 MR. MCMULLEN: Well, just -- and I just didn't think
8 that these things, Your Honor, bore a relationship to the
9 verbal things that may lack trustworthiness but I think
10 your opinion is the one that counts.

11 THE COURT: I think he gets to say what Alvarado
12 translated back to him as he initiated the oral interview
13 being, tell me when this started, who was there, how'd it
14 happened, just like what he said. He's allowed -- he will
15 be allowed to do that and you're allowed the full breadth
16 of cross-examination about what else he didn't do or
17 analyze or otherwise.

18 MR. MCMULLEN: Well, may we -- perhaps may I confer
19 with my counsel and we decide maybe in the morning.

20 THE COURT: Sure.

21 MR. MCMULLEN: Okay. Thank you.

22 THE COURT: That's all the proffer. You need
23 anymore, Solicitor?

24 MR. SCOTT: No, sir.

25 THE COURT: All right. Lieutenant, you can step

1 down.

2 MR. MCMULLEN: Thank you.

3 THE COURT: We will adjourn until 9:00 in the morning
4 and talk about this further and the jury will be back at
5 9:30.

6 MR. MCMULLEN: Thank you.

7 (Whereupon, the trial will resume the next morning at
8 9:00 a.m.)

9 OCTOBER 29, 2014

10 THE COURT: Do y'all want to put something on the
11 record?

12 MR. MCMULLEN: Maybe if we can have a sidebar.

13 THE COURT: Okay. Mr. Scott, I ask them if they want
14 to put anything on the record about my ruling yesterday
15 about the proffer.

16 MR. MCMULLEN: May it please the Court. I just
17 wanted to understand about the cross-examination and you
18 have been very patient with me. It is my understanding is
19 that the ruling is, I can cross-examine him on the
20 deficiencies on his investigation. Whatever and that some
21 how opens the door for these statements that were not
22 otherwise recorded.

23 THE COURT: After I heard the proffer it seems to me
24 that the completeness of the interviews of the victim, the
25 victim's mother and the defendant all are so intermixed

1 with the translation issue and the credibility of the
2 translators or interpreters, whichever the proper were we
3 were educated on, that everything should come just so the
4 jury gets a complete story of the multitude of facts that
5 they are to consider. I don't think it would be fair to
6 the jury to preclude that. I have heard too much and too
7 many variations to exclude it.

8 MR. MCMULLEN: So does that say, if I don't
9 cross-examine him about the statements of MINOR , the
10 statements of the mother or the statement of Mario and
11 even Liz for that matter. I just cross-examine him about
12 whether he took a sample from the blanket or whether the
13 blanket was ever tested. Is that fair game?

14 MR. SCOTT: The statements are coming in and just be
15 able to object to translations.

16 MR. MCMULLEN: That is not my question.

17 THE COURT: What you are saying is if you don't go
18 that far will I limit the statement coming in. The answer
19 is no. After I have heard it I think they get to have it.
20 But if I change my mind, I don't think it is unduly
21 prejudicial to your client. I think it is more probative
22 to the jury to hear the whole story and if they do then
23 you have got full reign to cross-examine at your
24 discretion, whatever issues you want. I am not going to
25 limit you on certain things. I think I changed my mind,

1 particularly this, first we were talking and the proffer
2 was about the statement of the defendant and after I heard
3 the statements and the variations of the victim and the
4 victim's mother. That is when I believe under the
5 probative value of what he was told by your client is
6 probative toward all the issues that are subject to the
7 jury's evaluation.

8 MR. MCMULLEN: And so it is kind of a ruling on
9 completeness and res gestae. There is a complete
10 understanding of that.

11 THE COURT: And probative prejudicial, the jury needs
12 to hear everything. The negative remarks as far as the
13 fact finders, I don't think this puts any more prejudice
14 towards him by the version that the detective heard. To
15 me it is very similar but I think the jury needs to hear
16 it all.

17 MR. MCMULLEN: Now, is there any preclusion of using
18 the word, fondle.

19 THE COURT: I think we are going to stay with
20 improper touching because the translator has consistently
21 used that word. But the provocative clothing, a man acts
22 like a man and enticing. I think that can, I think the
23 cross-examination of a summary, that is kind of a
24 paraphrase kind of like he also, you were paraphrasing
25 what having sex means. The girl gave an answer and he

1 wrote it in his report, I think that is the best way to
2 characterize those statements. Mr. Scott is not going to
3 be allowed to call any of the witnesses thus far that he
4 has named other than a certified translator to get that
5 document translated.

6 MR. SCOTT: She is saying some of the words, she
7 can't read them.

8 MR. PINILLA: The problem is, I think we have an
9 objection there that the State is going to use the Court's
10 interpreter.

11 MR. SCOTT: She will be interpreting for the Court.

12 MR. PINILLA: But we don't have to put her on the
13 stand to read it.

14 THE COURT: The detective who took the statement in
15 Spanish, this is the statement given to you under the
16 Miranda protections. It is written in Spanish, can you
17 read it or can the Court's translator read it. I think
18 they can. If the police officer could read English he
19 would be able to publish that statement in the record
20 right now without the benefit of your client testifying,
21 right? So why can't the Court appoint the translator to
22 do the same thing.

23 MR. PINILLA: That is fine.

24 MR. MCMULLEN: What is in it for us to get up there,
25 here is what I am trying to, why would my client want to

1 do that. My point is if the thing is never, ever been
2 translated before.

3 MR. SCOTT: It has. We are trying to get it
4 accurately translated.

5 THE COURT: I am going to tell you about the trial we
6 just had. Timmy Rice, it had a statement, I was taking
7 care of a six-year-old girl, I started having urges and I
8 was trying to suppress these urges. They had to put the
9 defendant on the stand and say, well, what I meant was.
10 Very similar stuff, the statement comes in, if you have
11 got to explain it you have got to get on the stand and
12 explain it.

13 MR. MCMULLEN: But if the translator is saying, well,
14 I can't tell whether this is bathroom or kitchen then I
15 would like her to say that.

16 MR. SCOTT: Ruby, your issue is you can't read some
17 of these words. Is that your issue with that.

18 THE COURT: I think she has got to read it as, this
19 word, it looks to me like. I think that is how she will
20 do it. She has got to say it both ways or I can't read
21 it. If we have a defendant who speaks English and writes
22 English and he writes poorly, you get what you get. Let's
23 bring them in.

24 (Whereupon, the jury came into open court at
25 approximately 9:54 a.m.)

1 THE COURT: All right, Mr. Scott, you may call your
2 next witness.

3 MR. SCOTT: The State calls Kevin Goodman.

4 KEVIN GOODMAN, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q And, Mr. Goodman, you're employed with Newberry
9 Police Department?

10 A I am.

11 Q And you are an investigator?

12 A That's right.

13 Q How long you been with that agency?

14 A A little over nineteen years.

15 Q Nineteen years with the Newberry Police Department?

16 A With the City Police Department, yes sir.

17 Q And then how long have you been an investigator?

18 A I've been in the Investigative Division since 1999.
19 I've been an adult investigator -- primary adult
20 investigator since 2010-2011.

21 Q Okay. What's the difference from like a road patrol
22 officer and an investigator?

23 A Just our day-to-day duties. The road guys, they
24 answer service calls, work wrecks, answer alarm calls,
25 different little things like that. Investigators will

1 come in the morning and get cases from -- that were taken
2 the night before and we start investigating them.

3 Q Okay. So you take -- they take the call and then you
4 get the case and dig a little bit deeper?

5 A Right.

6 Q All right. In this case, Andy Rowe would be the road
7 officer that responded to [REDACTED]?

8 A That's correct.

9 Q So he responds to the call and then he calls you over
10 to investigate?

11 A At some point in time, he came -- he called me over
12 to get my opinion to make sure that they had gone through
13 the proper steps and was doing that.

14 Q Okay. So you recall this date June 29, 2013?

15 A That's right.

16 Q And do you recall about what time you responded to
17 [REDACTED]?

18 A They actually arrived around 11:22. So a couple of
19 minutes after that, around 11:30 or so I guess I would
20 have gotten there and that's just a guesstimate.

21 Q All right. But approximate at 11:30 p.m.?

22 A That's right.

23 Q Okay. And [REDACTED], that's in Newberry
24 County?

25 A That's in the City of Newberry. Yes, sir.

1 Q Okay. And all of the City of Newberry is in Newberry
2 County?

3 A That's exactly right.

4 Q Okay. What was the nature of the call you responded
5 to?

6 A It was an alleged criminal sexual conduct with a
7 minor.

8 Q Okay. When you arrived on the scene, who was the
9 suspect at that time?

10 A Mario Hernandez.

11 Q Okay. And when you arrived at [REDACTED]
12 where was he?

13 A They were standing in the front yard. He, Ms. Liz
14 Rivera and Sergeant Rowe were standing in the front yard.

15 Q Okay. What, if anything, did you overhear?

16 A I overheard Ms. Rivera translating or interpreting to
17 -- Sergeant Rowe was asking questions of Mario through the
18 translator. And she in return was answering, she would
19 interpret to Mario, he would answer it and she would give
20 it back to Sergeant Rowe. And what he was answering was
21 that he had -- Mario had allowed the mom and the young
22 lady to stay with them for about four years or so. He
23 said during that course of time that they, when I say
24 they, the mom and the daughter would walk around the house
25 dressed provocative and enticed him. And although he was

1 a preacher, he was a man as well. And him being a man, he
2 reacted as a man would react. And he was sorry for that.
3 He said that he did never put his penis inside of her, but
4 he would, he had fondled or touched her inappropriately
5 over that course of time.

6 Q Okay. He used the term touched?

7 MR. MCMULLEN: I want to object, Your Honor, to the
8 use of the word fondle?

9 THE COURT: Sustain.

10 Q He used the word touched, touched her in some
11 fashion?

12 A The word that was given to me was that, the other
13 word. I don't know what word he used, because I don't
14 speak Spanish.

15 Q Okay.

16 A That's the word that was given to us.

17 Q Well what, if anything, did you take that to mean
18 that he had reacted as any man would?

19 A Well, I mean---

20 MR. MCMULLEN: Your Honor, again, I just object. I
21 thought we agreed that fondle was never used and shouldn't
22 be used in front of the jury for that reason.

23 THE COURT: I don't think that was his question but
24 sustained to that issue. And characterize your question.
25 Let's don't speculate on what was the intended, because of

1 the translation issue as well as what he heard is what he
2 heard.

3 Q Yes, sir. Okay. Well, was he arrested that night?

4 A He was.

5 Q And what was he charged with?

6 A Criminal sexual conduct. He was put on hold for
7 criminal -- warrants, pending warrants on criminal sexual
8 conduct, first degree with a minor.

9 Q And then he was taken to jail that night?

10 A Yes, sir.

11 Q When was the next time you saw Mr. Hernandez?

12 A It would have been July 1st about 12:00 p.m.

13 Q Okay. And just to be clear, we're talking about
14 Mario Hernandez. Do you see him here today?

15 A Yes, sir. He's seated at the Defense table.
16 Hispanic male, blue suit, glasses.

17 Q Okay. July 1st you spoke, you saw him again?

18 A Yes, sir.

19 Q And how did that meeting come about?

20 A Well, I talked to the mom and the young lady earlier
21 that morning. And there was a, during that conversation,
22 it was brought to our attention that Mario possibly wasn't
23 wearing the same clothing when we got -- when they got to
24 the scene that night that he was wearing when this
25 incident took place. I always like to go back. Mario

1 didn't get an opportunity that night to write a statement.
2 I didn't get a chance to sit down and personally talk with
3 him, because he was already engaged in a conversation with
4 a sergeant. So for those reasons, I brought him down. I
5 had him brought down to the police department to my office
6 to speak with him to give him an opportunity to again tell
7 me his side of the story and to write a statement if he so
8 wished.

9 Q Okay. Let me back up, because you did speak with
10 Tomasa, the mother, and MINOR earlier on July 1st?

11 A That's right.

12 Q And what was Tomasa, what was the nature of her
13 statement to you?

14 A Tomasa came in and she actually didn't have much
15 other to say than what she said the night of June 30th.
16 So she actually went into the Victim Advocate's office and
17 she spoke with her for the majority of the time. She
18 didn't have anything new to add with me or any concerns or
19 questions for me. So she went and she sat down and she
20 spoke with the victim's advocate and gave a statement to
21 her.

22 Q Okay. But your understanding the nature of her
23 statement was substantially what she had said the night of
24 June 29th?

25 A Yes, sir.

1 Q And then MINOR , you spoke with her as well?

2 A That's right.

3 Q What did she disclose to you?

4 A Again, her statement was basically the same as the
5 night of the incident when I spoke with her that she
6 admitted to having sex with him. She admitted that on
7 that particular night, she said that this had been going
8 on since she was about 10 or 9 years old, since she had
9 been staying there with him. And she was given an
10 opportunity as well to write a statement.

11 Q Okay. Well, did she -- now when you say sex, you say
12 she had sex with him, what are we talking about, we
13 talking about?

14 A Well, MINOR was kind of shy and I know it's not
15 easy for a young lady to talk to someone, especially a
16 man, about what's just happened. And so she was kind of
17 vague on, she said we had sex. And I know that there are
18 sometimes some confusion about what is sex. So we talked
19 about that and I asked her about did he insert his penis
20 inside her, that kind of thing. And she said, yes, that's
21 what her description of sex was putting his penis inside
22 of her vagina.

23 Q Oh, so she -- instead of actual penetration, there
24 was intercourse?

25 A Right.

1 MR. MCMULLEN: I want to object to the leading, Your
2 Honor.

3 THE COURT: Don't lead.

4 Q All right. Well, just describe what intercourse is
5 again for the jury?

6 A She described him -- I asked her did he put his penis
7 inside of her vagina and she said, yes.

8 Q And how long did she say that she had lived at the
9 [REDACTED]?

10 A On and off about four years. I know she spoke of at
11 some point they had, she and her mom had moved, had went
12 to Atlanta for a short period, a couple of months or so.
13 I'm not exactly how sure, how long that was, and then they
14 ended up moving back.

15 Q Okay. And now you may have answered this, but when
16 did she say that intercourse had begun with Mr. Hernandez?

17 A In her statement she put when she moved in. She said
18 that it started when she is around 10, and then she said
19 or 9, 9 or 10 years old.

20 Q Well, do you know how old she was on June 29th?

21 A She was 12.

22 Q All right. So she had lived there for four years?

23 A She said they had lived there on and off for about
24 four years.

25 Q Okay. So she would have been 8 to 9 years old when

1 she moved in?

2 A Yes.

3 Q All right. And then she said that the intercourse
4 began shortly after she moved in?

5 A Right.

6 Q All right. So later that afternoon -- and you
7 started into this, but how did you arrange for Mr.
8 Hernandez to come to your office to speak with you?

9 A He was transported by Corporal Boris Alvarado.

10 Q And who is Boris Alvarado?

11 A He's a police officer. Well, a corporal with the
12 police department.

13 Q All right. And why did you choose Boris Alvarado to
14 transport?

15 A We use our Spanish speaking officer and he does a lot
16 of translating for us.

17 Q And so Alvarado brought Hernandez from the Newberry
18 jail to your office?

19 A Yes, sir.

20 Q All right. So what happens when he gets to your
21 office?

22 A He comes in. I read him his rights and we fill out a
23 form. He's read his rights from our English version and
24 at the same time it's being translated on a Spanish form
25 that he's signing off on the entire time. He waived those

1 rights. I picked up from his conversation on the incident
2 night about the inappropriate touching. And I asked him
3 when had that started, and he said around December 2012.
4 We talked about the inappropriate touching and he said,
5 you know, they would touch each other on their private
6 parts and clothes would always be on. The mama was
7 present. He spoke of her sitting on top of him while
8 sitting on the couch. But I took that to be her sitting
9 on his lap or something, not necessarily him laying down
10 on top of her or her laying, him laying down and she's on
11 top of him, but sitting on his lap. Those kind of things,
12 sitting on his lap. Inappropriate touching, the clothes
13 would always be on. We talked about the night in
14 question, June 29th, June 30th and he said that he was in
15 her room sitting on the bed. She was in the bathroom.
16 Their clothes were on. The light was on and mom came in
17 and nothing happened and he didn't put his penis inside of
18 her. That's all he would say.

19 Q Okay. Okay. So he is admitting to touching her
20 private parts but not to penetration?

21 A That's right.

22 Q And so what -- you said something about 2012. What
23 did he say about the year 2012?

24 A He said that's when the inappropriate touching
25 started around that time.

1 Q Okay. Now, you were talking about reading him rights
2 earlier. What are you talking about? What kind of rights
3 did he read?

4 A It's an adult waiver of rights form that we use
5 before we talked to him, before we interrogate anybody or
6 interview anybody.

7 Q Okay. So you're talking about Miranda warnings?

8 A That's right.

9 Q All right. You mentioned earlier something about he
10 may have changed clothes?

11 A Right.

12 Q What was that about?

13 A We were told when we talked to him, I believe, on
14 that morning that he didn't have on the same clothes. I
15 talked to him about that when he came in and he admitted
16 that he had changed clothes before the police arrived on
17 the scene of July -- June 29th, June 30th. That he had
18 changed clothes and I asked him what was he wearing, and
19 he described what he was wearing, some multicolored
20 shorts. They were blue, white and green short pants and
21 all of those clothes that he had on was in his closet, in
22 the top of his closet at his house. And he actually gave
23 us consent to go get those clothing.

24 Q All right. And did you take them?

25 A Yes sir, I did.

1 Q Did he say why he would have changed clothes at 11:30
2 that night?

3 A He did not.

4 Q All right. Let me show you State's number 7. Do you
5 recognize that?

6 A Yes, sir. This is our English version of the adult
7 waiver of rights, Miranda.

8 Q What are Miranda warnings? What would you have read
9 to him in English?

10 A I would have read, I have the right to remain silent
11 means that you don't have to say anything or answer any
12 questions. Anything you say can be used against you. I
13 have the right to talk to a lawyer and have a lawyer here
14 with me to help me and advise me during questioning.

15 COURT REPORTER: Wait.

16 THE COURT: Yeah, you're reading really fast.

17 MR. GOODMAN: Oh, I'm sorry.

18 THE COURT: I listen at about half that speed.

19 MR. GOODMAN: I've been saying it 19 years. I'm
20 sorry.

21 THE COURT: Okay. That's fine.

22 COURT REPORTER: He can just start over.

23 MR. GOODMAN: I really don't read that fast. I'm
24 just, 19 years of saying that's. I will start over. I
25 have the right to remain silent. That means I don't have

1 to say anything or answer any questions. Anything I say
2 can be used against me. I have the right to talk to a
3 lawyer and to have a lawyer here with me to help me and
4 advise me during questioning. If I want a lawyer here
5 with me during questioning but cannot afford to pay a
6 lawyer, one will be provided to me at no cost before I'm
7 questioned. If I decide to answer questions now without a
8 lawyer I still have the right to stop answering questions
9 whenever I want to. And the last one is, I also have the
10 right to stop answering questions until I've talked to my
11 lawyer.

12 Q All right. So you would have read that to him in
13 English?

14 A Yes, sir. The way it would have been done is I would
15 have read, I have the right to remain silent. That means I
16 don't have to, I don't have to say anything or answer any
17 questions. I would stop and Boris Alvarado would
18 translate from a Spanish form that makes sure he
19 understands it, initials it, then we'll go on to number
20 two.

21 Q Okay. So he's actually got, this is States number 6.
22 What is that?

23 A This is the Spanish form.

24 Q Okay. Where would that have been?

25 A And this would have been in front of him with Al in

1 front of him. Yes, sir.

2 Q All right. So as you're reading him the rights in
3 English, Alvarado is translating your English into
4 Spanish.

5 A Right.

6 Q And in the meantime, he's looking at the rights in
7 Spanish in front of him?

8 A Right. He'll have actually both of these sitting in
9 front of him, okay. I'll have another copy of my own that
10 I'll read, just a blank copy. And as he understands it,
11 he'll initial as Alvarado, as I said, Alvarado will
12 translate it, interpret it. He will sign this one, the
13 Spanish one, then he'll sign the English one.

14 Q Okay.

15 A And so both of them are sitting in front of him the
16 entire time that I'm reading it.

17 Q All right. Let me hold the Spanish one. All right.
18 This top portion up here, I guess that's some information
19 about him?

20 A That's his personal information, yes sir.

21 Q Who would have filled that out?

22 A Me.

23 Q Okay. And how would you have gotten that
24 information?

25 A I would have had, of course, Alvarado is asking him

1 his name, age, address and that kind of thing. And as he
2 answered I would put it on here.

3 Q And what did he list his age as?

4 A Forty-two.

5 Q And where was his address?

6 A [REDACTED].

7 Q Okay. All right. So then you would have asked him
8 the Miranda or given him the Miranda warnings?

9 A That's right.

10 Q And did he indicate that he understood the Miranda
11 warnings as you gave them to him?

12 A Yes, sir.

13 Q And how would he indicate that to you?

14 A By putting his initials beside each item.

15 Q Is that the M.G. beside each of the six Miranda
16 warnings?

17 A That's right.

18 Q That's Mario Gonzales?

19 A Right.

20 Q Okay. And he appeared to understand every one of
21 those in your observations?

22 A Yes, sir.

23 Q Would he nod his head or anything?

24 A Yes, sir. Actually, as I'm reading, as I was reading
25 the English version, he would start nodding his head. And

1 then you could see him nod his head again as they're
2 reading the Spanish version.

3 Q Okay. And so you had to read those warnings before
4 you started questioning him?

5 A That's right.

6 Q And so you read those first and then he gives a
7 statement about they touch each other's private parts?

8 A Right.

9 Q Okay. Well, after that oral interview what, if
10 anything, was done?

11 A He had an opportunity to give a written statement.

12 Q Okay. And did he do so?

13 A He did.

14 Q Okay.

15 MR. SCOTT: Judge, let me offer States 6 and 7 for
16 admission into evidence.

17 THE COURT: Any objection?

18 MR. MCMULLEN: No objection.

19 THE COURT: Except for the objection preserved in the
20 preliminary hearing.

21 MR. MCMULLEN: Yes, sir.

22 THE COURT: All right. It will be admitted subject
23 to the objection at the Preliminary Hearing.

24 (Whereupon, State's exhibits 6 and 7 were admitted
25 into evidence.)

1 Q All right. This is States number 8. Do you
2 recognize that?

3 A Yes, sir. This is the statement that Mario Valerio
4 Gonzales-Hernandez wrote on July 1st, 2013.

5 Q Okay. Were you in the room as he wrote that?

6 A I was.

7 Q And what is it in English or Spanish?

8 A It's in Spanish.

9 Q Okay. Can you read it?

10 A Absolutely not.

11 Q But you did witness him write that?

12 A Right. Yes.

13 MR. SCOTT: Okay. Your Honor, the State would offer
14 State's number 8 for admission into evidence at this time.

15 THE COURT: It'll be admitted subject to the
16 objection.

17 (Whereupon, State's Exhibit 8 was admitted into
18 evidence.)

19 (Whereupon, State's Exhibit 9 was marked for
20 identification only.)

21 Q All right. So let me ask, you said that you went
22 inside of his closet. So he admitted to changing clothes?

23 A Yes.

24 Q Did he change clothes while you were at the
25 residence?

1 A He had changed clothes before we got there.

2 Q Okay.

3 MR. MCMULLEN: I want to object to how he would know
4 when the man changed clothes or, and to the
5 characterization of admitting.

6 THE COURT: All right. Rephrase your question. I'll
7 sustain the objection as to this officer's knowledge.

8 MR. SCOTT: Okay.

9 Q Yeah, to your knowledge did -- was he wearing the
10 same clothes while you were there?

11 A He had the same clothes on the entire time I was
12 there, yes sir.

13 Q Okay. But he admitted to you that he had changed
14 clothes before you got there?

15 A Yes.

16 MR. MCMULLEN: Again, admitting. I mean, if a person
17 knows the police are coming to get him and he wants to put
18 on some clothes to wear to get arrested.

19 THE COURT: All right. Now, I don't want a talking
20 objection. I understand but that's the word he used, and
21 I don't, it's not an admission of a crime just to change
22 clothes.

23 Q All right. How was it that you went into his home to
24 get the clothes?

25 A He gave me consent.

1 Q Okay. So there was some talk about a search warrant
2 earlier. You didn't get a search warrant because he gave
3 you consent?

4 A Not a search warrant. He gave us consent. He gave
5 us a consent form.

6 Q Is that what that is, State's number 10?

7 A Yes, sir. A consent to search his home for those
8 clothing. Yes, sir.

9 Q Okay. So you didn't need a search warrant?

10 A No.

11 MR. SCOTT: Your Honor, the State offers State's
12 number 10 for admission.

13 MR. MCMULLEN: No objection.

14 THE COURT: No objection to 10.

15 (Whereupon, State's Exhibit 10 was admitted into
16 evidence.)

17 Q What's State's number 11?

18 A This is a consent to search for his buccal swabs.

19 Q What is a buccal swab?

20 A It's just you take a Q-tip and swab inside of the
21 cheeks for DNA purposes.

22 Q Okay. You collected a DNA sample, is that what that
23 is?

24 A That's right.

25 Q And did you take one?

1 A I did.

2 MR. SCOTT: The State offers number 11 for admission.

3 MR. MCMULLEN: And no objection to number 11.

4 (Whereupon, State's Exhibit 11 was admitted into
5 evidence.)

6 (Whereupon, State's Exhibit 12 and 13 were marked for
7 identification only.)

8 Q And here's States number 14, what's that?

9 A This is the chain-of-custody evidence form, evidence
10 log for the buccal swabs indicating the investigating
11 officer and the victim, the suspect, the day I seized
12 them, the time. And then it's got a chain-of-command as
13 to when it was turned over to whoever.

14 Q Did you put it into that bag?

15 A No, sir. This is a bag that came from SLED. I put
16 it in the white envelope and put the seal on it.

17 Q Okay. What do you do, just take like a Q-tip swab of
18 the cheek?

19 A Let it air-dry, and then we'll put it in this white
20 envelope, seal it with a evidence seal. And it stays
21 sealed until it gets to SLED and they'll be the ones that
22 will cut it and open it.

23 Q Okay. Well, what's the chain-of-custody on that.
24 And you took it and put it and put it in the envelope?

25 A I seized it on July, let me see here, it says date

1 here, July 25, 2013 at 10:30 in the morning. That would
2 have been air-dried and everything and ready to go. And
3 then it would have been turned over to Mike O'Connell.
4 That's the evidence custodian. He would have then at some
5 point would have taken it to SLED and I got it back on
6 October the 28th to bring over here.

7 Q Okay. Did you take anything else from inside the
8 house, the trailer?

9 A When we were there, it was brought to our attention
10 while we were there, myself and Sergeant Moore that the
11 officers that night didn't get the pink nightgown that she
12 had on when this incident allegedly took place. So we
13 collected that as well.

14 Q Okay. You got information that she was wearing a
15 pink nightgown during this assault?

16 A Right. At some time that night she had a pink
17 nightgown on. So we went ahead and took it for her.

18 Q All right. This is State's number 4, what is that?

19 A This will be that pink nightgown that I'm referring
20 to.

21 Q Okay. And you took it, when did you seize that?

22 A This is July 1, 2013.

23 Q Then what did you do with it?

24 A It would have been put into evidence.

25 Q And tell me whose hands it was in after yours?

1 A After evidence, Lieutenant O'Connell who is our
2 evidence custodian would have taken it out on July the
3 25th, taken to SLED. Then SLED, he got it back September
4 the 6th, 2013 and put it back into evidence. He took it
5 out of evidence on October the 28th, gave it to me to
6 bring here.

7 Q Okay.

8 MR. SCOTT: Your Honor, State offers State's 4 and 14
9 for admission into evidence.

10 MR. MCMULLEN: No objection.

11 THE COURT: And no objection to 4 and 14.

12 (Whereupon, State's exhibits 4 and 14 were admitted
13 into evidence.)

14 Q And why was the nightgown significant? Why was that
15 sent to SLED?

16 A Because she allegedly was wearing that the night the
17 incident allegedly took place.

18 Q Okay. And why do you send something like that to
19 SLED?

20 A Well, I mean, there is a possibility there's DNA on
21 it and that would be significant in this case.

22 Q Okay. What, if anything, what else did you do
23 regarding this case?

24 A After that, basically, we just say it's a waiting
25 game on SLED lab reports to come back.

1 Q Okay. Without saying what they were, did you get
2 results back from SLED?

3 A Yes, sir.

4 Q Okay. Thank you, Investigator Goodman. Please
5 answer any questions either Mr. McMullen or Mr. Pinilla
6 has for you.

7 MR. MCMULLEN: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. MCMULLEN:

11 Q Good morning, Investigator Goodman.

12 A Good morning.

13 Q How long have you been investigating for the Newberry
14 Police Department?

15 A Again, I came into the Investigative Division in 1999
16 in the Juvenile Division. I have been in Adult
17 Investigations since 2010-2011.

18 Q What kind of training have you received about crime
19 scene processing?

20 A We've been to numerous trainings through the South
21 Carolina Criminal Justice Academy processing crime scenes.

22 Q Have you been through training on writing reports?

23 A Yes, sir.

24 Q Is that what you're looking at now?

25 A Yes, sir.

1 Q Yours?

2 A This right here is the original report.

3 Q Is that the one that Officer Rowe produced the night
4 of this incident?

5 A And that's right.

6 Q What is written in the very top left corner? Officer
7 Rowe wrote, rape, forcible, did he not?

8 A That, our computers don't generate that. It's going
9 to, the incident typed at the very, very top here?

10 Q Yes, sir.

11 A When we started our narrative, the Law Track is going
12 to generate that. I mean, it could have been, it will put
13 offenses in right there. It's just going to automatically
14 generate that part.

15 Q How does the computer know what to type there?

16 A It's going to be here.

17 Q How does the computer know what to type there?

18 A Because it's here. Up top when you type in rape,
19 forcible up top and you press that code in.

20 Q Okay.

21 A So when we start typing our narratives, whatever we
22 put up here, it's going to automatically put there. I had
23 to figure that out too.

24 Q In other words, you knew right away and Officer Rowe
25 characterized this right away as a forcible rape?

1 A That's what was reported to us.

2 Q All right, sir. Now, when you got there -- first of
3 all, as long as we're on this report, what time were
4 police dispatched to this incident location?

5 A The time here is 23:18 which will be 11:18 p.m.

6 Q 11:18 p.m. And what time did Officer Rowe arrive?

7 A This arrival time indicates 23:11 which is 11:22 p.m.

8 Q It says 23:22, does it?

9 A 23:22.

10 Q So do you have any idea as to when the call came in?

11 A When it came into dispatch?

12 Q Yes, sir.

13 A I would imagine and I'm speculating here. I would
14 imagine it would come -- if they dispatched it at 11:18
15 p.m., it would have been 11:17-11:18, somewhere. It
16 didn't take them long to dispatch a car.

17 Q Do we know who made that call?

18 A I don't, no sir.

19 Q All right, sir. Do we know whether it was a 911 call
20 or from just any old phone?

21 A No, sir. Again, I wasn't on shift, so I wouldn't
22 know that. No, sir.

23 Q Where were you?

24 A Actually, I was working Grant Homes which it is some
25 side work I have to do to provide. So I was working

1 secondary employment at that particular time.

2 Q You provide security for?

3 A For the Housing Authority. Yes, sir.

4 Q All right, sir. Did you ever go to the Central 911
5 or the Dispatch Office to obtain a copy of the 911 tape,
6 if any?

7 A No sir, I didn't.

8 Q All right. So to your knowledge, somebody called at
9 or about 11:18 and your department responded within four
10 minutes?

11 A That's right.

12 Q And then the rest of this report conveys what Officer
13 Rowe saw and conveys what you based your investigation on,
14 is that correct?

15 A That's correct.

16 Q Starting point. Now, when you arrived how long after
17 Rowe arrived did you arrive?

18 A Ten minutes or so. I'm not real sure.

19 Q All right. And who did you see outside?

20 A I remember seeing Mr. Hernandez, Sergeant Rowe, Ms.
21 Rivera. I remember seeing the young lady.

22 Q Where was she?

23 A She was actually, and there was a little boy there.
24 There was a little, there was a car parked in the driveway
25 and they were kind of standing over by that car. The mom,

1 I cannot remember. I know she was there. I cannot
2 remember where exactly she was at when I drove up. And
3 obviously there were some other officers there as well,
4 the shift.

5 Q Who else was there?

6 A I can remember Ms. Siebert, Officer Siebert being
7 there and I want to say Officer Mercer.

8 Q What is a crime scene log?

9 A A crime scene log is a log that is used to log in who
10 all actually comes onto that scene.

11 Q May I see that?

12 A And we don't have that.

13 Q Why not?

14 A It wasn't done by the Sergeant that night.

15 Q So you don't know who went in and out?

16 A I don't know who went in and out of that house.

17 Q Now, in State's exhibit 1, I'm sorry, State's 3,
18 there's a photograph. I think you have already told us
19 but what is that, sir?

20 A This is a picture of the home, a car. And a picture
21 of, I believe, that's the back of Sergeant Rowe. Look
22 like he's entering the house. That's Ms. Rivera standing
23 beside the car and I'm going to assume that's me. It's
24 kind of dark.

25 Q That's the good-looking guy there?

1 A Yeah, that you can't see.

2 Q Where's the yellow tape?

3 A There is none.

4 Q And why is that, sir?

5 A That crime scene will be inside the house.

6 Q Is there any yellow tape inside the house?

7 A No, sir.

8 Q And is that something you were taught to do as part
9 of your crime scene training?

10 A It depends. When you're outside, yes, that crime
11 scene tape is very important. But, I mean, that's a
12 closed inside. It's inside of a room. You don't see Ms.
13 Siebert. I do remember her being inside the house so she
14 can control who goes in and out of that room the entire
15 time. So you don't have to, you know, you see it all the
16 time on T.V. But you don't always have to have the crime
17 scene tape up if it's a controlled environment.

18 Q Controlled?

19 A If it's a controlled area. If it's inside, you don't
20 necessarily have to have the crime scene tape up.

21 Q But we don't know who went in and out of that house?

22 A I couldn't tell you who went in and out of that
23 house, no sir. I do know that the officers would have
24 been in and out getting stuff.

25 Q Now, DNA comes from people, though, right?

1 A That's right.

2 Q So people going in and out of this scene in this
3 location are leaving DNA walking around in the house, are
4 they not?

5 A I'm not a DNA expert, as far as that room is
6 concerned.

7 Q All right. So now you're there to report a forcible
8 rape reported five minutes or so before police arrive at
9 the most. And then you get there ten minutes later, so
10 fifteen minutes after this phone call is placed?

11 A Approximately.

12 Q Did you photograph MINOR or did anybody?

13 A She was taken to the hospital to get a rape kit done.

14 Q All right. I don't recall your having written
15 anything about any bruises or abrasions or redness?

16 A Right.

17 Q You didn't observe any of that?

18 A No, sir.

19 Q And this is supposed to be after a forcible rape?

20 THE COURT: I think that's mischaracterizing what the
21 charges are on the indictment. It's a CSC second and CSC
22 first on the indictments which are the formal allegations.

23 MR. MCMULLEN: Yes, sir.

24 THE COURT: So that's a little mischaracterizing.

25 MR. MCMULLEN: Okay.

1 THE COURT: Report versus the indictments.

2 MR. MCMULLEN: Okay.

3 A And if I will, when we have to type in these reports,
4 we have boxes that we check off. So if it is criminal
5 sexual conduct with a minor, there's certain boxes that we
6 have to check on. 11A is going to be rape, forcible and
7 it's going to include criminal sexual conduct with a
8 minor, because a minor can't give consent. So that's not
9 us saying rape, forcible. That's what we click on.
10 That's the tab we have to click on because it covers that.

11 Q When you got there, bear with me please, sir. When
12 you got there, you took down some summaries of what you
13 heard from the various people you've already listed?

14 A Right.

15 Q Please tell the Court and please tell the jury that
16 you recorded your interviews with these people that night?

17 A Say that again.

18 Q Did you record the interviews with MINOR , with
19 Tomasa, did you record what Mario said through the use of
20 a translator, Liz? Was any of this recorded on video or
21 audio?

22 A No, sir.

23 Q Now, are your cars equipped with that?

24 A My car is not, no sir.

25 Q Is Rowe's?

1 A At that time, I would think yes.

2 Q Rowe investigates DUI's apparently?

3 A Right.

4 Q So Rowe would have a car equipped with video, would
5 he not?

6 A He would have a car equipped with video and audio if
7 it was working at the time. And I couldn't tell you if it
8 was or it wasn't.

9 Q If he'd wanted to, he could put witnesses in the car
10 or outside and turn on the camera?

11 A Out in front of the car, yes.

12 Q And interview them?

13 A Right.

14 Q All right. So, I mean, you understand that by not
15 recording these things we're all stuck with whatever
16 version we get?

17 A Right.

18 Q And that's through an interpreter. And so what we're
19 talking about, sir, is it not, Mario says something, then
20 he says it supposedly at the residence to Tomasa or to
21 Liz. Then Liz says what she was told and then it gets to
22 you and you write down as best you can what you hear?

23 A Right.

24 Q All right. Are you aware of what dialect Mario
25 Hernandez speaks?

1 A No, sir.

2 Q All right. And do you speak any Spanish at all?

3 A I can count to ten.

4 Q All right. Now the statements, the complainant's
5 account of events, the young lady, MINOR, you're aware
6 of what was reported that night, are you not?

7 A I am.

8 Q She says sexually abused for the past four years,
9 correct? I'm looking, sir, at the second page of the
10 second page of the incident report that Rowe produced.

11 A Okay.

12 Q Do you have that?

13 A Yes sir, I do.

14 Q Now, at the very top of that second page it says---

15 MR. SCOTT: Your Honor, instead of probably citing
16 another officer's report, I think the proper way to do it
17 would be to question him on his own recollection of events
18 and just instead of relying on another officer's incident
19 report.

20 THE COURT: Read them in. It'd be easier to examine
21 a witness than it is to cross-examine a report.

22 MR. MCMULLEN: All right.

23 THE COURT: I think you follow that suggestion.

24 MR. MCMULLEN: Yes, sir.

25 Q The victim's account or the, I'm sorry, the

1 complainant, the young lady's account, would be that she
2 had been sexually abused for four years, is that correct?

3 A Yes, sir.

4 Q Now, if we go back four years from June 28th or 29th,
5 2013, we get to June 28th through 29th of 2009, is that
6 correct?

7 A Well, let me correct you.

8 Q Yes, please.

9 A And according to her, speaking to me, on June 30th,
10 29th, the victim said she had been having sex, sexual
11 intercourse with Mario starting back when she was 10 or 9.
12 She had been staying there, they had been staying in the
13 house for over four years. The sexual abuse that she
14 talked about, the sexual intercourse that she explained to
15 me started when she was 10 or 9. That's how she put it.

16 Q All right.

17 A So that's not going to be the entire four years.

18 Q She was born May 7th, 2001, wasn't she?

19 A I don't know.

20 Q Well, all right.

21 A It's not on this report.

22 Q Now, the case we're making is based upon the age of
23 the young lady, is it not?

24 A That's right.

25 THE COURT: Didn't we stipulate to the date of the

1 birth of the child earlier or perhaps outside of his
2 presence?

3 MR. MCMULLEN: All right, sir.

4 THE COURT: Well, what was the stipulation, was it
5 [REDACTED], 2001?

6 MR. DANIEL: [REDACTED] 2001, Your Honor.

7 THE COURT: [REDACTED] 2001.

8 Q So let's assume, please, that it's May 7th, 2001.

9 THE COURT: And I know I told that to the jury when I
10 explained to them the indictment.

11 MR. MCMULLEN: Yes sir, we stipulate.

12 THE COURT: Okay.

13 Q On May 7th, 2001. So if we go back four years or,
14 I'm sorry, if we do the math on that how old would she be
15 in June of '13?

16 A She was born when?

17 Q She'd be 12, wouldn't she, 12 years and a month?

18 A Right. Yeah.

19 Q Okay. And so if we take four years away from that,
20 now we're talking about she's 8 years old?

21 A Right.

22 Q Okay. Why is it that when you went and got a warrant
23 you put the date as January 1st, 2011?

24 A Because again, as I explained when she explained it
25 to me, she said it started when she was 10 or 9. So I

1 went with the first age she gave me, 10. That would take
2 her back two years which would be 2011. She didn't have
3 specific dates, specific months, specific times. So
4 procedurally when we do that, we use January 1, 2011 until
5 the day of the incident and that covers all of that.

6 Q As part of your interviewing process of a child
7 sexual victim, did you ask, you know, tell me about the
8 very first time, tell me what you recall about the first
9 incident?

10 A We do that at times. But again, in
11 nineteen-and-a-half years, you can tell when someone---

12 MR. MCMULLEN: What he's about to say, he's about to
13 vouch for the credibility of the---

14 THE COURT: All right. Ask him leading questions.

15 MR. MCMULLEN: All right.

16 Q Did you make any note or ask her at all about, you
17 made that a note, didn't you?

18 A No. Other than it would happen during times, the
19 acts will take place when mom was asleep or mom was at the
20 doctor's office, because she was a bad diabetic.

21 Q As to the very first time it ever happened. I mean,
22 everybody remembers their first time, don't they?

23 A I don't know.

24 THE COURT: He's already asked that, answered that
25 question that he didn't know.

1 MR. MCMULLEN: All right.

2 THE COURT: I mean, I'm certain he did.

3 MR. MCMULLEN: She didn't know.

4 THE COURT: Well, but he won't know.

5 MR. MCMULLEN: All right.

6 Q So the date you've chose was just the way you've
7 already explained?

8 A Right.

9 Q All right.

10 A She wasn't real specific, so we, the timeframe.

11 Q Now, and you had to go back to get the nightgown
12 because it wasn't taken into evidence that night, is that
13 correct?

14 A Correct.

15 Q So does that mean that she admitted that she changed
16 clothes?

17 A No, sir. She didn't admit she had changed clothes.
18 For whatever reason it wasn't taken and I was asked to get
19 it. So I collected it and brought it back and put it into
20 evidence.

21 Q It wasn't taken, because she wasn't wearing it
22 anymore when she went to Columbia to get the examination
23 done, right?

24 A Apparently, she didn't have it on when she went to
25 Columbia.

1 Q Yeah, so she changed clothes?

2 A I can't say she changed clothes. I don't know.

3 Q Either that or she wasn't wearing it at all?

4 A Obviously she didn't have it on when she went to
5 Columbia, no.

6 Q All right. Now, did you read Mario his rights as
7 quickly then as you did today?

8 A Absolutely not.

9 Q Do you know how far Mario went in school?

10 A According to our interview in the beginning I asked
11 his education. He said he had an Associate's Degree.

12 Q All right. And then Alvarado, is he, to your
13 knowledge, certified as an interpreter, as a translator?

14 A I don't know if he's certified and he translates for
15 us all the time. But as far as certified on paper, I
16 couldn't tell you that.

17 Q Okay. If it's true as we've heard, if it's true that
18 he locked himself in the house or locked others out,
19 knowing what you know about these allegations, what he's
20 being accused of, wouldn't that be the best thing he could
21 do while he waits for police to arrive?

22 A Is what?

23 Q Stay inside, leave these other people alone or call
24 the police.

25 A I mean, you stay, to stay inside, if you know the

1 police are coming just stay inside, yes.

2 Q All right.

3 A Now, when we knock, the best thing to do is to come
4 out. If you are waiting on us and you don't have a
5 problem with us then when we knock, come to the door.

6 Q Did you have to knock the door down?

7 A When I got there, they were in the yard.

8 Q All right.

9 A That would be best asked by Sergeant Rowe, how long
10 it took them to get into the door.

11 Q Did he cooperate fully with you?

12 A Yes, sir.

13 Q And he's the one who told you they -- this isn't what
14 I was wearing that night, I was wearing something else?

15 A Well now, he didn't volunteer that. That was told to
16 me by the young lady.

17 Q When they came in on July 1st?

18 A When they came in on July 1st and when I brought him
19 down yes, he didn't have no problems with telling me that
20 he had changed.

21 Q You talked to them at 9:00 or 9:30 you said, and then
22 him later?

23 A Well, yes, sir. Yes. And he had no problem
24 whatsoever answering that question.

25 Q And then the family confirmed, yes, that's what or

1 the young lady and her mother confirmed that's what he was
2 wearing?

3 A Yes, sir.

4 Q So you went back there on July 1st yourself to get
5 that?

6 A Myself and Sergeant Moore.

7 Q And they were still living in that house?

8 A That's right.

9 Q What, if anything else, did you take that day?

10 A That would be the pink nightgown. Oh, well, his
11 other clothing that was with it.

12 Q Did you take the blanket that's covering this bed?

13 A No, sir.

14 Q That was never taken into evidence?

15 A I didn't take that. I thought you asked me what did
16 I take. I didn't take that blanket. That blanket was
17 taken by the shift that was working.

18 Q What does that mean, sir?

19 A Sergeant Rowe, it was his call and I would have, let
20 me look at this, the comforter that you're speaking of was
21 seized. It's on the evidence log if you have it. It was
22 seized by Sergeant Rowe.

23 Q All right. To your knowledge, was any testing done
24 on that?

25 A No, sir.

1 Q Do you know why not?

2 A Typically, Mr. McMullen, what we do is SLED has asked
3 us, because they, they test stuff for the entire State, to
4 not bring down truckloads of stuff. What we try to do is
5 send down what we think we have the best possibility of it
6 being some evidence there. And that, in this particular
7 case, they don't say you can, you can't send more than
8 two. They like for you to send two or less. It's easier
9 for them. So, the rape kit was going down, buccal swabs
10 of his and the nightgown was the two different things.

11 Q Why was this photograph taken, Exhibit 1?

12 A That's the alleged crime scene.

13 Q And why wasn't the alleged crime scene analyzed for
14 DNA?

15 A We took things to be analyzed for DNA.

16 Q Was this blanket that's,---

17 A -- the blanket did not go. No, sir.

18 Q It didn't go to SLED at all?

19 A To the best of my knowledge, I'll have to look at the
20 evidence sheet for the blanket.

21 Q Well, I'll wait.

22 A It's in the box somewhere.

23 Q I'm handing you the box.

24 A And do, where's the blanket and the package it was
25 wrapped in? This is not torn, so it wasn't, it's not

1 packaged and it's not torn. The seals are not torn so
2 that would indicate that it did not go to SLED because
3 that would have been---

4 Q -- well, that's not sealed?

5 A -- I'm talking about the evidence seals. If you'll
6 look at the other evidence seals, they cut those seals and
7 process and put them back in their bag. So from looking
8 at that, that did not go to SLED.

9 Q And is this is the police procedure for how you can
10 keep track of whether something has been sent to SLED or
11 not?

12 A I mean, there is an evidence log and it was in this
13 box. But, obviously, everything has been taken out of
14 here so I am not sure where that is at.

15 Q Thank you.

16 A But there is an evidence log for that for every piece
17 of evidence.

18 Q We don't know what happened to that?

19 A I don't know what happened to it. It was in that box
20 when I brought it over here yesterday.

21 Q All right.

22 THE COURT: Has it been introduced yet?

23 MR. SCOTT: Evidence, no sir.

24 THE COURT: And it's kind of unfair to have all the
25 lawyers go through something that was brought to the

1 courtroom and say where is it. He didn't actually take
2 the box apart. Let's take a break and you can look for
3 it.

4 MR. MCMULLEN: Let me just ask him this way.

5 THE COURT: Go ahead.

6 Q Do you know of your own knowledge whether that
7 blanket was ever taken to SLED or not?

8 A To my knowledge and from looking at it, it did not go
9 to SLED.

10 Q All right. And this is the alleged crime scene?

11 A Yes, sir.

12 Q All right. Corporal Hawkins and MINOR and her
13 mother and Liz left 1903 River, went to Richland Hospital,
14 isn't that correct?

15 A I think that's correct.

16 Q Liz was already there when you got there?

17 A Yes, sir.

18 Q And Liz translated for the Spanish-speaking people
19 that night?

20 A That's right.

21 Q Are you the person who took photographs?

22 A No, sir. That would be Sergeant Rowe, I'm pretty
23 sure.

24 Q And that's, he photographed what he calls the crime
25 scene and collected the comforter that the subject and the

1 victim were laying on the alleged assault. Now,
2 Investigator Hawkins who took the folks to Richland
3 Memorial, do you have his detailed statement of the
4 investigation?

5 A Yes, I have here his supplemental, yes sir.

6 Q How many lines is that typewritten?

7 A It's exactly one, two, three, four.

8 Q Thank you. And Emily Siebert, the one who was
9 keeping the crime scene or alleged crime scene secure, do
10 you have her supplemental report?

11 A That's the actual arrest report where she served the
12 warrant.

13 Q It says, detailed statement of investigation. How
14 many lines is that?

15 A Right. That's the incident report supplement and
16 this is her actual arrest report where she served the
17 warrant at the detention center.

18 Q What day did she serve the warrant at the detention
19 center?

20 A She wrote this on June 30th, so it would be June
21 30th. She said on today's date.

22 Q What date did you bring Mario over to your office to
23 get his side of the story?

24 A July 1st.

25 Q After the warrant was served?

1 A That's right.

2 Q So what was the purpose of taking his statement?

3 A Well, I like to give everybody the opportunity to --
4 he didn't get a chance to talk that night to me.

5 Personally, I didn't get the chance to sit down and talk
6 to him. So I wanted to give him that opportunity as well
7 as find out if he really had changed clothes or not.

8 Q Okay. And he told you he had?

9 A Right.

10 Q And you didn't know that until that morning when the
11 mother and daughter told you that?

12 A That's right.

13 Q Okay.

14 A That's right.

15 Q So that wasn't the reason you had him brought over
16 was it or was it?

17 A Right, because he came down. If you'll look, I
18 didn't get him to come down till 12:00 and this is two
19 hours later that he would have come down. And I would
20 have addressed that plus give him an opportunity, at some
21 point in time he was going to come anyway, just to give
22 him that fair opportunity to again explain himself
23 completely. And put it, whatever he wanted to do in
24 writing. Just to be fair.

25 Q And that morning, the young lady and her mother said

1 part of the time they left [REDACTED], they moved back to
2 Atlanta whence they came. They stayed there for a while
3 and moved back to [REDACTED], is that correct?

4 A That's right.

5 Q And you don't know how long?

6 A I don't want to speculate. A couple of months I
7 know. I don't know how many months, but a couple of
8 months is what they said or she said. And when I say,
9 she, I mean the young lady.

10 Q You didn't write any of this down, did you?

11 A No, sir. Because I didn't see where that was
12 relevant to what happened at [REDACTED].

13 Q So the allegations are this has been going on
14 continuously from -- you put on the warrant January 1st,
15 2011 until 6/30/2013?

16 A Right.

17 Q A two-and-a-half year period?

18 A Right.

19 Q And you don't know whether there is an eight-month or
20 seven-month or ten-month chunk out of that, that they
21 weren't there at all?

22 A I do know that they wasn't there. She said that they
23 wasn't there.

24 Q And then when it's in the, when the police report is
25 generated that gets left out?

1 A That she had gone to Atlanta at some point?

2 Q And stayed gone for some point.

3 A There was no allegations of anything happening in
4 Atlanta. There was no, Atlanta had nothing to do with
5 River Street.

6 Q There were---

7 THE COURT: Tell you what, I'm going to need a little
8 break. Let's take a quick break and you can start back
9 up.

10 MR. MCMULLEN: Yes, sir.

11 THE COURT: So ladies and gentlemen of the jury,
12 y'all can step in the jury room. You can't be discussing
13 the case and we'll have you back in here in just a few
14 minutes.

15 (Whereupon, the jury was excused from open court for
16 a break.)

17 THE COURT: We will take a break.

18 (Whereupon, a short break was taken.)

19 THE COURT: Let's bring the jury in.

20 (Whereupon, the jury came into open court at
21 approximately 11:07 a.m.)

22 THE COURT: All right. Come to order. All right.
23 Mr. McMullen, you may continue.

24 MR. MCMULLEN: Thank you, Your Honor. May it please
25 the Court?

1 CONTINUE CROSS-EXAMINATION

2 BY MR. MCMULLEN:

3 Q Investigator Goodman?

4 A Yes, sir.

5 Q We're back on the record.

6 A All right.

7 Q Where we were, I believe, is I was asking you why you
8 didn't make notes of the time period when these people
9 told you they weren't even at 1903 River, when they were
10 living somewhere else. So there couldn't possibly be
11 rapes going on or sex going on between them during that
12 whole chunk of time.

13 A There was no allegations of any sexual intercourse,
14 anything going during that timeframe. And again, that
15 timeframe is from January 1 to June 30th and it just
16 encompasses everything. It's not saying that it, that sex
17 was going on all the time. When they left the home and
18 went to Atlanta, there was nothing that MINOR said that
19 led me to believe that anything went on during that time.
20 So Atlanta was insignificant to me at that time.
21 Obviously, well, nothing was going on at that time because
22 they wasn't around each other. And when she comes back,
23 there is that possibility again that the sex is going on
24 and it's still within that timeframe of January 1, 2011 to
25 June 30th.

1 Q But now, all right, I hear what you're saying, sir.
2 But when you say that there is no allegation that sex was
3 going on during that time, that's what you went and told
4 Judge Partridge, that it was going on between this date,
5 1/1/2011 to 6/30/2013. You didn't tell Judge Partridge
6 1/1/11 until December of '12 and then again from July of
7 '12 to June of '13. You didn't give him two warrants.
8 You gave him one warrant encompassing the whole time?

9 A The entire time that she would have stayed there on
10 and off.

11 Q Would it surprise you to know that she was gone ten
12 months out of two-and-a-half years?

13 A It wouldn't.

14 Q Do you know why they came back?

15 A I have no idea.

16 Q No idea why they came back?

17 A No.

18 Q All right. You never asked the mother her reasons
19 for returning to this address?

20 A I did not.

21 Q Now, if rapes had been occurring or if this man had
22 been molesting or having sex with this girl by force for
23 some certain amount of time since she was 9 or 10. And
24 then she moves away at sometime and then she comes back,
25 did a question arise in your mind, well, why wouldn't you

1 say something to your mother like don't take me back to
2 that place?

3 A Obviously, yes that would come up. She didn't tell
4 her mom. She said that Mario told her if she told her
5 mom, her mom wasn't going to believe in her. And she was
6 scared to tell her. And it didn't come out until this
7 particular night when, obviously she got, well, she got
8 caught.

9 Q All right. Your supplemental report, you wrote it on
10 July 16th?

11 A That's right.

12 Q What you're documenting is what happened on July the
13 1st?

14 A That's right.

15 Q Why'd you wait 15 days?

16 A We're a very small department. I am currently
17 working about six burglaries, probably 10 to 15 cases
18 right now. It's hard for me to sit down at that computer
19 every time I talk to someone and type that in right then.
20 So what I do is I, we have investigative note sheets that
21 we use in the field. So when I go out, I may go out with
22 a stack of reports and working on two or three different
23 crimes. And I'll document that stuff on that in writing,
24 handwritten. And then later on, I'll go back and type all
25 that in, yes.

1 Q May I see those notes?

2 A Those notes, when I type them in, I mean there is no
3 reason for me to keep those. I take those and put them on
4 the computer.

5 Q All right. Now, what you wrote on the computer on
6 the 16th about what happened on the 1st, you say, would
7 you summarize what you said here with MINOR ?

8 A And this is which one? I'm there. All right. I
9 spoke with MINOR in reference, in the presence of
10 Sergeant Moore. And MINOR gave me a written statement
11 on the course of events that had taken place inside the
12 home and around or of how long it had been going on. See
13 MINOR written statement for details.

14 Q She gave a written statement of the course of events
15 and gave you an idea how long it'd been going on?

16 A Right.

17 Q And then she wrote a statement. Have you got the
18 statement handy?

19 A I do. I have my copy of it.

20 Q And you just stated, I'm sorry, you ready?

21 A I'm ready.

22 Q You stated that you talked about the coming back from
23 Atlanta. And I asked, well, why wouldn't in the world
24 wouldn't MINOR have said, hey, I don't want to go back
25 to that place? Doesn't she say in her statement, we moved

1 in, he started having sex with me, and then he told me
2 people wouldn't believe me because why.

3 A Because I lie sometimes.

4 Q And what else does it say there?

5 A I was 9, 10 years old when he started having sex with
6 me. Then the second of, I'm assuming she means of the
7 third time my mom started suspecting or, suspecting about
8 that. Now, my mom knows and he, Mario, keep doing sex and
9 he keep hurting me.

10 Q All right. So she did know?

11 A She who?

12 Q My mom started suspecting. Now, she knows and he
13 keep doing it.

14 A It says here, that the second or third time, my mom
15 started suspecting about that. Now, my mom knows, and
16 again, I'm assuming when she says "now", she's talking
17 about now, that all this has come out on June the 30th,
18 29th, 30th.

19 Q All right, sir. And I'm going to try and move
20 quickly. Did you inquire what she meant by, I lie
21 sometimes?

22 A I did.

23 Q What'd she mean?

24 A She talked about, you know, lying about she's a
25 teenager. May lie about a grade or lie about talking to

1 someone and just kid stuff.

2 Q Talking at school?

3 A Getting in trouble and lying about as they, as young
4 kids do, just simple stuff.

5 Q Did she tell you about getting in trouble for lying
6 at school?

7 A No. No. I'm saying if you asked her what, what were
8 the lies she said. And just in general, those are things
9 that she would lie about at times and just kid stuff,
10 nothing huge.

11 Q Did you take a carpet sample from the room where this
12 happened?

13 A No, sir.

14 Q You took whatever you wanted out of his house without
15 a search warrant, is that correct?

16 A I took his clothes with his permission.

17 Q Okay.

18 A The other things were taken, they were the victim's
19 or the young lady's stuff out of her room.

20 Q And I'm not objecting to it. I'm just saying that
21 this is the way it is.

22 A But I did not have a search warrant. I got
23 permission from him to get his clothing and the young
24 lady, excuse me, the rest of that stuff was hers.

25 Q And he gave you permission, gladly or freely gave you

1 a swab of his DNA?

2 A I have not had a problem with Mr. Hernandez at all.

3 Q He's cooperated completely?

4 A Yes, he has.

5 Q He's adamantly said to you all along, I did not ever
6 have sex with her, didn't he? He always said, I did not
7 have intercourse?

8 A He always say he did not put his penis inside of her,
9 mouth, fingers, nothing.

10 Q Okay. Tell the jury, if you know, who is Salo?

11 A I don't know who that is.

12 Q Would it surprise you to know that a man lived in
13 that house with them for the bulk of the time period we're
14 talking about or various time periods we're talking about?

15 A Would it surprise me, it would, because I didn't know
16 that.

17 Q Well, do you know whether the little boy, what his
18 name is?

19 A I do not know his name. I know that there is a
20 little boy there.

21 Q Did you interview him?

22 A No, sir.

23 Q Do you know if the little boy and the young lady have
24 the same father?

25 A I do not.

1 Q Would they have different DNA, Y-DNA stuff, do you
2 know anything about that?

3 A No, sir.

4 Q Okay. Did you find the two computers that Mario had
5 there?

6 A No, sir.

7 Q If you had, would you have searched those looking for
8 any photographs of girls?

9 A From the allegations that were given, probably not.

10 Q Okay. How about his phone, did you take his phone
11 and search it?

12 A No, sir.

13 Q All right. Did you find any sex toys?

14 A No, sir.

15 Q Lubricants, condoms?

16 A No, sir.

17 Q Is it true that Tomasa sold all the property that he
18 had left in the house?

19 A I have no idea..

20 Q He hasn't been back to the place, has he?

21 A He hasn't and it's my understanding she is not there
22 either.

23 Q Okay. But she was still there on July 1st?

24 A Yes.

25 Q All right. And whatever evidence might have been on

1 the computers, might have been on the phone, that's gone,
2 whatever evidence either way is gone? I will just
3 withdraw that question, it is not fair. A little bit more
4 and I'll be done. When you interviewed the young lady
5 about the sex, did you go into detail about what was
6 happening, how often?

7 A As far as how often, did it happen every day or I
8 just asked her when did it happen, where did it take place
9 and that kind of thing.

10 Q Did you ask her, for example, where he had his hands?
11 Did he have her, his hands on her wrists?

12 A In that, on that particular night or just in general?

13 Q In general.

14 A No.

15 Q That particular night?

16 A No.

17 Q You didn't see any bruises on her when you saw her?

18 A No, sir. Again, there was no indication to me that
19 he had, from speaking with her that he threw her down and
20 what we would consider. And when you say forcible rape, a
21 rape like throwing down and holding. And she said, we had
22 sex.

23 Q Did she ever tell you that she cried out for her
24 mother?

25 A No.

1 MR. MCMULLEN: Okay. Your indulgence one moment.

2 Q Would it surprise you to learn that she -- that
3 MINOR told her mother in Atlanta that she had been
4 getting abused back here in Newberry?

5 A Would that surprise me? I guess it would, yes.

6 Q Would it surprise, I'm not permitted to ask this.
7 Thank you very much.

8 A You're welcome.

9 REDIRECT EXAMINATION

10 BY MR. SCOTT:

11 Q Investigator Goodman?

12 A Yes, sir.

13 Q He denies penetration, but he did admit to
14 inappropriately touching her?

15 A Inappropriately touching her, yes sir.

16 Q Okay. And I'm going to ask you this because maybe
17 the jury is curious. Why don't you record everything you
18 do as a law enforcement officer? Tell me some of the
19 difficulties that would bring?

20 A Well, first and foremost, we don't have, as far as
21 the investigators are concerned, we don't have cameras in
22 our buildings to record our interviews. We do have access
23 to tape recorders. A lot of people don't like talking in
24 front of tape recorders, because they like to kind of
25 speak freely and be able to say whatever they want to say

1 without being recorded. So I very seldom, very seldom
2 record any interviews.

3 Q Well, this is a fairly dynamic situation, isn't it?

4 A Right.

5 Q I mean, you got the mother and the children that are
6 crying.

7 MR. MCMULLEN: He's leading the witness.

8 THE COURT: And don't lead.

9 MR. SCOTT: Okay.

10 Q Mr. McMullen would have you go and sit in the car
11 with all these people and cut the camera on and record it.
12 Tell me why that's not feasible?

13 A Well, at that particular time, I mean, you know, that
14 could have been an option. It's just practical that when
15 people are relaxed and talking, you let them relax. And
16 you -- if someone starts talking you don't say, hey, stop,
17 let me go turn on my recorder and we turn it on, that
18 freezes them. It means, we're talking about the
19 allegation of a 12-year-old that's allegedly having sex
20 with a older grown man. And if he is justifying that or
21 talking about that, you don't stop him and say, hey, look
22 let me turn the video on. You let them talk and they
23 couldn't anticipate that he was going to -- that was just
24 going to come out like that. So it's just, sometimes it's
25 not practical.

1 Q Okay. So when Mr. Hernandez starts talking, you
2 don't say well hold on just a second, let's go sit in the
3 car and turn the camera on?

4 A Right. A lot of times, I mean, I may do that three
5 or four days down the road when I pull up to someone's
6 house. But it's not that particular night when everything
7 is going on.

8 Q Okay.

9 A It's a lot different.

10 Q Now, Mr. McMullen characterized the allegations that
11 it was going on continuously for four years. Did she say
12 it was a continuous thing or did she say it started four
13 years prior to June?

14 A She said it started when she was 10 or 9 years old,
15 so that would go back two years. The four years come in
16 is that she, they lived there on and off for four years.

17 Q Right.

18 A Now, and I don't know if that's been a confusion, but
19 the sex allegedly started when she was 10 or 9 years old.

20 Q Okay. She indicated to you that it happened before
21 she left---

22 MR. MCMULLEN: I object to leading questions.

23 THE COURT: Sustained.

24 Q How old was she when she said the sex started?

25 A She was 10 or 9 years old.

1 Q Okay. Thank you. All right. And, Mr. Goodman, I'm
2 about to let you go. I know you got an appointment. I
3 see you with your son around town. A lot of times you go
4 pick him up after work when he gets out of school.

5 A That's right.

6 Q Does he lie to you from time-to-time?

7 A Yes, sir. Yes sir and absolutely.

8 Q Okay.

9 A Or in his words, I'm not lying, I was just playing.

10 Q But it's fair to say that at some point, he tells
11 untruths?

12 A Absolutely.

13 Q Okay. And how old is he?

14 A He's 14.

15 Q Thank you.

16 MR. MCMULLEN: Just very briefly.

17 THE COURT: Sure.

18 RECROSS-EXAMINATION

19 BY MR. MCMULLEN:

20 Q You have tape recorders and video equipment at your
21 Newberry Police Department, do you not?

22 A We do not have video equipment out there. There are
23 some handheld recorders but not the, we don't have video
24 cameras set up at the police department. No, sir.

25 Q And you have -- you brought those people in to

1 interview them in the Newberry Police Department in your
2 office, correct?

3 A That's right.

4 Q And you sit down with them and in two of the cases,
5 Tomasa and Mario, you had an interpreter with you, right?

6 A That's right.

7 Q And it would have been real easy for you to go around
8 a corner somewhere and get a tape recorder, would it not?

9 A It would have been real easy for me to open my
10 drawer, my desk drawer and pull out a tape recorder. Yes,
11 sir.

12 Q And what your testimony is, what your information is,
13 it comes from Tomasa through an interpreter. And in many
14 instances, they're saying what Mario said and that's the
15 information that we're going on, isn't it?

16 A We're going on information that was interpreted by
17 Boris Alvarado and Liz Rivera.

18 Q Do you understand a word of Spanish?

19 A Other than counting to ten.

20 Q Thank you. No further questions.

21 THE COURT: All right. Detective, you may step down
22 and you're free from your subpoena.

23 MR. GOODMAN: Thank you, sir.

24 THE COURT: Sidebar.

25 (Whereupon, a bench conference was held in the

1 presence of the jury but out of the hearing of the
2 jury.)

3 THE COURT: Call your next witness.

4 MR. DANIEL: Your Honor, we call Boris Alvarado.

5 BORIS ALVARDO, being
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DANIEL:

9 Q Officer Alvarado, how long you been with the Newberry
10 Police Department?

11 A Almost six years. It's been five years and eight
12 months.

13 Q And where were you born, Office Alvarado?

14 A I was born in the city of Cochabamba, Bolivia, South
15 America.

16 Q And what language did you grow up speaking in
17 Bolivia?

18 A Spanish.

19 Q And how long did you live in Bolivia?

20 A Until the age of almost eight.

21 Q Did you learn English at all during that time?

22 A Very little. Very little English.

23 Q When did you come to this country?

24 A At the age of eight, I, with my family relocated to
25 New York City.

1 Q Did you learn English at that point when you moved up
2 there?

3 A Yes, sir. I went through the New York City Public
4 School System.

5 Q So you became fluent in English when you attended the
6 public school systems in New York?

7 A Yes, sir.

8 Q How long did you stay in New York?

9 A Until I, after I graduated high school. I, right
10 after I joined the military. From there, I traveled with
11 the military.

12 Q So you're fluent in English and Spanish?

13 A Yes, sir.

14 Q All right. And you were hired here at the Newberry
15 Police Department when again?

16 A In December of 2008.

17 Q Because you do know Spanish, are fluent in Spanish
18 are you often asked to assist in investigating cases
19 involving Spanish-speaking individuals?

20 A Yes, sir.

21 Q July 1st, 2013, did you have an occasion to transport
22 a Mario Hernandez from the jail to the Newberry Police
23 Department?

24 A Yes, I did.

25 Q And why were you chosen to be the one to transport

1 Mr. Hernandez?

2 A I was on duty that morning and also Mr. Hernandez is
3 not fluent in English. They requested me to help him
4 translate.

5 Q You were requested to transport Mr. Hernandez by
6 whom?

7 A Investigator Kevin Goodman.

8 Q And why did he want him transported to the police
9 department?

10 A He going to give him a chance to interview on the
11 events that took place at that residence on that Saturday
12 evening.

13 Q So you were the interpreter for Mr. Hernandez?

14 A At that time, yes sir.

15 Q Okay. So where exactly did this interview take place
16 at the police department?

17 A And the interview take place in Lieutenant Kevin
18 Goodman's office.

19 Q And what, did anything happen prior to the interview?

20 A Did anything happen prior?

21 Q Before, I guess, the question and answer started, are
22 Miranda rights administered?

23 A The Miranda, yes sir. We offered Mr. Hernandez's
24 Miranda rights. We presented him with a Miranda form that
25 is in Spanish. And Investigator Kevin Goodman read the

1 English warnings form. And I translated what he was read,
2 and Mr. Hernandez had the opportunity to read the same
3 thing I translated on the Spanish form.

4 Q Now, since you eluded to it, I'm going to show you
5 what's been admitted into evidence as State's number 7.
6 Do you recognize that?

7 A Yes, sir. This is the Miranda warnings that was
8 given to Mr. Hernandez.

9 Q And what language is that?

10 A This is in English.

11 Q And I'll show you States number 6 admitted into
12 evidence and what is that?

13 A This is the same, this is the same Miranda warnings
14 in Spanish.

15 Q Okay. Is that a, I guess looking at the, State's
16 number 6, the Spanish Miranda form, does that correspond
17 to the English Miranda form?

18 A Yes sir, it does.

19 Q Okay. So that is an accurate translation?

20 A Yes, sir. It is, yes.

21 Q Okay. And you read those rights to Mr. Hernandez in
22 Spanish?

23 A Yes sir, I did.

24 Q Did he acknowledge he understood those rights?

25 A Yes, we instructed to Mr. Hernandez that if he

1 understood that, that writing he had us. We read it to
2 him, to put his initials beside that number which he did
3 at that time.

4 Q Okay. Did you have, well, take that back. Mr.
5 Hernandez, he's a Spanish-speaking individual, correct?

6 A Yes, sir.

7 Q What country is Mr. Hernandez from?

8 A If I'm not mistaken he is from Guatemala.

9 Q Did you have any trouble understanding the Guatemalan
10 dialect?

11 A I don't, no sir.

12 Q Did you understand everything that Mr. Hernandez was
13 saying in Spanish?

14 A Yes, sir.

15 Q Did Mr. Hernandez provide -- I guess, take it back.
16 After these Miranda warnings are administered, did he --
17 did Mr. Hernandez make any statements to you and
18 Investigator Goodman?

19 A Yes, he did. He provided an oral statement and also
20 a written statement.

21 Q I guess, what questions were asked of Mr. Hernandez
22 during his interview?

23 A During the interview, the oral interview,
24 Investigator Goodman gave him the opportunity to give his
25 side of the story on the events that took place on that

1 Saturday evening. And what Mr. Hernandez said I relayed
2 to Investigator Goodman.

3 Q And what were some of these oral statements that he
4 made, Mr. Hernandez made that you interpreted for
5 Investigator Goodman?

6 A I don't have that form with me. If I could use that
7 so to my recollection.

8 Q If I hand you an incident report from this case,
9 would that refresh your memory?

10 A Yes, sir.

11 MR. DANIEL: Do you have any objection to that?

12 MR. MCMULLEN: No. If the witness could read it,
13 refresh his recollection and put it down to testify.

14 THE COURT: And ladies and gentlemen of the jury,
15 y'all have noticed the incident report has been referred
16 to, addressed by, referred to, I mean, handed to the
17 officers. They're for the officers notes. The officers
18 memories are good. They do so many cases, they can refer
19 to them, refresh their memory to recollect what happened
20 then. The officer is going to be cross-examined and not
21 the document, so the incident reports aren't coming into
22 evidence. They're not really allowed to, because they're
23 reports of the officers. But their memory and their
24 testimony can be cross-examined and that's why it is.
25 Okay.

1 Q Just read over that. If that refreshes your memory,
2 then I'll repeat my question.

3 A During the interview, Mr. Hernandez made the
4 statements that around December 2012 is when the touching
5 had started. Also, it was also said that during that
6 time, it was more confidence built into it. And there was
7 inappropriate touching in the private parts. And also it
8 was said to, that there was no intercourse or penetration.
9 But it was, and he also said that at all times he had his
10 clothes on. And some of that stuff that I can recollect
11 from.

12 Q Was that the extent of what Mr. Hernandez said in his
13 oral statements he made?

14 A Yes, so what I could recollect.

15 Q Was he specific at all about the inappropriate
16 touching?

17 A He made, specifically he said that the inappropriate
18 touching and private parts.

19 Q Did, at anytime during this interview, did Mr.
20 Hernandez reduce his oral statements to writing?

21 A He was given a, after the oral interview, he was
22 given an opportunity to do a written statement of the
23 events that took place. And during that written statement
24 he was allowed to write what events that happened.

25 Q Was he instructed to write any particular thing in

1 that statement?

2 A No, because it's his statement. We don't instruct
3 them to write it. All we do is to instruct them to start
4 from the beginning and tell us the, what took place all
5 the way through to the time that he's at the office.

6 Q Was this written statement essentially a summary of
7 what y'all had discussed previously in the oral interview?

8 A It would be his written statement, something that he
9 would put down on the paper what took place.

10 Q I want to hand you what's been admitted into evidence
11 at States number 8. Do you recognize that?

12 A Yes, sir. This is Mr. Hernandez's written
13 statements.

14 Q And what language is that in?

15 A In Spanish.

16 Q And Mr. Hernandez acknowledged that statement?

17 A Yes sir, he did. Mr. Hernandez and during the
18 instruction phase, during the interview that, what we
19 instruct them to do is completing the required sections.
20 And when we are through with the, when he's through with
21 the statements we cross the empty spaces so nothing else
22 could be added to it and also this required his signature.

23 Q What time was that interview conducted? The date and
24 time, does it have that on there?

25 A No, this written statement does not have the time

1 that it was written.

2 Q July 1st, 2013, that's what you---

3 A --the date is July 1st, 2013. But the time that it
4 was written, it doesn't have a time.

5 Q All right. Did Mr. Hernandez make that statement
6 freely and voluntarily?

7 A Yes, it is freely and voluntary statement.

8 Q No promises were made?

9 A No, no promises. All that he was asked to write,
10 what everything, what he wanted to say on that paper.

11 Q And Mr. Hernandez, did he acknowledge he understood
12 those Miranda rights before speaking to you and
13 Investigator Goodman?

14 A Yes, sir.

15 MR. DANIEL: No further questions.

16 MR. PINILLA: May it please the Court?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. PINILLA:

20 Q Good morning, Officer Alvarado, how are you?

21 A Good morning, sir.

22 Q Officer Alvarado, you said you moved here when you
23 were eight years old from New York, is that correct?

24 A Around that age, yes sir.

25 Q And how old are you now?

1 A I'm 41.

2 Q 41. And do you use Spanish on a daily basis?

3 A Not as often as I did. When my grandmother passed
4 away almost ten years ago, and she was the person that I
5 spoke Spanish on a daily basis.

6 Q Do you have any diplomas or certifications to be a
7 translator?

8 A No, I don't.

9 Q Would you agree or isn't it true that several words
10 in Spanish can mean different things depending on where
11 you're from?

12 A I agree to that.

13 Q Would you agree that certain words in Guatemalan
14 where Mr. Hernandez is from would be different from words
15 in Bolivia?

16 A That is true, as well.

17 Q Thank you, sir. Mr. Alvarado, the document that was
18 handed to you to refresh your recollection, whose incident
19 report was that?

20 A That's Investigator Kevin Goodman.

21 Q It wasn't your incident report?

22 A No.

23 Q Did you take notes during this interview on July 1st,
24 2013?

25 A No, I was not there as the interviewer. I was there

1 only to assist translating Mr. Hernandez.

2 Q Now, Officer Alvarado, when you say inappropriate
3 touching, did you read that right from the report or do
4 you recall that?

5 A There were, I recall, I recall parts of it. This
6 happened in July of 2013. There's some that I can
7 remember, some parts I can't remember. But I remember the
8 inappropriate touching.

9 Q And not just from reading this report?

10 A And not from -- some from reading this report and
11 some I didn't. I have to look into the report to refresh
12 my memory.

13 Q That report is not yours?

14 A No, the report is not mine.

15 Q Do you recall private parts as you just testified?

16 A I recall that private parts was said in the oral
17 interview.

18 Q Did he say what his private parts were?

19 A He didn't say private, what part of parts he was.
20 All he say was private parts.

21 Q So you don't know what he meant by private parts?

22 A He said private parts and what's, that I, that's what
23 I translated to Kevin Goodman.

24 Q And everything that he would say, you just gave it to
25 Officer Goodman?

1 A Officer Goodman.

2 Q And your understanding is that Officer Goodman relied
3 on you to write everything in his report, is that correct?

4 A And what I, what they, my job at that day was for to
5 translate what Mr. Hernandez was saying to Investigator
6 Kevin Goodman.

7 Q And would you agree that Investigator Goodman had no
8 idea what Mr. Hernandez was saying?

9 A I agree.

10 Q So Investigator Goodman relied completely on you?

11 A Yes.

12 Q So everything that you told him, he would reduce it
13 to his own writing?

14 A It was written in his incident report.

15 Q Now, the writing that the Solicitor showed you of Mr.
16 Hernandez, did you have an opportunity to read that to
17 Investigator Goodman after it was written?

18 A Recalling that, this is his voluntary statement.

19 Q I understand, but after it was written.

20 A After it was written?

21 Q Did you read it back to Officer, Investigator
22 Goodman?

23 A That's my recollection, so I don't think I read that
24 to him.

25 Q So Investigator Goodman has no idea what was written?

1 A No. We were going to translate this into English.

2 Q So is it proper to say that you actually have no idea
3 what was written either at that time?

4 A At that time. And what I did is take the written
5 statement, I make sure that all the paperwork, all the
6 required sections were filled in to make it official. And
7 that is what was relayed to Officer Goodman.

8 Q So at that time, you didn't read it? At that time,
9 Investigator Goodman had no idea what was put on paper?

10 A No, because we were going to get this translated at a
11 later time and that was going to be turned into
12 Investigator Goodman.

13 MR. PINILLA: I beg the Court's indulgence.

14 Q When you translated it to Investigator Goodman, and
15 I'm assuming you translated word-for-word as you said you
16 recall touching and you recall private parts.

17 A Yes.

18 Q Did Investigator Goodman ask Mr. Hernandez what he
19 meant by private parts?

20 A No, if it's not on this report, he did not ask for,
21 if it was the chance for Mr. Hernandez to say what--

22 Q To say and to what to write?

23 A We never asked him to say what he, well, or write
24 something that we wanted to hear. This is his opportunity
25 for him to say what happened or write what happened.

1 Q So Investigator Goodman didn't ask questions back and
2 forth?

3 A He asked some questions. He asked questions of the
4 incident and what took place. What happened, how they
5 met.

6 Q But again, Investigator Goodman did not ask Mr.
7 Hernandez what he meant by private parts?

8 A He did not ask him.

9 Q Thank you.

10 MR. PINILLA: I beg the Court's indulgence. No
11 further questions, Your Honor.

12 THE COURT: All right. Any redirect?

13 MR. DANIEL: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. DANIEL:

16 Q I said private parts, the Spanish equivalent in
17 Bolivia, what would the implication be to private parts?

18 MR. PINILLA: Well, objection, Your Honor. Mr.
19 Alvarado has testified that he's not a qualified
20 interpreter, translator.

21 THE COURT: Why don't you rephrase that question? I
22 don't think the implications, rephrase your question.

23 Q Well, Office Alvarado, private parts, you interpreted
24 that on July 1st when Mr. Hernandez is making an oral
25 statement, correct?

1 A Yes, sir.

2 Q Private parts, if that's said in Spanish, does it
3 have a, does it have a particular connotation that would
4 be different than the English private parts?

5 MR. PINILLA: Objection, Your Honor.

6 THE COURT: I'm going to allow the question.

7 A If you say private parts in English, it's assumed
8 that the person understands it's intimate areas of the
9 part of the body. In Spanish when you say private parts,
10 if somebody from Puerto Rico had says private parts, I was
11 born in Bolivia and I don't, they do speak with a
12 different dialect. But I understand what private parts
13 are and it's pretty much understood what he meant. I hope
14 I answered your question correctly.

15 Q Private parts to a Spanish speaker, would arm be,
16 would someone confuse the anatomy of the arm being a
17 private part in the Spanish language?

18 A No.

19 MR. DANIEL: I beg the Court's indulgence.

20 THE COURT: Okay.

21 MR. DANIEL: No further questions.

22 THE COURT: Any redirect?

23 MR. PINILLA: Your Honor, I beg the Court's
24 indulgence.

25 RECROSS-EXAMINATION

1 BY MR. PINILLA:

2 Q Officer Alvarado, to the best of your knowledge, was
3 this interview recorded in any way?

4 A No, it was not recorded.

5 MR. PINILLA: Thank you. No further questions, Your
6 Honor.

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

8 MR. SCOTT: Your Honor, the State calls Ruby
9 Stephens. Before Mr. Alvarado leaves.

10 THE COURT: All right. Corporal, you're still under
11 oath. All right. You can be seated. Ms. Stephens, you
12 were sworn yesterday and you're still under oath to
13 translate his Spanish.

14 MS. STEPHENS: That's fine.

15 THE COURT: Accurately in Spanish.

16 MS. SEPHENS: Yes, sir.

17 DIRECT EXAMINATION-INTERPRETED BY RUBY STEPHENS

18 BY MR. SCOTT:

19 Q Corporal Alvarado, let me show you State's number 8,
20 and that has been admitted into evidence. Do you
21 recognize that?

22 A You want me to answer it in English or you want me to
23 answer it in Spanish?

24 THE COURT: You answer in English.

25 A Yes, sir.

1 MR. SCOTT: Ruby, I don't need you to translate for
2 him.

3 MS. STEPHENS: Pardon me, but the interpreter is
4 required to interpret everything.

5 A Well, thank you.

6 Q Okay.

7 A This is Mr. Hernandez's written statement.

8 Q Okay. Have you previously translated that into
9 English?

10 A Yes, sir.

11 Q Okay. What I'm going to ask you to do is read it one
12 sentence at a time in Spanish as it's written. And then
13 give Ms. Stephens time to translate that into English.
14 You understand?

15 A Yes, sir.

16 Q Okay.

17 COURT REPORTER: And, Judge, I need her to move
18 around so I can hear her.

19 THE COURT: Once she starts repeating it back in
20 English move so she can hear you.

21 A I'll lean the microphone toward her so it will be
22 easier to hear her. I am going to read this statement and
23 it begins with the date.

24 (Mr. Alvarado reads statement in Spanish and Ms.
25 Stephens interprets the statement in English.)

1 MS. STEPHENS: 9/2002-2010, they came to live in my
2 house.

3 MR. PINILLA: Objection, Your Honor. I think she's
4 reading from the statement.

5 MR. MCMULLEN: This kind of defeats the purpose of
6 Alvarado reading it. If she's going to stand looking over
7 his shoulder also reading it. She's supposed to listen
8 and talk and interpret what she hears.

9 A Okay.

10 THE COURT: For whatever reason, I sustain your
11 objection. Do it that way.

12 Q All right. Mr. Alvarado, just start again. Just
13 read it into Spanish one sentence at a time, and she's
14 going to translate in English for us.

15 (Mr. Alvarado reads statement in Spanish and Ms.
16 Stephens interprets the statement in English.)

17 MS. STEPHENS: 9/2010, they came to, I live in my
18 house. There was, unintelligible, I too play with the
19 child, the female child. They played. Okay.

20 OFFICER ALVARADO: If I could repeat that sentence,
21 because I just, it's hard to read the handwriting.

22 Q Are you seeing misspelled words in there?

23 OFFICER ALVARADO: There are some misspelled words,
24 but I'm going to read what it is, it's just the
25 handwriting is hard to read.

1 MS. STEPHENS: They went to go live in Atlanta in
2 December 2011 and they returned July 2012. There began a
3 game with the little girl when a man and part of the boy.

4 OFFICER ALVARADO: Okay. The way they copied that,
5 if I could rephrase that question.

6 MS. STEPHENS: The man and the father of the boy
7 went. From then on, there was a confidence with the
8 child, the female child. She played a lot. She touched
9 my buttocks or my butt. She bit my cheeks. Even,
10 unintelligible, in the night was doing tickling on the,
11 repeat please? Was doing tickling on the shoulders, the
12 ribs and the legs.

13 OFFICER ALVARADO: Second page.

14 MS. STEPHENS: All of this was given with some, with
15 the mother or in front her, there was no sexual act.
16 Saturday 30 was getting my clothes and went in to leave
17 some clothes, went into the room to leave my clothes. Of
18 the mother, I asked her first and told her in,
19 unintelligible, in her room or in the room. And when she,
20 the female child, was in the bathroom and the door open,
21 another thing, too, when I lay down or when I laid myself
22 down on the sofa the female girl always threw herself on
23 top of me. Again, in front of her mother and now she
24 accuses me that, that I have raped her child, her female
25 child, but I have not done that to her.

1 Q Mr. Alvarado, how would you characterize Mr.

2 Hernandez's handwriting?

3 A It's got errors and a lot of misspelled words I don't
4 know.

5 Q And it appeared you had some difficulty reading some
6 of the words?

7 A Some I have, I do.

8 Q Okay. But you did sit in on the oral interview that
9 took place before that written statement?

10 MR. PINILLA: Your Honor, objection, leading.

11 Q Do you recall an oral statement prior to that written
12 statement?

13 A Yes, sir.

14 Q And were you present?

15 A Yes, sir.

16 Q Okay. And were you able to translate into English,
17 that statement?

18 A Yes, sir.

19 Q Okay. Have you been involved with taking, in taking
20 written statements from suspects before this case?

21 A Yes, sir.

22 Q And is it typical, is it office policy to have an
23 oral interview before the written statement?

24 A It's giving them a chance to explain themselves in
25 order to explain their situation. It's a way to take --

1 getting their side of the story. They always have given
2 an opportunity that they don't have to provide any
3 statement. They say, well, let me know, let me know what
4 the, what happened. And when the interview is over you
5 write it down what happened.

6 Q Okay. And do you ever find that maybe they don't---

7 MR. PINILLA: Object, Your Honor, leading.

8 Q What are some of the differences between the oral
9 statements and the written statements in your experience?

10 A In my experience, what's usually said is not written
11 on the statement.

12 Q Okay. But in the oral, what was his oral statement,
13 though? What was the difference in his oral statement and
14 that written statement?

15 A A lot of the differences in the statement, he went
16 from the touching and to only the buttocks area to saying
17 that it was the private parts are the discrepancies.

18 Q Okay. And in his written statement, he didn't admit
19 to touching the girl.

20 MR. PINILLA: Your Honor, objection.

21 THE COURT: All right.

22 MR. SCOTT: I'm done, Your Honor.

23 THE COURT: Don't beat a dead horse.

24 MR. SCOTT: Yes, sir. Nothing further from the
25 state.

CROSS-EXAMINATION

BY MR. PINILLA:

Q Officer Alvarado, you testified that we give or that sometimes a written statement is given so they can give their side?

A Yes, sir.

Q Does it bother you to know that they're different between the oral and the written?

A It sure is an inconvenience for a prosecution or that the oral statement is different from the written statement. And if I could, if allows me to explain further. Is that when you tell us something and you wrote, and we give you the opportunity to write it, even though after I read what you just wrote and I know it's different from what you said, if I ask you to point out the differences in there, that is no longer your voluntary statement. And that's the reason we leave what is written the way it's written, because this is what he wrote at that time, is his own freewill. I don't instruct anybody to say, well, you said this here but it's not here. Because, and then it no longer, it violates his rights. It's no longer voluntary after that.

Q I understand. Now, but it's so to preserve what happened there that day, is that correct?

A Yes.

1 Q But these, this interview or the oral statements
2 between you and Mr. Hernandez were not recorded. Is that
3 correct?

4 A Yes.

5 Q So as an investigator and I know that you are brought
6 in just, or as an officer and you were just brought in as
7 a translator. Does it bother you that you never read this
8 statement back to Investigator Goodman?

9 A When I, when this written statement was made, we
10 spoke to Investigator Goodman and said we'll get this
11 translated at a later time. Did it that day that it, at
12 that interview I was working the road. I had not only did
13 come in and assist with the case, but I also have other
14 duties performing on the road. And I told the
15 Investigator that at a later time I might, if I was given
16 some extra time or over the weekend or on a slow day that
17 I was going to get that translated and send it back to him
18 for his paperwork.

19 Q Was it ever translated by you?

20 A Yes.

21 Q And when was that?

22 A I can't recall the day. But it was, it didn't happen
23 that same day.

24 Q Did it happen a month later, two months later, six
25 months later?

1 A No, and not that long.

2 Q Okay.

3 A Not that long. At most it's probably a week.

4 Q And I understand it's a voluntary statement, but
5 isn't it important for a full investigation that
6 Investigator Goodman see the contradictions, because he's
7 relying on you to say everything that's said?

8 A And it's true and I understand your point. But you
9 also got to understand that what you say and what you
10 write, if it's two different things, I cannot make it, I
11 cannot make it match.

12 Q Okay.

13 A Because it's something that, if we ask for you to
14 write something that you told us. And if you want to
15 write something different, that is your choice. And now
16 we cannot change the fact on that.

17 Q But somebody could investigate the differences, is
18 that correct?

19 A The investigator set that up and also the solicitors
20 come in after that, yes.

21 Q Now, Officer Alvarado, I did not notice, isn't it
22 true that you didn't read the words private parts or
23 inappropriate touching in the statement that you just read
24 and had translated?

25 A In this statement, no, I didn't.

1 Q Now, he did say she would bite my buttocks. Is it
2 possible that when Mr. Hernandez said private parts, he
3 could have been referring to his buttocks?

4 A He could have been referred to that.

5 Q Thank you.

6 MR. PINILLA: I beg the Court's indulgence. No
7 further questions, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q Okay. Mr. Pinilla was asking you about the
11 translating of the document. You have translated that
12 previously, haven't you?

13 A And yes, sir.

14 Q Let me show you State's number 9. Do you recognize
15 that?

16 A Yes, sir.

17 Q And what is it?

18 A This is a translation that I did on the voluntary
19 statement of Mr. Hernandez.

20 Q Thank you. And that was the English translation of
21 his written statement?

22 A Yes, sir.

23 MR. SCOTT: Your Honor, the State would offer State's
24 number 9 for admission into evidence.

25 MR. PINILLA: I object, Your Honor. Mr. Alvarado,

1 for the reasons that we previously talked about in the
2 sidebar, is not certified.

3 THE COURT: I want to hear you further after the
4 lunch break.

5 MR. PINILLA: Thank you, Judge.

6 THE COURT: We talked about this, pretrial and now.
7 All right. You may step down. Let's take a lunch break.
8 I think it's a good time to take one. It's 1:30. That'll
9 be a hour and 15 minutes. Y'all be back in the jury room
10 at 1:30 and don't begin discussing the case.

11 (Whereupon, the jury is excused from open court for a
12 lunch break.)

13 THE COURT: Everybody else stand at ease till the
14 jury exits.

15 (Whereupon, a lunch break was taken.)

16 THE COURT: Are we ready to move forward?

17 MR. SCOTT: Your Honor, are we done talking about it?

18 THE COURT: Yes, I am done talking about. What we
19 can do is, if they want to hear it again we can replay the
20 testimony.

21 MR. SCOTT: I am talking about introducing the
22 translator.

23 THE COURT: I don't see a problem with it but I am
24 not going to do it unless they agree to it. If there is
25 something in there they don't want, I don't understand the

1 harm in it. It looks like they are hiding something from
2 the jury to me, that is my opinion.

3 MR. MCMULLEN: May I make a motion on something
4 separate, Your Honor?

5 THE COURT: Yes. All right.

6 MR. MCMULLEN: May it please the Court? Your Honor,
7 I understand that this afternoon the State intends to call
8 a DNA expert from SLED and we don't contest their
9 qualifications. The results, Your Honor, will be as I
10 understand from their providing the discovery that, that
11 they performed various tests. And on some of the items
12 they saw signs that they, that prompted them to submit it
13 to the DNA analyst who would be testifying. And that
14 person, ultimately, can neither include nor exclude the
15 defendant. The results are "inclusive". And, Your Honor,
16 I just got this citation overnight. And but, basically,
17 other courts have held, Your Honor, that if the DNA
18 profile developed from the crime scene evidence, if it's
19 inconclusive then it is therefore evidence of nothing.
20 And the case I have, in this case it was found harmless
21 error, but it was still error to admit it.

22 THE COURT: Well, here's what the State is trying to
23 do. I know exactly what they're doing. If they don't
24 call the DNA experts who ran the test, then you're going
25 to say well they didn't even run the test and they don't

1 want to be caught in that box. It's like calling a doctor
2 saying well there's no physical harm to a child of CSC.
3 Well, if they call an expert to testify that the human
4 body is a quick-healing entity and there is many occasions
5 when there is no physical evidence. They're doing it so
6 that it takes away the defense argument it wasn't done.

7 MR. MCCULLEN: Yes, sir.

8 THE COURT: The State has not mentioned yet one
9 single thing about DNA and y'all have brought it up every
10 chance you got is you collect evidence for DNA testing.

11 MR. MCCULLEN: Yes.

12 THE COURT: So that's why they're doing it, but I
13 don't know why they're doing it. Maybe I'm wrong.

14 MR. MCCULLEN: Well, what --

15 THE COURT: If you hadn't keep bringing it up, I'm
16 probably with you.

17 MR. MCCULLEN: Well, what I would propose, Your
18 Honor, is that the State and we can stipulate to the jury
19 that the particular sample was tested and the evidence
20 sample produced inconclusive DNA results and could not be
21 compared to any known DNA profiles.

22 THE COURT: How old is that case that you cite?

23 MR. MCCULLEN: August 28, 2013. It's Diggs v. State
24 and Allen v. State.

25 THE COURT: Where is it from?

1 MR. MCCULLEN: Maryland.

2 THE COURT: Okay. Well, I don't have to tell you
3 that I don't have to follow Maryland law?

4 MR. MCCULLEN: No, sir. In any event, Your Honor, at
5 the appropriate time I'd like to object to the Court, I'd
6 like to ask the Court to not allow the State to introduce
7 the DNA report and a chart of an inconclusive sample.
8 Because it invites, the jury becomes amateur analysts by
9 making their own comparison especially when the State
10 highlights particular consistencies between the evidence
11 profile and the defendant's profile that are
12 scientifically inconclusive.

13 THE COURT: Well, let me ask the Solicitor. What do
14 you intend to do with this DNA expert, Solicitor?

15 MR. SCOTT: The results were that there was a
16 presence of male DNA.

17 THE COURT: From which?

18 MR. SCOTT: A cutting from the nightgown. It was
19 like on her chest area. And I'm going to introduce one of
20 these handy charts.

21 THE COURT: That's similar to the charts I've seen in
22 other cases then?

23 MR. SCOTT: Yes, sir. Yes, sir. And you'll find
24 that a lot of the, I don't know what the terms are, but a
25 lot of these boxes matched the known sample from

1 Hernandez. There are a couple that are not there. So I'm
2 going to have to have the DNA analyst explain what it
3 means.

4 THE COURT: Is this the same lady that was testifying
5 in the--

6 MR. SCOTT: No, this is a lady named Bartman. I just
7 met her today.

8 THE COURT: All right. Can we stop for a second?
9 I'd like for Mr. Hernandez to be in here.

10 MR. MCMULLEN: I could proffer what the report is,
11 Your Honor.

12 MR. SCOTT: I should be able to call, I see no reason
13 why I can't call her as a witness. She had, she did a
14 report, she has a finding. And as you said, DNA has been
15 mentioned in almost every one of my law enforcement
16 agencies.

17 MR. MCCULLEN: But I think the Judge has ruled that
18 she can be called as a witness.

19 THE COURT: An expert witness if she's so qualified.

20 MR. MCCULLEN: But what my further -- where she
21 testifies, may I hand this up just as a Court's exhibit or
22 do you want to see it?

23 THE COURT: This is a motion in limine. You're
24 trying to minimize it. I'll tell you what, tell me again.
25 Paraphrase what you believe she's going to testify to? I

1 don't want to see the exhibit, it's similar to one that I
2 have had in the past several trials. For some reason, I
3 have had the opportunity to preside over, I think this is
4 four CSC cases since July 4th. So I'm getting more and
5 more familiar with the DNA evidence from a CSC.

6 MR. MCCULLEN: My understanding is, Your Honor, that
7 the summary of the results is the DNA profile developed
8 from the nightgown that was collected two days after the
9 incident is a mixture of at least two individuals. It
10 says here, MINOR cannot be excluded as a possible
11 contributor. And it says, no conclusive statement can be
12 made regarding the inclusion or exclusion of Mario
13 Gonzales-Hernandez as a contributor. Now, what the State
14 I've seen done in the past is they'll show a chart. And
15 say, well, there's a 14 here and there's a 14 there and
16 they'll highlight it and say, okay, here's a 10 and here's
17 a 12. And they'll say, well if you look at all these
18 coincidences. Well, the fact is that 99.9 percent of all
19 of our DNA is the same and there's these small differences
20 and variations that this is a chart of. But in one grid
21 here, there is MINOR, Mario and the nightgown at issue.
22 And MINOR is a 14-15, Mario is a 12 and a 15, but the
23 nightgown is a 10 and a 12 and a 14. The 10 comes, I'm
24 told, from, Jennifer Bartman was kind enough to let Mr.
25 Pinilla and me go to SLED, talk to her. And she says this

1 means at least two other people besides MINOR DNA.
2 Now, and that's part of why I brought it up that there is
3 a little boy in the house who has a different father. But
4 what I was also told by her is that were it not for this
5 other sample here, this other thing on grid 2:1, the
6 nightgown, where we have five numbers. Well, you only get
7 two from any one person so if there are five numbers, that
8 means at least three people contributed. Now, some people
9 have the same number for both, 14 and 14, and they just
10 get a 14.

11 THE COURT: Having five numbers at least
12 distinguishes three people?

13 MR. MCCULLEN: Yes sir, at least three. And were
14 that not, were that one low side not to contain five then
15 Mario would have been excluded by this first grid with a
16 10, but that's not the way that it is. There is at least
17 two other contributors besides the young lady. And so
18 that, the bottom line I think is that the SLED person can
19 say we tested all these things and the best we can say is
20 we can't include him or exclude him. Well, then the
21 problem from the defense standpoint with even that is what
22 you're saying to the jury is, what the witness is saying
23 to the jury is, he can't be excluded. And so that's why
24 the proposed language is an inconclusive result. I have
25 no problem with her saying here's what we tested, here's

1 what was never submitted for testing, but it was an
2 inconclusive result. Some of these samples say no semen,
3 no semen, no semen. And that, in effect, is part of this
4 evidence too. That Ms. Bartman will state whatever else
5 is true, no semen was detected on anything, even the
6 nightgown. So whatever three people's DNA is on that
7 nightgown, it didn't come from semen. And so I would just
8 submit respectfully that under 403, when evidence doesn't
9 help the trier of fact to better understand the testimony,
10 then the evidence should just stay out. The chart should
11 stay out. It would just confuse them. And Jennifer
12 Bartman, I would submit she is an expert and she can
13 state, you know, all the king's horses and all the king's
14 men tried to get what we could out of this but all we can
15 say is inconclusive, the samples we got don't shed any
16 light on this, who's DNA this is. And let me add, Your
17 Honor, that I would not open the door at any point by
18 saying that if these things had been tested that they
19 would have not found his DNA in the items that were not
20 tested.

21 THE COURT: I think the State can call an expert
22 witness in a field of particularity if that expert is
23 qualified in the field of DNA. They can call them,
24 question them and if it gets outside of the scope of
25 assisting the fact finder in determining the questions of

1 fact they have then at that point, the testimony would not
2 be allowed. However, what's been presented thus far is
3 consistent with the DNA testimony I've heard in the past
4 subject to cross-examination of, not having heard the
5 testimony yet it's hard for me to rule on. An expert is
6 allowed to proffer opinions and to proffer comments on the
7 things they've analyzed and the facts and the data they
8 relied upon in reaching those opinions and are subject to
9 cross-examination. So I think at this time, I will listen
10 for questions outside of the scope of assisting the trier
11 of fact. But thus far, I think the State would be allowed
12 to call that person and to testify consistently what she's
13 done in this case.

14 MR. MCCULLEN: Yes, sir. And I understand your
15 ruling and at this point my only objection remaining would
16 be I just don't want them to put in a chart that I will
17 submit doesn't assist the trier of fact and understanding
18 it.

19 THE COURT: All right.

20 MR. MCCULLEN: So it's not the testimony I object to
21 but the chart. And if you like at the appropriate time,
22 you could rule then.

23 THE COURT: We could rule on it then. I think that
24 would give me a lot better grasp of what the testimony is
25 going to include, because then I'll have the foundation.

1 MR. MCCULLEN: Thank you.

2 THE COURT: All right. Now, we're ready?

3 MR. SCOTT: Yes, sir. We're ready.

4 THE COURT: I'm ready for them now.

5 (Whereupon, the jury came into open court at
6 approximately 1:46 p.m.)

7 MR. SCOTT: We call Donna Debrew to the stand.

8 DONNA DEBREW, being

9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SCOTT:

12 Q Ms. Debrew, where are you employed?

13 A I am employed by Palmetto Health with Richland.

14 Q Is that in Columbia?

15 A Yes, sir.

16 Q And what's your occupation?

17 A I'm a Forensic Nurse Examiner or a Sexual Assault
18 Nurse Examiner.

19 Q Okay. SANE, I guess, that's the acronym?

20 A Yes, sir.

21 Q Is that, that's sexual assault?

22 A Sexual Assault Nurse Examiner.

23 Q What does a Sexual Assault Nurse Examiner or a SANE
24 nurse, what do they do?

25 A We are on call for the emergency room, so when a

1 patient or, you know, a victim is brought in for a sexual
2 assault, domestic violence, anything like that, we come in
3 to do an exam and collect evidence, look for injuries,
4 collect evidence.

5 Q And the way it works, though, they would come to see
6 a doctor, then the doctor would refer them to you?

7 A Yes, sir.

8 Q Go ahead.

9 A Sometimes law enforcement brings a victim in or
10 sometimes they show up at the emergency room, and then the
11 doctor calls us.

12 Q Okay. And how long have you been a SANE nurse?

13 A We started this program almost five years ago, 2010.

14 Q Who's we, Richland Memorial?

15 A Richland Memorial.

16 Q And so when they started five years ago, were you one
17 of the first?

18 A Yes, sir. We formed a team of seven nurses. One was
19 a coordinator and the other nurses take call, and we were
20 on call for surrounding hospitals from Lexington, Baptist,
21 Park Ridge, Richland, Kershaw. And at that time, we did
22 Providence Northeast and Providence Downtown.

23 Q Okay. If you were on call, you could be called out
24 to any of those hospitals?

25 A Yes, sir.

1 Q And what kind of, it's a fairly specialized, I guess,
2 area of nursing. What kind of training did you have to
3 undergo to be qualified as a SANE nurse?

4 A Initially we had to take a SANE adult course. We had
5 to take a SANE pediatric course. I did 40 pelvics at the
6 GYN clinic behind Richland Memorial Hospital. We did 10
7 to 20 acute cases before we did cases on our own. We took
8 call during all this at the same time. We attend CERT
9 meetings monthly. We do chart reviews, every, sometimes
10 twice a week, but usually every week, it ends up we do
11 chart reviews. We had to ride along with law enforcement.
12 We had to go to SLED. We did court time, about 25 hours
13 of court time.

14 Q What's that mean, just sitting on what, a General
15 Sessions trial like this?

16 A Just to see how court runs, Family Court and with
17 sexual assault just to see how it works and what would be,
18 you know, required by us if we did go to court.

19 Q Do you have any idea how many patients you've
20 examined as a SANE nurse?

21 A I did look that up before I came. It's been over
22 400.

23 Q Okay. And you mentioned as part of your ongoing
24 training or, at least initially, you attended some court
25 proceedings as a spectator?

1 A Yes, sir.

2 Q Have you ever testified in court?

3 A Yes, I have.

4 Q And talking about big court like this, in General
5 Sessions Court?

6 A Yes, sir.

7 Q How many times?

8 A Twice. I've been, I guess, cleared as an expert
9 witness for what I do in forensic nursing.

10 Q Forensic Nursing?

11 A Yes.

12 Q Do you remember what counties those were?

13 A Kershaw County and Richland County.

14 Q I'm going to ask that you be qualified as an expert
15 in Newberry County.

16 MR. SCOTT: Now, Judge, we would offer Donna Debrew
17 as an expert in Forensic Nursing.

18 THE COURT: Any voir dire from the Defense?

19 MR. MCMULLEN: Your Honor, I object, if I can just
20 ask her some questions.

21 THE COURT: Sure.

22 BY MR. MCMULLEN:

23 Q Ms. Debrew, good afternoon.

24 A Hi.

25 Q Is it true that much like a phlebotomist that you

1 just take the samples, but you don't actually analyze
2 them?

3 A I do not analyze them. I collect them. When the
4 victim explains to me what happened to them, then I
5 collect them from those areas. If it's on the neck, in
6 the vaginal/rectal area, I collect them.

7 Q But it's not for the purpose of medical diagnosis, is
8 that correct?

9 A As a nurse, I cannot medically diagnose, no.

10 MR. PINILLA: That's my objection, Your Honor.

11 THE COURT: Are you offering an expert in the field
12 of Forensic Nursing for assessment of sexual assaults?

13 MR. SCOTT: Yes, sir.

14 THE COURT: I find her so qualified subject to the
15 objection. Ladies and gentlemen of the Jury, what this
16 means is the State's called a witness who has an expertise
17 as offered by the calling by the State in the Forensic
18 Nursing for assessment of sexual assaults. And so what
19 that means is Ms. Debrew has had specialized training in
20 that area and has specialized experiences in the area and
21 maintains credentials in doing that type of work and she's
22 able to offer opinions in that field. All right. You may
23 continue.

24 Q Okay. Ms. Debrew, were you working the, I guess,
25 very early morning hours of June 30th, 2013?

1 A Yes, sir.

2 Q And did you have an occasion to examine a MINOR
3 Aguirre?

4 A Yes, I did.

5 Q And how was she presented to you?

6 A Since we're on call, if I haven't gotten calls that
7 day and I'm not in the hospital, I'm usually at home. So
8 I received a call at home. Spoke with the nurse that was
9 taking care of her at that time and they called me to the
10 hospital and said law enforcement is there and they're
11 requesting a forensic exam.

12 Q Okay. And what was your understanding?

13 A The brief information that I was given was that she
14 was assaulted by or was reporting that she was assaulted
15 by someone in the home which was a male that was much
16 older than her. It was a 12-year-old victim at that time
17 and when I got to the hospital I spoke with the physician.
18 He had done his initial exam and had cleared her, because
19 the physician has to see the patient before I see them,
20 and he had cleared her for me to do my exam.

21 Q Okay. Did she come with you? Did she come to you
22 with any general complaint?

23 A When I initially saw her, you know, she was there
24 with her mother. Her mother did report that she did have
25 some stomach pain. And the victim herself at that time

1 did not until later when I did the exam and the type of
2 exam that I do can be uncomfortable at times. And she was
3 uncomfortable with me doing the exam and looking in the
4 area that I had to look in and became upset. And so the
5 exam wasn't as long as we would like it to be, but we try
6 not to traumatize a patient anymore than they've already
7 been traumatized.

8 Q And what time was it that she came to you?

9 A I've got the -- is it okay if I look at this?

10 Q Yes.

11 A My report that night said that she arrived in the
12 emergency room at 1:20 and it looks like that I started
13 the entry around 4:18. I probably arrived there probably
14 between 3:30 and 4:00 o'clock.

15 Q Okay. So the exam began at 4:18 a.m.?

16 A Yes, sir.

17 Q And tell us what you do when she is there? I mean,
18 what all goes as far as your evaluation?

19 A Oh, and initially I speak with the doctor just to
20 find out if there is anything that I need to be aware of
21 as far as her medical condition.

22 Q Did he describe any complaint that she had?

23 A Just when I spoke with her mother, she said she had
24 complained of her stomach hurting.

25 Q Did she disclose anything to the doctor who referred

1 her to you?

2 A She did. I read his findings and he did say that she
3 was having some vaginal discomfort.

4 Q Okay.

5 A And that's on her medical record from the E.R.

6 Q And then what do you do, I guess, a physical? Do you
7 do a, I guess an interview as part of your examination?

8 A When we begin, I talk to the patient first to find
9 out her medical history. To find out, you know, when her
10 period started, if she's having periods, if she has any
11 medical issues, if she's allergic to anything. And then
12 once we get through all that, if she's on any medications.
13 Then we go to what happened when she was or why she was
14 brought in that night. And that's basically a history of
15 her telling me what happened and we try to type exactly
16 what they tell us.

17 Q What was your understanding of the type of assault?

18 A She explained to me that she was assaulted by the
19 landlord and I think she called him the pastor. I'm
20 trying to find the right page.

21 Q I guess, when I'm asking the nature of the assault,
22 was it touching, was it digital penetration, was it?

23 A He penetrated her -- with the questions that we ask,
24 we get very specific what is touched or where something is
25 put. And she did say that, when I questioned her on, did

1 he put his penis in your vagina, she answered yes.

2 Q Okay.

3 A And when I questioned her, did he put his penis in
4 your bottom where you poop and she said yes.

5 Q Okay. And so what type of examination physically did
6 you do?

7 A We kind of look them over head to toe to see if
8 there's any scratching, bruises, anything like that. And
9 then from what she tells me, I swab those areas. So I
10 swabbed her vaginal area. I looked in that area, took
11 pictures and swabbed the rectal area. And we also do a
12 buccal swab and I did collect her underwear.

13 Q Okay. And the buccal swab, that's the Q-tip in the
14 cheek?

15 A Yes, sir. To show that that's her DNA because
16 anytime we process a kit, her DNA will show up.

17 Q This is State's 15?

18 A Yes, sir.

19 Q I guess the buccal swab samples?

20 A Well, this is the kit itself. It has everything
21 inside. The main envelope, we put individual envelopes
22 inside of that and one is a buccal swab, the rectal swab,
23 the vaginal swabs. And they're all individually packaged
24 and I seal them and initial them. And then the packs that
25 we do not use, the envelopes that we do not use, we put

1 those in there to show that we used the entire kit and
2 nothing was left out.

3 Q And those are sent to be analyzed by another agency?

4 A Yes, sir. It depends on which law enforcement
5 agency, and I think Newberry uses SLED.

6 Q Okay. During the physical examination, I guess the
7 examination of her vagina, did you notice any injury or
8 anything consistent with injury?

9 A On her hymen, when I took pictures, there is an area
10 that looks discolored, it's purple, and looks like
11 bruising on her hymen and there was also vaginal blood.

12 Q The hymen, what is, describe to us what the hymen is?

13 A In a female, you have the outer labia of the vagina,
14 the labia majora, the labia minora. And then if you hold
15 those open, inside you can see a hymen. You know, a lot
16 of people say it looks like a flower because it kind of
17 folds in on itself a little bit. Younger children, it
18 looks really smooth and round. But it's sort of a pale
19 pink little area of tissue. And when you have intercourse
20 it can be torn, it can be bruised. It's just there. When
21 women have babies, it kind of goes away as you get older.

22 Q What were your findings as far as MINOR hymen?

23 A I found an injury to her hymen on the left---

24 MR. MCMULLEN: Objection to the characterization as
25 injury. As I understand, she's supposed to gather the

1 evidence.

2 THE COURT: Sustained. All right. Rephrase your
3 question.

4 MR. SCOTT: Okay.

5 Q Are there different types of hymen and are there
6 different ways to describe the hymen?

7 A Yes, sir.

8 Q What are some of those?

9 A A hymen could look oval or round. It could look
10 crescentic like a half-moon. It could look like swiss
11 cheese with holes in it. An imperforate hymen may be
12 completely covered which would cause problems in the
13 future. It can be fimbriated which is folds over on
14 itself and kind of looks like a flower.

15 Q All right. Well, what type hymen did MINOR have?

16 A She had a fimbriated hymen. And there was, that had
17 kind of folds in it. When I did her exam, it was hard to
18 look, normally we would get a Q-tip and pull those folds
19 out and try to look at all the edges to see if anything is
20 torn, bleeding, that kind of thing. But she was very
21 uncomfortable with the exam. So it was hard to examine
22 the hymen completely. But there was an area on that top
23 left side, I believe it's the top left side of that
24 picture that I took that has a blue/purple discoloration
25 to it.

1 Q Okay. And, I guess, this is a fairly intrusive exam?

2 A Yes, sir. It would be if a female went to a
3 gynecologist. With younger children, we don't use
4 speculums. But we still look and we're kind of tugging
5 and pulling just to look in that area. We take pictures,
6 and then we use Q-tip swabs to collect evidence.

7 Q I guess the schoolyard understanding is if there is a
8 hymen present, then they have not had sex but that's not
9 accurate?

10 A No, sir. Every female has a hymen. It depends on
11 their age and sexual activity as to how much of the hymen
12 remains. It wouldn't necessarily be gone even when a
13 woman has had a baby, they still may have part of their
14 hymen or pieces of the hymen. Younger children, it's very
15 fragile and thin and as they grow, it changes and becomes
16 like MINOR. It was folded on itself, fimbriated, and
17 that's just with hormone changes and as she ages and goes
18 through, starts her menstrual cycle and that kind of
19 thing, it changes over time.

20 Q But what you did note what appeared to be consistent
21 with bruising?

22 MR. MCMULLEN: Objection.

23 THE COURT: Rephrase that question.

24 Q What did you -- what did you see?

25 A The night that I examined her -- I don't think in the

1 chart -- we do a preliminary record. And then we have our
2 pediatric physician review the pictures either a week or
3 two later depending on when we meet with her, you know, to
4 make sure that we've covered everything. So after
5 reviewing the pictures and we put them on a computer
6 screen which is much bigger than my camera and you can see
7 a little bit better. There was that discoloration to that
8 top left side that was sort of a purple/blue tint to it
9 and the bleeding in her vaginal area.

10 Q In your opinion when you see a purplish/blue
11 tinting---

12 MR. MCMULLEN: Object to any diagnosis or
13 interpretation of the results.

14 THE COURT: Sustained. I didn't hear the whole
15 question.

16 Q Do you have an ultimate opinion as to the allegations
17 compared to your findings?

18 MR. MCMULLEN: Objection to that.

19 THE COURT: All right. Let me have a sidebar on that
20 one.

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

24 THE COURT: What class are y'all in, Professor?

25 PROFESSOR: Oh, this is a forensics class at

1 Newberry.

2 THE COURT: All right. Well, just I'll bring y'all
3 up to speed. This is a lady by the name of Donna Debrew
4 and she's been qualified in the field of forensic
5 assessment of sexual assault and she's right in the middle
6 of being questioned. So, Solicitor, continue on.

7 BY MR. SCOTT:

8 Q Okay. Last question. After examining over 400
9 patients and five years in this field, on the night of
10 June 30th, 2013 after examining MINOR , did you
11 form an opinion and really just yes or no is the answer
12 I'm looking for.

13 A Yes. Yes.

14 Q Okay. And in your opinion, were your findings
15 consistent with some sort of trauma?

16 A Yes, sir.

17 Q Thank you.

18 MR. MCMULLEN: May it please the Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. MCMULLEN:

22 Q Good afternoon, Ms. Debrew. Appreciate the work you
23 do. How long you've been at it?

24 A Forensic Nursing five years, and I've been a nurse
25 for 25.

1 Q And you saw MINOR, the night of -- the early morning
2 hours of June the 30th of 2013, is that correct?

3 A Yes, sir.

4 Q Do you have your report with you?

5 A I do.

6 Q Would you kindly refer to that? I'm looking at page
7 two. Could you check to see whether since the time of
8 this alleged assault, had she urinated?

9 A We do ask those questions and she had.

10 Q Had she defecated?

11 A No, sir.

12 Q Had she used any genital or body wipes?

13 A She answered no.

14 Q Had she douched?

15 A No, sir.

16 Q Had she removed a tampon or a diaphragm?

17 A No, sir.

18 Q On the third page, ma'am, she gave as part of your
19 interview a statement as to what happened or what she says
20 happened?

21 A Yes, sir.

22 Q Would you tell the jury what she said?

23 A This is what I typed when she was talking to me.

24 Like in the night, it was 11:00 or 12:00 and he, (the
25 pastor), that should be, came in the living room and then

1 he came in my room. He had a bad attitude. He takes down
2 my underpants and he abused me. I was like, mommy, and I
3 ran to the bathroom. My mom came and he acted like
4 nothing happened. My mom went, why are my daughter's
5 underwear on the floor? My mom asked me and I was
6 trembling and I was really scared. The pastor said,
7 nothing is going on and you're lying on me. He said that
8 twice. My mom got the phone. She was going to call 911,
9 and he was like begging and crying for her to stop or for
10 her not to call. My brother was there watching. I went
11 to the neighbor and she called the police and they came
12 and brought us here.

13 Q So it was her statement that she -- while the abuse
14 was happening, she says, I was like, mommy. And you put
15 an exclamation point behind that word?

16 A Yes, sir.

17 Q Does that mean that, I mean why did you do that?

18 A Because of the way she said it.

19 Q As in she screamed out?

20 A Yes, sir.

21 Q Okay. And then it says she ran to the bathroom?

22 A Yes, sir.

23 Q She's being attacked. She yells mommy, and then
24 somehow gets out from under him, I guess, or out from up
25 on top, whatever. But she runs to the bathroom?

1 A That is what she said to me.

2 Q And then the mother came?

3 A From what she told me.

4 Q Okay. And then mom was going to call 911?

5 A Yes, sir.

6 Q All right. And then if you will kindly go to page
7 four?

8 A Yes, sir.

9 Q It says, methods employed in the assault. Were any
10 weapons threatened?

11 A She said no.

12 Q Any injuries inflicted?

13 A No. And that question refers to like in a web,
14 because it kind of divides out like there's different
15 types of injuries as far as hitting with a weapon or
16 hitting and grabbing without a weapon. So she said no.

17 Q And then the question is physical blows. She put
18 yes?

19 A She, when she said yes, we usually just say what do
20 you mean by that. And she said once when he wanted to do
21 it again, I said no and he got the belt and hit me. That
22 was in his room.

23 Q All right.

24 A For the most part, I do acute assault, so I do what
25 happened that night. And she, from what this sounds like,

1 told me about something that happened at another time.
2 But since she said that, I marked yes because she made
3 that response.

4 Q So you would make a distinction between the alleged
5 assault that you're, that allegedly, freshly committed
6 versus something in the past?

7 A Yes, sir. That's why I made that note just to make
8 it clear that he didn't hit her that night.

9 Q Now, the next line, though, doesn't have any
10 notation. It says, grabbing, holding, pinching, yes.

11 A She said yes.

12 Q Did she say where? I mean, now you didn't write the
13 note.

14 A I didn't specifically ask where.

15 Q Would you expect that to leave a mark of some sort or
16 a bruise after?

17 A It depends on how tight they are being held or
18 sometimes patients will describe that to me by their body
19 weight. You know, they're laying on them holding them,
20 but it's more of the body weight than their hands.

21 Q And just to speed this along, if I may?

22 A Yes, sir.

23 Q As to, she says no to physical restraints,
24 strangulation, burns, verbal threats of harm, other
25 methods?

1 A Yes, sir.

2 Q Okay. And then where penetration, it says
3 penetration of vagina on page five, she puts penis. Yes.

4 A Yes, sir.

5 Q Finger or objects. No?

6 A Yes, sir.

7 Q The same question as to anus. Yes?

8 A Yes, sir.

9 Q And then oral copulation of genitals, she say yes.

10 A That one can get confusing, because it says of
11 patient/of assailant. And what I understood from her to
12 say is that he put his mouth on her.

13 Q And this is all the night of June 29th, morning of
14 the 30th?

15 A Yes, sir.

16 Q Then it says licking, kissing. Yes, yes?

17 A Yes, sir.

18 Q All right. And let me go down to, it says did
19 ejaculation occur, mouth? She said, she said no, doesn't
20 she?

21 A She said no, because she didn't put her mouth on him.

22 Q All right. And then for vagina, anus, body, clothing
23 and bedding, well, let me stop at clothing. Vagina, anus,
24 body, clothing, what is her answer?

25 A I just put unsure, because when you talk to a child

1 this age and you talk about ejaculation and fluids and
2 that kind of thing, sometimes they understand, sometimes
3 they don't. So I usually will say -- if they look at me
4 funny when I say did he ejaculate. I may say, well, was
5 there anything wet on your legs or was there anything wet
6 on your underwear, was there anything, did you see any
7 fluid or anything white or yellow or anything like that.
8 And she just said she didn't know. So I marked unsure on
9 those.

10 Q Now, and did you ever inquire how long this had been
11 going on or if this was the first?

12 A Again, we do acute assault. So I don't get into
13 that. We normally refer children 12 and younger to an
14 advocacy center afterwards.

15 Q Okay.

16 A And this is a preliminary report. So it doesn't say
17 that we referred her. But we did refer her to, I believe,
18 it was The Child's Place Advocacy Center. But I don't
19 think they made an appointment with that or I don't think
20 they saw her for followup.

21 Q It would be up to them to do do that?

22 A Sometimes law enforcement will refer them. We fax a
23 record either way.

24 Q And whether the patient ends up going or not is up to
25 them?

1 A Yes. Sometimes they can't get there with
2 restrictions.

3 Q But as far as her not knowing whether there was
4 ejaculation, if this had been an ongoing occurrence, you
5 probably -- you wouldn't have to explain what ejaculation
6 or sperm was, would you?

7 A It depends on the child. And how, I guess, savvy
8 they are as far as having sex or how many times they've
9 had sex. And they, then they still may not know just with
10 there---

11 Q And she was 12 at this time?

12 A Yes, sir.

13 Q Now, where it says bedding, what did, what was
14 different about that line?

15 A She just made, sometimes they'll make a statement and
16 I may just type it. And she just said, sometimes my bed;
17 sometimes his bed. I said was there anything on your
18 bedding.

19 Q No, I'm sorry. You're the, it says that as in
20 regards to ejaculation?

21 A Yes, sir.

22 Q Sometimes my bed; sometimes his bed.

23 A Yes, sir.

24 Q All right. And contraceptive or lubricant used. It
25 says no foam, no jelly, no lubricant, no condom.

1 A She answered no to all those.

2 Q And you didn't see any tearing?

3 A No, sir.

4 Q And let's see, the Tanner stage of four indicates --
5 and so on a scale of one to five, it indicates she's
6 almost to womanhood, does it not?

7 A Yes, sir.

8 Q Now, there's a blank that's not filled out, oriented
9 times three. Does it, was she oriented?

10 A You mean at the bottom where it says drug
11 facilitated?

12 Q Yes.

13 A I marked N/A on that, because drug facilitated is
14 usually a victim that comes in that possibly had something
15 put in their drink or we think they possibly may have been
16 drugged in some way. So I really didn't answer those
17 questions other than just to mark N/A.

18 Q Okay. Because you didn't know either way and people
19 don't always know?

20 A I mean she was talking to me. She was coherent. She
21 was clear. No smell of alcohol.

22 Q Moving forward to page eight, please, ma'am.

23 A Yes, sir.

24 Q On that page, there's a diagram of the -- let me say
25 female anatomy, if I may?

1 A Yes, sir.

2 Q And there are two spaces, on the first diagram there,
3 you put a number two in those, the digit two?

4 A Yes, sir.

5 Q And those arrows are pointing toward her vagina, are
6 they not?

7 A Yes, sir.

8 Q And then that will be continued I suppose on the next
9 page?

10 A It lists the number one.

11 Q Then, exam position used, lithotomy?

12 A Lithotomy, that is if the patient is laying on her
13 back with her knees elevated and slightly out to the side.

14 Q As for a gynecological exam?

15 A Yes, sir.

16 Q Are they in the stirrups?

17 A Yes, most of the time. Now, with children, it may
18 vary, but I think with her, I did. I can't remember
19 exactly if we did it in the exam room or if we did it in
20 her patient room in the E.R.

21 Q Now, you put exam methods, water-lubricated speculum
22 and UV light. Had the UV light revealed anything, I
23 suppose you would have made a note of that?

24 A I would have made a note.

25 Q So there was nothing revealed by the ultraviolet

1 light?

2 A Nothing that I could see at that time.

3 Q All right. And she said she had not douched or --
4 she had urinated but not douched or bathed or wiped, is
5 that correct?

6 A I guess wiped as far as like genital wipes to clean
7 up and that kind of thing.

8 Q Body wipe I think it said. Yes, ma'am. And then
9 previous pelvic exam, she'd never had one it says.

10 A Yes, and I marked water-lubricated speculum. I'm not
11 sure if that's in error. I don't show a picture of a
12 speculum present so that possibly could be an error for
13 that.

14 Q All right.

15 A Because usually with children that age and younger,
16 we just look and kind of pull the area apart to see. And
17 in the pictures I didn't see one of a speculum and if I
18 had used a speculum. I may have marked that mistake.

19 Q Fair enough. Now, on the next page, page nine, this
20 is where you have the references from the previous page
21 where the vagina is pictured.

22 A Yes, sir.

23 Q Or diagrammed or whatever. You put the note, digit
24 two twice.

25 A Yes.

1 Q And then over here it says number two or actually
2 number one. But it says hymen, body part and then it says
3 moist secretion?

4 A Yes, sir. There were, like the area itself looked
5 wet and there are only certain things that you can pick in
6 the computer to specify. So I picked hymen, moist
7 secretion, and then I wrote irregular in shape.

8 Q And as I understand it, women's hymens vary a great
9 deal?

10 A Yes, sir.

11 Q And unlike popular myths they don't go away during or
12 after intercourse?

13 A Not always.

14 Q The next line refers to labia majoris?

15 A Majora.

16 Q Majora.

17 A Yes, sir.

18 Q And that's the outer part of the vagina?

19 A Yes. There are like, we call them lips. There's
20 bigger lips and then smaller lips and those are the outer
21 of the bigger lips.

22 Q And you noted there, what was the notation about
23 that?

24 A Patient had started her period because there was
25 blood present on her labia. And also, I think, like right

1 on her inner thigh.

2 Q Okay. So the fact that she started the period would
3 explain why there was blood in her vagina?

4 A Yes, sir.

5 Q And the fact that the UV light didn't show but you
6 could see the secretion?

7 A Well, if something is mixed with blood, the UV light,
8 for the most part should show blood. But when I UV'd her
9 it didn't really show either, I mean, secretions of
10 anything. So I am not sure why it didn't.

11 Q Would it tend to also to show semen?

12 A Yes, sir.

13 Q It didn't do that either?

14 A No.

15 Q And then, actually, you put somewhere, presence of
16 semen, you put N/A.

17 A We don't, when we first started, we used to make a
18 slide and look under the microscope for semen ourselves.
19 And since we don't have, we are not certified as a lab and
20 that's not like our specialty, they didn't want us to do
21 that as a nurse. So we don't even look anymore.

22 Q Since it's no longer part of your procedure, you just
23 put N/A every time now?

24 A Yes, sir.

25 Q Thank you. But so the fact that the hymen is

1 irregular in shape is noted, there is nothing here, ma'am,
2 that says it was discolored or bruised?

3 A Again, this is a preliminary report. On the very
4 front of the sheet there's a little thing that goes across
5 the top that says preliminary report.

6 Q Yes, ma'am.

7 A And we always go back and have another nurse check
8 our record for spelling errors and that kind of thing,
9 mistakes. And we also review our record with our
10 pediatric doctor and we may go in and make changes after
11 the fact, before we consider it final.

12 Q All right.

13 A So when I looked at the pictures through the camera
14 that night, we just mainly get the pictures, take
15 everything. And then review the better after the fact and
16 have our pediatrician look at them, too. But if you look
17 at the pictures themselves you can see that area on there
18 but it's not described. Because I think because
19 preliminary report, it just hadn't been added yet.

20 Q When you look on the camera, is it magnified?

21 A You can zoom in more and we try to take overall shots
22 and then specific areas. So it just depends on what I'm
23 specifically taking a picture of and I may see something,
24 but I may not list it until I talk to my pediatrician.

25 Q And then is it fair to say that whatever you didn't

1 detect or whatever you omitted to write down in
2 preliminary, upon looking at it through the camera and the
3 photograph of the picture, maybe it is more focused or a
4 better view?

5 A It's amazing the things I see after the fact or, you
6 know, when I'm not in the moment and I go back and review
7 it later that I see or find.

8 Q And is it fair to say this would be a very small area
9 that if you missed it the first time around?

10 A Just working in that area, it's a tight area and when
11 she had the exam, I don't think that note is in here.
12 She was uncomfortable during the exam just because it's
13 embarrassing and she was upset and she cried.

14 Q And this was the first such exam she'd ever
15 undergone?

16 A From what, yes sir, from what they told me. So I
17 didn't want to continue to pull and tug.

18 Q Okay.

19 A So we try to do it as quickly we can, and I may not
20 have seen it at that moment and then saw it after I looked
21 at it again.

22 Q Thank you. Now, turning to page 10 of 12.

23 A Okay.

24 Q So we're almost there. She had pink underwear that
25 you collected, is that right?

1 A Yes, sir.

2 Q And, I guess, let me just ask you, is that because
3 she says that was what she--

4 A I would have seen them and I would have collected
5 them and put them in a bag and that's included in the SLED
6 kit. So that's why I didn't mark clothing because they're
7 not considered, clothing is a separate item in a separate
8 bag, a bigger bag.

9 Q Yes, ma'am.

10 A But in the SLED kit itself it has that red envelope
11 with all those individual envelopes. And then it has a
12 green envelope for, if we were to do drug testing. And
13 then there's a packet with slides that's also in there.
14 And then there are individual bags. There's a clothing
15 bag that I didn't use, because law enforcement had
16 collected her clothing. And there's a debris sheet, I
17 didn't use that. And her underwear bag, which I collected
18 the underwear and put them in the SLED kit.

19 Q And may I ask how you know that law enforcement had
20 collected the clothing she was wearing earlier?

21 A They had told me and I think in a nurse's note I may
22 have written that. But in this preliminary report, it's
23 not anywhere.

24 Q Well, why would you collect the underwear?

25 A We collect underwear every time because a lot of

1 times, there's drainage, discharge, things can rub off on
2 underwear. So we always collect underwear even if it's a
3 separate, even if it wasn't the original pair they were
4 wearing, we'll still collect it.

5 Q It says here, trace evidence collected. Combed pubic
6 hairs.

7 A Yes, sir. That's kind of routine, too. If a patient
8 has, still has pubic hair and has not shaved, we comb
9 through the pubic hair and that may be to find other hair.
10 It could be to find drainage or discharge. And I don't
11 think SLED routinely processes everything, you know, if
12 they do that, but we combed through it and include it in
13 there just in case.

14 Q Did you find any of those things?

15 A I don't know if there was drainage, because it would
16 have been dried. I mean, it still should have shown up on
17 the comb. But as far as hair, I don't remember seeing
18 any. I didn't make a note.

19 Q Would you have collected it if you had found some?

20 A It would have been included in that same packet.
21 Occasionally, if it's in the -- like if I did speculum
22 exam or if it were on the vaginal area where I swabbed, I
23 may swab with a Q-tip to try to collect it and put it in a
24 different envelope. But as far as the combing, we just
25 comb it into a page and then fold that page a certain way

1 and include it in the kid.

2 Q And then it says further down you collected a vaginal
3 swab, a rectal swab and a buccal swab?

4 A Buccal.

5 Q Buccal.

6 A And that's the inside of her cheek.

7 Q So it's saliva, then from the anus and from the
8 vagina?

9 A Well, the buccal swab is mainly her DNA. Because we
10 know we'll find her DNA in the kit, so we always collect.
11 That's a standard. We also collect the buccal swab. And
12 then normally, depending on what she tells me, we'll do
13 the vaginal and rectal swabs and then we could collect
14 from other places if we know.

15 Q And that's the swab that you collect and it goes
16 right to SLED?

17 A If we package it up in that kit and law enforcement,
18 if they don't collect it that night, we lock it in our
19 office in a refrigerator. It's a locked refrigerator with
20 assigned log. And then the office itself is locked, so we
21 maintain our chain-of-custody.

22 Q She reported or told you that this assault, said it
23 happened at about 11:00 or 12:00?

24 A I think she said 12:00. I don't remember the exact
25 time, but I think she said 12:00 or 12:30. I don't

1 remember where I read that.

2 Q Okay. But whenever it happened, she got to the
3 hospital at 1:20?

4 A Yes, sir.

5 Q And then you were able to begin your collection of
6 evidence, I guess you'd say, at 4:18. Is that correct?

7 A I opened the chart at 4:18 and I probably was there
8 before then, because we arrive at the hospital, I speak
9 with the doctor or the nurse. Then I meet, then I met her
10 mom, talked with law enforcement. And then by the time I
11 got the computer and opened the record, it was 4:18.

12 Q So if this happened at 11:00 p.m., then this would
13 have been within five and a half hours?

14 A Yes, sir.

15 Q If it happened at 10:00, it'd be within
16 six-and-a-half hours?

17 A Yes, sir.

18 Q Something like that? Okay. And then page 11 of 12.
19 Let's see, don't see anything here. And then you signed
20 it, Donna Debrew, RN.

21 A Yes, sir.

22 Q Could you bear with me just one moment, please?

23 A Yes.

24 Q Page seven was a diagram of a female front and back?

25 A Yes, sir.

1 Q It says at the top, no findings.

2 A For this picture it would be if she had scratches,
3 bruises, abrasions, any bodily injuries.

4 Q And why were her mother and another woman there? Let
5 me back up. The young lady speaks fluent English, doesn't
6 she?

7 A Yes, sir.

8 Q Why was the mother and this friend or translator in
9 the room?

10 A I don't think they were in the room when I did the
11 exam on the front. And again, this is a preliminary
12 report so it's not marked persons present during the
13 medical exam.

14 Q Okay. On 11 it says, accompanied by. That just
15 means that's who was there at the hospital with her?

16 A Yes, sir. And normally, you know, a parent is with a
17 child because they have to give consent for her to be
18 treated. We had the interpreter there for her mother so
19 she understood everything that I was doing. And then
20 there is usually an advocate from Sexual Trauma Services
21 that is there for the patient, herself.

22 Q Because she was brought to you by the police, you
23 didn't have to call DSS, did you?

24 A No.

25 Q But now, in general, with a person in your profession

1 who sees signs of sexual abuse, that person has to call
2 and report it, do they not?

3 A It depends on the situation. With her situation, she
4 was brought in by her mother and when she was going home,
5 the person that she was accusing of this was not going to
6 be in the home as far as what law enforcement told us. If
7 she had been going, like if that was her only option to go
8 back to that home, then we would have called DSS and they
9 would have taken her into custody.

10 Q Okay. But, I mean, just in general, perish the
11 thought, but suppose you're at a playground in your
12 neighborhood and you see a neighbor child. And you say,
13 wow, I recognize some of these signs that could be sexual
14 abuse. You would be obligated to report it, would you
15 not?

16 A I'm a mandated reporter.

17 Q The same as to teachers to your knowledge?

18 A Teachers, pastor.

19 Q Law enforcement?

20 A Law enforcement, people in the medical field.

21 MR. MCMULLEN: Thank you so much for what you do and
22 for what you've done today. Thank you.

23 REDIRECT EXAMINATION

24 BY MR. SCOTT:

25 Q Okay. Now, really just a couple of questions, Ms.

1 Debrew. You said five-and-a-half hours had passed, to
2 your knowledge, between the assault and when your exam
3 began?

4 A I remember a time I think around midnight. I can't
5 say for sure, because I think that was in that time in
6 there. But I don't remember where I saw that.

7 Q I think it was in your narrative here.

8 A Yes, that's where. 11:00 or 12:00 is what she told
9 me. So from that time until I got there. And I'm just
10 assuming that I got there between 3:30 and 4:00 because on
11 average when they call me, it takes, we're supposed to
12 respond within an hour. I don't remember what time they
13 called me. But from the time the E.R. called me, I would
14 have arrived and done the exam from that point.

15 Q Okay. Well, if some five-and-a-half hours had
16 passed. How would the passage of time affect what you
17 would expect to collect as far as physical evidence?

18 A It can, we can lose evidence from any time. We try
19 to see a patient within the first 36 hours. Children it's
20 shorter, because evidence is lost a lot quicker on
21 children than it is on adults. And then depending on how
22 many times she went to the bathroom and wiped, those kind
23 of things, we can lose evidence.

24 Q Okay. And we're talking about an examination and
25 hoping to collect some evidence out of, from her vagina?

1 A Yes, sir.

2 Q And she did indicate that she'd urinated?

3 A Yes, sir.

4 Q And what, if any, effect would that have on your
5 expectations of collecting evidence?

6 A It can wash away evidence.

7 Q Okay. Thank you.

8 RECROSS EXAMINATION

9 BY MR. MCMULLEN:

10 Q And just you try to do these exams within 36 hours?

11 A Yes, sir.

12 Q That's the window?

13 A Yes.

14 Q And this was done within six?

15 A Yes, sir.

16 Q Thank you.

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

18 MR. SCOTT: Your Honor, the State calls Jennifer
19 Bartman to the stand.

20 (Whereupon, State's Exhibit 15, 16, 17 and 18 were
21 marked for identification only.)

22 JENNIFER BARTMAN, being
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SCOTT:

1 Q Ms. Bartman, where you are employed?

2 A I am employed with the State Law Enforcement
3 Division, commonly known as SLED.

4 Q How long have you worked there?

5 A I have worked there just over two years.

6 Q And what do you do at SLED?

7 A I am a DNA analysis, I work in the DNA case work
8 department. So I receive evidence from crimes that occur
9 in South Carolina. And I can screen them for evidence and
10 then I perform DNA analysis on those items.

11 Q And you are a forensic scientist?

12 A Yes, that is correct.

13 Q What kind of training did you get to become a
14 forensic scientist for SLED.

15 A I have a Bachelor's Degree in Biology. I also have a
16 Master's Degree in forensic science. And I also completed
17 a year of on the job training at SLED with a court
18 qualified analyst in the proper techniques and procedures
19 of the laboratory.

20 Q And is there ongoing training that you have to do?

21 A Yes, that is correct. We are required to do at least
22 eight hours of continuing education each year. But we all
23 usually do more than that.

24 Q How many samples do you test on a weekly basis?

25 A We get several pieces, it does fluctuate because we

1 have several different job descriptions. But we probably
2 do around 50 a month probably.

3 Q You have been doing two years, is what you said?

4 A I have been with SLED two years, yes.

5 Q On a weekly basis how many samples do you test?

6 A It varies weekly, overall we tend to look at it on a
7 monthly basis where it is approximately 50, depending on
8 the types of cases that we have.

9 Q The 50 a month you say, you say you have been working
10 as a forensic scientist at SLED for two years?

11 A For two years, yes.

12 Q And have you testified in General Sessions Court
13 before?

14 A Yes, I have.

15 Q How many times?

16 A Three times.

17 Q And were you qualified as an expert?

18 A Yes, I was.

19 Q In what field?

20 A In DNA analysis.

21 Q DNA analysis.

22 MR. SCOTT: Your Honor, we would ask that Ms. Bartman
23 be qualified as an expert in DNA analysis.

24 MR. MCMULLEN: We will stipulate that she is an
25 expert in DNA analysis.

1 THE COURT: Ladies and gentlemen, again, this young
2 lady, Ms. Bartman, has now been qualified as an expert in
3 the field of DNA analysis.

4 Q DNA, I don't know, can you give us the DNA, the
5 explanation what DNA is and why it is important in
6 criminal investigations?

7 A Sure. DNA is a chemical that is found in our bodies.
8 It is unique between individuals except for identical
9 twins. And it is, you inherit half of it from your mom
10 and half of it from your dad.

11 Q And sometimes I get a case called touch DNA. Are
12 there other, touch DNA would be what, you leaving your
13 hands and your skin cells. What is touch DNA?

14 A Touch DNA is simply what we call the DNA that is left
15 behind after you touch a surface or skin cells that have
16 come off of you and left on another object or person.

17 Q That type of DNA is the kind that is probably--

18 MR. MCMULLEN: I object to the leading questions.

19 THE COURT: This is preliminary. I am going to allow
20 him a little latitude to make things speed along a little
21 bit.

22 MR. MCMULLEN: Yes, sir.

23 Q Touch DNA is probably the kind, I guess, evaporates
24 more quickly than body fluids?

25 A It is possible. It depends. When you do leave skin

1 cells on a surface there is potential to be washed away or
2 it to be taken away by another person touching an object
3 or something like that.

4 Q What types of items are submitted to you that you
5 collect DNA on?

6 A Most commonly we look at blood, semen, saliva and
7 then DNA left behind by skin cells.

8 Q And in this particular case, this is SLED lab number
9 L1309485. Did you have occasion to examine DNA evidence
10 brought by Newberry Police Department involving a suspect,
11 Mario Gonzales Hernandez and a victim, MINOR

12 A Yes, I did.

13 Q And when did you receive that for analysis?

14 A I am referring to our verified chain of custody from
15 SLED. And are you asking when I personally got the
16 evidence or when SLED received the evidence?

17 Q When did SLED get it?

18 A SLED received the evidence on July 25, 2013.

19 Q And when did you get it?

20 A I received the evidence on February 27 of 2014 from
21 our evidence control department.

22 Q What were the items you received for analysis?

23 A I performed DNA analysis on buccal swabs from the
24 victim, a buccal swab from Mario Gonzales Hernandez,
25 vaginal swabs, rectal swabs, a cutting from the nightgown

1 and a cutting from underwear.

2 Q Let me show you State's number 14. Do you recognize
3 that?

4 A Yes, I do.

5 Q And what is that?

6 A When a piece of evidence comes to the lab it has a
7 unique bar code that is generated on it. And this is item
8 4 with this unique case number. And this is a buccal swab
9 from Mario Gonzales Hernandez.

10 Q Okay. It comes to you, I guess, in one of these Best
11 Bags, Best Kits?

12 A In one of these plastic sealed pouches, yes.

13 Q Describe to the jury what these Best Kits are and why
14 y'all use them?

15 A It is not a kit per se. When evidence is brought
16 into the laboratory it is put into these SLED evidence
17 pouches. That is when it is given that yellow bar code
18 with the lab number and the item number.

19 Q Are these tamper evident bags?

20 A Yes, they are heat sealed. So that means that when
21 they are cut open they have to be resealed and when we
22 reseal them we put our initials and the date that we
23 resealed them so you can tell who went in it and where.

24 Q And when it came to you were you able to establish
25 the chain, who had it before you and whether it had been

1 opened and tested?

2 A Yes, it was properly sealed when I received it.

3 Q I think it is number 15. Do you recognize that?

4 A Yes, I do.

5 Q What is that?

6 A This is the sexual assault kit that was submitted as
7 item 1, SLED item number 1.

8 Q Does that contain item 1.5, the victim's buccal
9 swabs?

10 A Yes, it does.

11 Q And State's number 16, do you recognize this?

12 A Yes, I do.

13 Q And what is that?

14 A This is container A, typically when we package more
15 than one item in coin envelopes we put them in a
16 container. And container A looks like it contains, I can
17 look up what it contains of. Look at it, it is the
18 cutting from the underwear and the cutting from the
19 nightgown.

20 Q And the nightgown, the chest area is, is this where
21 the cutting would have come from?

22 A Yes, that is indicated by the number that is next to
23 the cutting.

24 Q So, that section of the nightgown was cut out. You
25 received the cutting and you performed some sort of

1 chemical testing on it?

2 A I received the cutting from the nightgown in a tube
3 already and then I performed the DNA analysis on the
4 cutting.

5 Q And did you have, what were your findings as far as
6 the, well, let me ask you this. How do you use the buccal
7 swabs from the victim and suspect as compared with the
8 piece of evidence like the cutting from the nightgown?

9 A The type of DNA analysis that we do is called STR
10 analysis which stands for short tandem repeat. And we are
11 looking at 15 different locations on the DNA as well as a
12 gender marker which would indicate to us whether it is
13 male or female. And at each of those different locations
14 that is repeating sections of DNA. How many times that
15 section repeats is the difference between individuals.
16 So, we look, we generate a DNA profile from the evidence
17 first. And then we generate a DNA profile from the
18 submitted standards and we do a comparison of those number
19 of repeats between the known standards that we have and
20 the evidence that was submitted.

21 Q Let me show you State's number 18. What is that?

22 A This is page three of the DNA report that I generated
23 and it is a table indicating those numbers that I was just
24 telling you about, the number of repeats.

25 Q And you generate those whenever you have a finding as

1 far as, after DNA analysis?

2 A Yes. Whenever we generate a DNA profile it is
3 recorded in this manner.

4 Q And that particular chart, your DNA analysis and the
5 examination, what were your results?

6 A For this particular case I did two different types of
7 testing. I did the initial STR testing that I was telling
8 you about and I also did an additional test called YSTR
9 testing which looks at just the male DNA that is present,
10 if it is present. And what--

11 MR. MCMULLEN: Your Honor, may I object at this
12 point. She is looking at the chart but I believe the
13 results are on page two of the report. She is looking at
14 something rather than the results.

15 THE COURT: Does it make a difference.

16 MR. MCMULLEN: I believe he asked about the results
17 of the testing rather than a litany of what numbers are on
18 a chart.

19 THE COURT: I think I want to hear a little more on
20 the record but in-camera. Ms. Ringer, I want to take a
21 short break, I want to hear something on the record, a
22 little more clearer in detail. Y'all step in the jury
23 room and don't talk about the case.

24 (Whereupon, the jury was excused from open court for
25 a break.)

1 THE COURT: I was taking notes on what she said about
2 the YSTR answer. And I didn't hear the distinguishing
3 difference between the page number you are talking about
4 and the question. What was the question, Mr. Scott, that
5 you asked.

6 MR. SCOTT: What were your results and she was trying
7 to explain it. I mean he objected while she was
8 explaining it. I am not clear what the objection is. She
9 is referring to her notes.

10 THE COURT: That is kind of what I thought you said.
11 So, what is the objection, Mr. McMullen.

12 MR. MCMULLEN: Your Honor, it is a three-page report.
13 And page two or three that has headlines or headings that
14 says, results. She wasn't handed that, she was handed
15 page three which shows a bunch of numbers.

16 THE COURT: Doesn't she have her own file with her.

17 MR. MCMULLEN: Yes sir, but she was handed page three
18 and it was marked as an exhibit and she was asked to refer
19 to this and give the results of her testing. And the
20 results of her testing, Your Honor, is that she, they
21 can't make any statement regarding the inclusion or
22 exclusion of the defendant. That is the results. And
23 that is why I wanted to keep all of this mumbo jumbo out
24 because it doesn't shed any light, it does not assist the
25 trier of fact at all, it is not going to change a fact

1 that the results on page two don't tell us, they don't
2 find Mario Hernandez's DNA.

3 THE COURT: What was going to be your next question.
4 I want to hear her answer first. What were your results,
5 I don't know where she was looking because I was looking
6 down taking notes.

7 MR. SCOTT: I can't even tell what my next question
8 is going to be because I don't know what he is going to
9 object to.

10 THE COURT: I want to hear your answer to your
11 question. She never did give the answer, the objections
12 came in.

13 Q Ms. Bartman, what were your findings?

14 A I was going to refer to my report and to read my
15 results to that.

16 Q I would like you to do that.

17 A The DNA profile developed from item 2.1 which is the
18 nightgown is a mixture of at least two individuals. The
19 victim cannot be excluded as a possible contributor to
20 this mixture. The probability of randomly selecting an
21 unrelated individual who could have contributed to this
22 mixture is approximately 1 in 1,600. No conclusive
23 statement can be made regarding the inclusion or exclusion
24 of Mario Gonzales Hernandez as a contributor to this
25 mixture. And then going on to the Y testing.

1 THE COURT: Stop for one second. Is that not her
2 reading from the page you are looking at?

3 MR. MCMULLEN: It sure is, yes sir.

4 THE COURT: Is that what you wanted?

5 MR. MCMULLEN: It is. My objection would be because
6 she was handed page three and asked to give her results.

7 MR. SCOTT: Well, she hadn't finished with the
8 results. What I did intend to do was next. She is going
9 to explain why it is relevant and what it means. And the
10 jury, they should be able to see it.

11 THE COURT: All right, now, it seems to me if she can
12 read the results in conclusion that she just read that she
13 can be allowed to explain how you arrived at that
14 conclusion.

15 MR. MCMULLEN: Yes, sir.

16 THE COURT: As an expert, why wouldn't she be able
17 to.

18 MR. MCMULLEN: Well, what he wants to do is make that
19 an exhibit and it goes back in the jury room and they are
20 going to see, ew, there is a 14 here and there is a 14
21 there. And they are going to say, 99.9 percent of all of
22 our DNA is the same. And yet they are going to be mislead
23 because, it is going to tell us they both have brown eyes.
24 But it is not going to tell us, it is not going to tell
25 the trier of fact anything.

1 THE COURT: I agree with you if she is just giving
2 the numbers. If she is giving the results and she said,
3 not included or excluded.

4 MR. MCMULLEN: Well, I don't have a problem with
5 that. I have a problem with the--

6 THE COURT: She is giving more or less the bad news
7 first and how, now, how she arrived at it. I don't think
8 that is unduly prejudicial to you. I find it a little bit
9 probative to how she reached her conclusions.

10 MR. MCMULLEN: Right. And I just don't want the
11 chart admitted into evidence. I don't mind her testifying
12 from the chart or referring to the chart during her
13 testimony. I just hate for the jury to go back there with
14 this chart with a bunch of matching numbers and then say,
15 well, there is an 11 and 13, there is an 11 and 13.
16 Because this is not, the best expert that we have got that
17 I have met, says I can look at all of this and what I find
18 out is the stuff that is on page two. I don't mind page
19 two going back there. But I just hate for the jury to
20 start becoming amateur scientists.

21 THE COURT: I think she can explain the chart also.
22 I agree with you. What is the purpose of the chart going
23 back there after she explains it.

24 MR. SCOTT: I don't know that it has to but there is
25 a, the language that SLED will use and she is testifying

1 to, I think she needs this chart to explain it.

2 THE COURT: I do too. Certainly if you had it blown
3 up on a poster board and make her point out like I have
4 seen in other trials. She would be allowed to teach the
5 jury how she arrived at that conclusion.

6 MR. SCOTT: Right, that is what I was going to do. I
7 was going to blow it up actually, that is what I have done
8 in the past. I was just going to put it on the Elmo and
9 have her use a laser pointer to explain the grids, how she
10 reached that conclusion. Because ultimately, what she
11 needs to explain why no conclusive statement regarding to
12 the inclusion or exclusion to somebody. And with this
13 chart she can do that.

14 THE COURT: I think she would be allowed to do that
15 but with her testimony I don't think her report would come
16 in, she is testifying.

17 MR. SCOTT: I wasn't going to introduce that report.

18 THE COURT: I think neither come in but her testimony
19 and the report being shown to the jury on how she arrived
20 at it is absolutely allowable.

21 MR. MCMULLEN: All right. And my only point about
22 the chart is, it ends up being evidence, it ends up being
23 something very useful to this expert witness but it is of
24 no use at all to the trier of fact.

25 THE COURT: He said he wasn't going to try to

1 introduce that or the conclusory page. Because normally
2 an expert's report is not admissible. The testimony, the
3 full testimony to how she reached her opinions and
4 conclusions is and the underlying data therein supporting
5 those conclusions is allowable testimony. Is that what
6 you intend to do, Mr. Scott?

7 MR. SCOTT: Yes sir, I am going to put it here and I
8 am going to have her go with the laser pointer and that is
9 the buccal swab. That is Hernandez's buccal swab. And
10 MINOR and the cutting from the nightgown. She is
11 going to explain--

12 THE COURT: How that works and how her conclusion was
13 arrived at.

14 MR. SCOTT: Yes, sir.

15 THE COURT: But neither document is coming into
16 evidence.

17 MR. SCOTT: I don't need to introduce that.

18 THE COURT: Fair enough. I think that protects the
19 interpretation by the jury by the chart, not in the jury
20 room. We have got an explanation right here.

21 MR. MCMULLEN: If that is your ruling I won't keep
22 arguing.

23 THE COURT: I think that is exactly what you asked
24 for.

25 MR. MCMULLEN: I wish they wouldn't even see this

1 chart because it will not assist the trier of fact in
2 understanding anything. Because the ultimate testimony
3 is, I can look at this all day and I can't include or
4 exclude.

5 THE COURT: That is what an expert does, is she
6 educates us on the conclusion she has reached regarding an
7 issue, and that is an issue for the trier of fact. I
8 agree with you that the chart won't go in but she will be
9 able to use it to explain herself. I want a break.

10 (Whereupon, a short break was taken.)

11 THE COURT: Let's bring the jury back in.

12 (Whereupon, the jury came into open court at
13 approximately 3:28 p.m.)

14 CONTINUE DIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q Ms. Bartman, since we have broke, in the middle of
17 your testimony, tell me, what were the results of your
18 findings after analyzing the buccal swab of the two
19 individuals and the nightgown?

20 A I am going to read right from the DNA report that I
21 generated. The DNA profile developed from item 2.1, which
22 was the cutting from the nightgown is a mixture of at
23 least two individuals. The victim cannot be excluded as a
24 possible contributor to this mixture. The probability of
25 randomly selecting an unrelated individual who could have

1 contributed to this mixture is approximately 1 in 1,600.
2 No conclusive statement can be made regarding the
3 inclusion or exclusion of Mario Gonzales Hernandez as a
4 contributor to this mixture. The partial YSTR profile
5 developed from item 2.1, which again is the cutting from
6 the nightgown is a mixture of at least two individuals.

7 No conclusive statement can be made regarding the
8 inclusion or exclusion of Mario Gonzales Hernandez as a
9 contributor to this mixture.

10 Q So does that mean that the cutting from the nightgown
11 contains DNA from two individuals?

12 A From at least two individuals.

13 Q Okay. Now, what is this. This is ID'd as State's
14 18. What is that?

15 A This is page three of my report. This is a table
16 that we generate which indicates the DNA profiles that we
17 generate. So each of those numbers that you see are the
18 number of repeats that are at that location. So each of
19 the different columns are each of the different locations
20 that we look at.

21 Q Okay. What does that mean, each column and location,
22 explain that a little bit more?

23 A As I said earlier, we look at 15 different locations
24 on the DNA and the gender marker. So each of those, each
25 of these different columns is a different location that we

1 test. And this column at the end is the gender.

2 Q And you said you did two different tests from the DNA
3 samples?

4 A Yes. So table one is the STR analysis that I did.
5 And table two is the YSTR analysis that I did which is
6 male specific.

7 Q And so table one, the first row is MINOR
8 known DNA sample?

9 A That's correct.

10 Q The second row, second highlighted box there, that
11 would be Mario Gonzales Hernandez's known DNA sample?

12 A That's correct.

13 Q Those are boxes we know that the contributor is from.
14 Is that accurate?

15 A That's correct.

16 Q So we know row one and MINOR is a known. We know
17 row two is Hernandez's DNA?

18 A Yes, that is correct.

19 Q And it is, item 2.1, that is a nightgown. That would
20 be the third highlighted row?

21 A Yes, that is correct.

22 Q That is the cutting of the nightgown. We showed it
23 earlier, the chest area that you cut a sample from?

24 A Yes, I didn't personally cut it. But I received
25 from.

1 Q What you tested?

2 A That's correct.

3 Q Explain to us regarding those three rows what the
4 numbers that are related to them, how are we to interpret
5 those?

6 A When we generate a DNA profile from an evidence item
7 that is a mixture. Typically that is when you will see
8 more than two numbers and each of the different locations.
9 And when we look at profiles that are mixtures, we look at
10 the entire profile. When we determine whether a person
11 can either be included, can be excluded or no conclusive
12 statement can be made between those. So, the instrument
13 that we use that generates a graft that has different
14 peaks on, in each of those peaks correlates to a number
15 that is shown on the table. So, when we do comparisons
16 between the known DNA standards which are the top two
17 rows. To the evidence items we look for whether the
18 numbers correspond and where they, where they are similar,
19 where they are different and make comparisons based on
20 that.

21 Q So MINOR , in the first column is a 14, 15. And
22 then in the nightgown she has 14 and 15?

23 A That's correct.

24 Q How is that relevant?

25 A That there is DNA there that has a 14, 15. So it is

1 consistent so far at that location.

2 Q Now, Hernandez in this column is a 12 and a 15. The
3 nightgown has a 12 and a 15. How is that relevant?

4 A Yes, that's correct. So at that location we can't
5 exclude Mario Hernandez at that point.

6 Q I guess the question is, it might just be semantics.
7 Why can't you include him then. You can't exclude but you
8 can't include him?

9 A Right. Like I mentioned, we look at the profile as a
10 whole. We don't look at each location individually. Just
11 because, several people can have a 14 repeat and a 15
12 repeat. That is not necessarily indicative of a person.
13 And we look at these 15 different locations because these
14 are the locations that have been shown to be the most
15 unique between individuals. So, when we look at all of
16 those different locations combined it gives us the best
17 look at whether a person can be there or can be excluded.

18 Q MINOR , the second column, 30 and a 31.2, the
19 nightgown has a 30, 31.2. Hernandez is 31.2 and a 32.2.
20 There is a 32.2 in parenthesis. What does that mean?

21 A That means that that particular peak that was
22 developed was at a lower level than the other two peaks.
23 We have different thresholds that we utilize at SLED. If
24 the peak does not reach that first threshold it is not
25 called so no number would exist in the table. If it

1 passes that first threshold but doesn't quite reach the
2 second threshold it will be in parenthesis. And then if
3 it is over that second threshold then it will not have any
4 parenthesis around the number.

5 Q So the 31.2 is consistent. However, the 32.2 that he
6 has in his profile is only showing up as, I guess below
7 threshold amount?

8 A Below or highest, highest threshold.

9 Q And, again, MINOR , 11, 13. There is an 11 and 13.
10 And similar to this box, Hernandez has a 10 and 12. 12 is
11 not in parenthesis but the 10 would be under your highest
12 threshold as far as that goes?

13 A It is just at a slightly lower level than the rest.

14 Q Thank you. 12 and 13 for MINOR . In the forth
15 column there is a 12 and a 13. There is an 11 for
16 Hernandez and an 11 here. Why is there a 10 in
17 parenthesis when neither one of them have a 10 in their
18 DNA profile?

19 A That could be an additional individual. It is
20 another peak that is there that does not correspond to
21 either of them.

22 Q Really, I am not going to go through the whole thing
23 to everyone's relief. But you are saying these numbers
24 for MINOR that are unique to her but you are seeing them
25 associated with the nightgown with these boxes. And I

1 guess enough of it is present for you to make some
2 conclusion?

3 A Yes. As far as MINOR goes, she cannot be excluded
4 as a possible contributor to the mixture.

5 Q But why use that language, she cannot be excluded.
6 Why not say her DNA is on this nightgown?

7 A When we deal with mixtures that is the terminology
8 that we use because there is more than one individual
9 there because there is multiple DNA from people there, we
10 say cannot be excluded as far as being definitively.

11 Q And then you say that about Hernandez as well, he
12 cannot be excluded?

13 A No conclusive statement can be made regarding the
14 inclusion or exclusion.

15 Q What does that mean?

16 A Like I said earlier, we can either include someone,
17 we can exclude someone or there can just not be enough
18 information to make a determination whether he can be
19 included or excluded from a profile.

20 Q Okay. The second table there, that would be male
21 specific testing. Is that what you said?

22 A Yes, that's correct.

23 Q And you read it the same way, I guess, as you do the
24 top box?

25 A Yes. Each of the different columns are different

1 locations that we are testing. And the top row is the
2 YSTR profile of Mario Gonzales Hernandez. And the bottom
3 row is the YSTR profile that I developed from the
4 nightgown.

5 Q Now, we are all looking at it and we see a lot of
6 these numbers that are matching one another. Why can't
7 you make a conclusion, just not reaching your threshold of
8 confidence, I guess.

9 A Because it is a mixture. We typically look at
10 mixtures more cautiously, it is as cut and dry as it is
11 them or it is not them. So, in this case there are some
12 numbers that are around the parenthesis, so there are some
13 lower level DNA there which you can see. This one and
14 some of the other ones. So there is just enough, there is
15 not to conclusively say that he cannot be excluded from
16 that profile.

17 Q Now, that sample, is there a way to test when there
18 is mixtures, whether there is male DNA?

19 A In this particular case, this bottom row or this
20 bottom table that I tested is the male DNA.

21 Q Let me rephrase that. You test an object like the
22 nightgown. And there is a mixture in there. Is there a
23 way to tell whether it is solely female DNA or whether
24 there is a male contributor?

25 A Yes. That, we look at our gender marker which is,

1 the STR testing is the testing that we always do first
2 typically. So this last row is the gender marker. So, if
3 it is just a single X that means female. And if it has an
4 X and a Y that means male. So in this case for the
5 nightgown there was a low level Y, so there was some male
6 DNA present which is why I performed the additional YSTR
7 test.

8 Q Do you know, was it body fluid on the cutting or do
9 you know what kind of DNA you were testing?

10 A I don't.

11 Q Okay. What is acid phosphatase?

12 A Acid phosphatase is a component that can be found in
13 semen.

14 Q And to your knowledge was that located in the cutting
15 section?

16 A Our evidence processing department issued a report
17 which I do have with me as well. But I will refer to,
18 that says testing for acid phosphatase was positive. The
19 presence of acid phosphatase is indicative of semen.
20 However, this chemical may be found in, may also be
21 present in other body fluids.

22 Q I guess, it is indicative of semen?

23 A It is a component that is found in semen. That is
24 correct.

25 Q Thank you, Ms. Bartman.

CROSS-EXAMINATION

BY MR. MCMULLEN:

Q Good afternoon, how are you?

A I am good.

Q I went on line, I see that SLED has again been reaccredited?

A That's correct.

Q Congratulations.

A Thank you.

Q So, do you know, there are two serologists, there is Jessica Herron and there is Andrea Simmons. Two reports, is that correct?

A That's correct.

Q And those were kind enough to meet with Mr. Pinilla and me at some point. Is that correct?

A That's correct.

Q Is it correct that the first one done, the first report done was by Jessica Herron?

A That's correct.

Q It has got a number six at the top of page one. And then the next one has a number seven at the top of page one. On the first one done, it says testing for this acid, what is it?

A Acid phosphatase.

Q That was present and that is indicative of semen.

1 But it is also present with other bodily fluids?

2 A That's correct.

3 Q What are those?

4 A One of them is vaginal fluid.

5 Q And that is just normal fluid that women have in
6 their vagina?

7 A That's correct.

8 Q And is mucus or a sneeze, is that one where we would
9 find that?

10 A I am not sure on that.

11 Q Teardrop?

12 A I don't believe so.

13 Q Saliva?

14 A I don't believe so.

15 Q Says on this first one, underwear from subject. Item
16 3, no semen indicated?

17 A That's correct.

18 Q And then she tested the cutting from the underwear
19 interior. It has this acid phosphatase and again, it
20 might be semen but it is other bodily fluids as well. So,
21 it was forwarded to the DNA section to you for further
22 testing?

23 A To our serology section, yes, which is part of our
24 DNA section.

25 Q And then actually, then it went first to Ms. Simmons?

1 A That's correct.

2 Q And Ms. Simmons says she has got the kit, she got the
3 smears from the vaginal smear and the rectal smear. And
4 what did she find?

5 A No spermatozoa was identified.

6 Q And this is the, MINOR vagina, vaginal smear.
7 Part of the test kit done at the hospital. The vagina and
8 the rectum, they swabbed them within six hours of the
9 alleged incident. And, again, no semen identified. Is
10 that correct?

11 A No spermatozoa identified, yes.

12 MR. SCOTT: Judge, I would object her testifying to
13 somebody else's report. There might be some further
14 explanation that Ms. Simmons could offer as far as some of
15 these analysis. He is welcome to call her as a witness.

16 MR. MCMULLEN: As I understand it, he just had her
17 testify from these reports.

18 MR. SCOTT: I think the problem is, this is Simmons'
19 report here.

20 THE COURT: Okay.

21 MR. SCOTT: And I don't know that she would be
22 comfortable to testify to all the tests that were done by
23 Simmons and whether there is further explanation that
24 Simmons relied on.

25 THE COURT: Stick to what she has tested.

1 MR. MCMULLEN: May I ask her, are you comfortable
2 testifying--

3 THE COURT: I am not comfortable with it.

4 MR. MCMULLEN: All right.

5 THE COURT: She can testify to what she tested.

6 Q You tested the vaginal swab, did you not?

7 A That is correct.

8 Q And if I may, up here, my eyesight is not that good.

9 MINOR number is here. This is a low side?

10 A Each location is a locust.

11 Q We get one of each of these numbers of each low side
12 from each parent unless, as here, and for the record that
13 is, let me just call it TH, is that 01 or THD1?

14 A 0.

15 Q There is a 6 in MINOR DNA which means that each
16 of her parents had a 6?

17 A That's correct.

18 Q And that is what we would call, homozygous?

19 A That's correct.

20 Q And this is heterozygous, is that right?

21 A That's correct.

22 Q So, where MINOR has a 6, Mario has a 6 and a 9.3 or
23 a 6.9 and a 3?

24 A A 6 and a 9.3.

25 Q So, the two of them each have a 6. But when her

1 vaginal swab was tested only a 6 shows, correct?

2 A That's correct.

3 Q And the same is true of her rectal swab?

4 A That's correct.

5 Q And in fact, isn't it true that all of these numbers
6 match exactly MINOR only?

7 A That's correct.

8 Q So, can we rule Mario out from being, having any of
9 his DNA in her vagina swab or rectal swab?

10 A From the DNA profile that I developed, yes.

11 Q And as for the cutting from the underwear, same
12 thing?

13 A That's correct.

14 Q None of his DNA?

15 A Not that was developed, no.

16 Q What do you mean, not that was developed?

17 A We can just comment on the DNA profile that we
18 developed.

19 Q So you can include him or you can't ever exclude him?

20 A We can exclude him from the profile that we
21 developed. We can't exclude it from ever being there if
22 that makes sense.

23 Q Well, MINOR has a 14 and a 15 as was pointed out in
24 the first grid. Mario is a 12 and a 15. Then the
25 nightgown has a 10 and a 12 and a 14, 15. The Solicitor

1 mentioned 10, what does the 10 tell us?

2 A It is a portion of DNA that does not correlate to
3 either the victim or the suspect.

4 Q And when you say, victim, you mean MINOR ?

5 A That's correct.

6 Q Now, another interesting grid here, as I see it,
7 under DS19, let's call it. It is about half way down and
8 it is for the nightgown item 2.1. There are five numbers
9 there, are they not?

10 A They are.

11 Q What do the five numbers tell us?

12 A That it is a mixture, it may be of more than two
13 people or it may be of two people.

14 Q If there are two people would somebody, wouldn't
15 there just be four numbers at the most?

16 A Typically, yes. But there are some rare occasions
17 where a person can have three.

18 Q Trioleos.

19 A That's correct.

20 Q If this one were not, didn't have five digits in it,
21 five different numbers. This ten over here would rule him
22 out completely, wouldn't it?

23 A Not necessarily.

24 Q Because he has got a 12 and a 15. Here is a 12; here
25 is a 15; here is a 14, 15; here is a 14, 15. But they

1 share the 15. Whose 10 is that?

2 A I do not know.

3 Q But it wouldn't rule him out?

4 A Not necessarily. Like I mentioned, we look at the
5 profile as a whole.

6 Q But the most likely explanation, isn't it fair to say
7 is that this 10 comes from the same extra contributor that
8 this extra number over here comes from.

9 A I can't make any statement regarding that.

10 Q Okay. Now, none of this at all comes from sperm,
11 does it?

12 A I cannot conclusively say, when we generate our
13 reports we do look at the work that was previously done
14 before us. But I, when I do the DNA analysis I don't know
15 exactly where the DNA is coming from. Since DNA can be
16 found in blood, it can be found in semen, saliva, touch.
17 When we generate the profile it can't be split into this
18 part of the DNA profile was developed from the blood, this
19 part of the DNA profile was developed from semen.

20 Q Well, so I would need to call Ms. Simmons to get her
21 report to show that there is no sperm found. You can't
22 say that. You brought a report with you, did you not?

23 A I do have her report.

24 Q Did you rely on her report in generating your
25 numbers?

1 A I examined her report before I began my analysis.

2 Q So this was part of your analysis?

3 A It was part of, I looked at it before I began my
4 analysis.

5 Q Okay. And she found no sperm.

6 MR. SCOTT: Your Honor, he can call her as a witness.

7 MR. MCMULLEN: If that is what I have to do.

8 THE COURT: You can ask her about what she did.

9 MR. MCMULLEN: If that is what we have to do we will
10 do that.

11 Q And in these last columns on the top chart it says X,
12 X, Y because that is Mario's, right. Men have an X,Y and
13 women only have the X, correct?

14 A That's correct.

15 Q So then on the vaginal swab there is just an X so
16 there is no male DNA found there of any kind, correct?

17 A That's correct.

18 Q No male DNA found rectal swab?

19 A That's correct.

20 Q And no DNA of any kind found on the underwear, I am
21 sorry, of any male?

22 A Male DNA.

23 Q Even though there was some sort of secretion found
24 that came from a woman or else there would be a Y there,
25 correct?

1 A I don't understand your question. Can you please
2 repeat that.

3 Q The underwear, apparently, that was testified earlier
4 without the person here, but they said they found some
5 sort of a fluid there. So that, what I am asking you,
6 whatever fluid was found there it came from a woman, did
7 it not?

8 A It is possible.

9 Q Well, is it possible that it came from a man?

10 A It is possible. The test that was performed is a
11 very sensitive test.

12 Q We are talking about this X right here on the bottom
13 right of the top column where the underwear was tested.
14 And all of these numbers exactly match MINOR ?

15 A That's correct. No DNA profile to MINOR was
16 developed from those items.

17 Q And MINOR is a woman, girl?

18 A That's correct.

19 Q So there is no male DNA that was found in her
20 underwear?

21 A That's correct.

22 Q What is differential extraction?

23 A Differential extraction is a type of extraction that
24 we do in order to separate sperm cells from non-sperm
25 cells.

1 Q Now, is that what I need to call Ms. Simmons to
2 testify about?

3 A No.

4 Q Did you do that?

5 A I did not do a differential extraction but that is a
6 DNA process that she does not perform.

7 Q Can you perform those?

8 A Yes, I can.

9 Q So you could have been able to tell us today whether
10 this DNA came from a man or a woman, whether it came from
11 sperm or not?

12 A If I performed a differential extraction we look at
13 two different, we will have two different profiles. So we
14 will have what we call the non-sperm fraction and then
15 whatever DNA profile that we develop from the sperm
16 fraction.

17 Q Is that a test you can perform?

18 A Yes, it is.

19 Q You just didn't?

20 A That's correct.

21 Q Now, were you ever asked to test anything that you
22 said, no, we are not going to do that. We are going to
23 send it back to Newberry?

24 A I do not believe so.

25 Q Were you ever asked to test a blanket?

1 A I do not believe so.

2 Q And this is a very bulky item but as we see with the
3 nightgown, we take a cutting from a bulky item and test
4 that, right?

5 A That's correct.

6 Q Would it be important to know whether there were any
7 other males in the house?

8 A It could be.

9 Q If I told you that MINOR has a younger brother who
10 has a different father, would that be important to know?

11 A Not necessarily as far as my conclusions go. I
12 compare the evidence to the standards, the known standards
13 that I have. If additional standards were submitted I
14 could do those comparisons with those standards as well.

15 Q If someone had held the girl down and penetrated her
16 with his tongue and his penis would you expect to find
17 that person's DNA five and a half hours later when the
18 sample was taken?

19 A It is possible, it depends on the activities that are
20 performed after.

21 Q If the subject had only urinated and had not taken a
22 shower, had not wiped with any sort of towel and had not
23 douched, would you expect to find the DNA?

24 A It really just depends.

25 Q Upon what?

1 A Upon different conditions. If he did salivate on
2 what he did, if it was on the clothing, if it was on her
3 skin. There is several different scenarios which will
4 rely on whether a DNA profile was developed or whether the
5 DNA will remain on the clothing or on the skin.

6 Q I appreciate you having not been in here for the
7 whole trial. But within this courtroom there is scattered
8 evidence that they submitted or didn't submit to you for
9 testing. Would you go anywhere in the courtroom, please,
10 and pick up any item of evidence that has Mario Hernandez
11 DNA on it?

12 A I cannot do that.

13 Q Thank you.

14 THE COURT: Any redirect.

15 REDIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q The nightgown cutting, you can't say that is not his
18 DNA on there either, can you?

19 A No, I can't include him or exclude him.

20 Q So that was his question. He said can you go around
21 and pick up anything with his DNA on it. And you said, I
22 cannot do that?

23 A That's correct.

24 Q Because you don't feel comfortable saying that that
25 is definitely his DNA on that nightgown cutting?

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of General Sessions
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Case No. 2013-GS-36-00500
Appellate Case No. 2014-002376

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SC Court of Appeals

The State, ... Respondent,
v.
Mario Valerio-Gonzalez Hernandez, ... Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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May 18, 2016