

22596

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

RECEIVED
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SC Court of Appeals

The State, Respondent,
v.
Mario Valerio-Gonzalez Hernandez, Appellant.

RECORD ON APPEAL
VOLUME TWO

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1 A That's correct. And these are the only items that I
2 tested.

3 Q And you can't say it is not his DNA either though,
4 can you?

5 A That's correct.

6 Q Okay. Thank you.

7 THE COURT: You may step down. Call your next
8 witness.

9 MR. SCOTT: The State calls MINOR , she is
10 my last witness, Judge.

11 MINOR , being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q MINOR , state your name for the record?

16 A MINOR .

17 Q MINOR , where are you living now.

18 A North Carolina.

19 Q You are living up in North Carolina you said?

20 A Yes.

21 Q And Greensboro?

22 A Yes.

23 Q But you used to live down here in Newberry, right?

24 A Yes.

25 Q And [REDACTED], do you remember that address?

- 1 A Yes.
- 2 Q Do you remember living there in 2013, the year of
3 2013?
- 4 A Yes.
- 5 Q What grade are you in?
- 6 A Eighth grade.
- 7 Q And how old are you right now?
- 8 A 13.
- 9 Q June 29th of last year how old would you have been?
- 10 A 12, around there.
- 11 Q When is your birthday?
- 12 A [REDACTED].
- 13 Q This was June 29th, a month after that, you just
14 turned 12?
- 15 A Yes, sir.
- 16 Q And then you turned 13 this May?
- 17 A Yes, sir.
- 18 Q Now that house, [REDACTED], you said you
19 lived there. Did your mother live there?
- 20 A Yes, sir.
- 21 Q Your little brother?
- 22 A Yes.
- 23 Q Who else lived there June 29th, 2013?
- 24 A Mario Gonzales.
- 25 Q Who is he?

- 1 A A pastor.
- 2 Q You see him here?
- 3 A Yes.
- 4 Q Can you point to him, please.
- 5 A (The witness points to the defendant, Mario
6 Gonzales.)
- 7 Q It was just the four of you living there at that
8 time?
- 9 A Yes, sir.
- 10 Q Salo Martinez, who is that?
- 11 A I can't remember.
- 12 Q You don't know who that is?
- 13 A Well, I can't remember.
- 14 Q Does that name sound familiar?
- 15 A Yes.
- 16 Q Do you know who your little brother's father is?
- 17 A No, sir.
- 18 Q On June 29th it was just the four of you living
19 there, Mario Hernandez, you, your mother and your little
20 brother, Miguel?
- 21 A Yes, sir.
- 22 Q And were you going to school in Newberry at the time?
- 23 A Yes, sir.
- 24 Q Which room did you sleep in at that house?
- 25 A I slept, the room beside the door, the front door was

1 there and then the living room and then the side of the
2 living room that was the big bed, room for me.

3 Q Who slept in that room with you?

4 A Sometimes my mom.

5 Q This is a real bad drawing I did.

6 MR. PINILLA: I object to the drawing, it is not in
7 evidence.

8 MR. SCOTT: It is strictly demonstrative evidence.

9 THE COURT: I am going to allow it.

10 Q If that is the front door, you said your room was,
11 was it to the right or the left?

12 A To the right.

13 Q And I have written, what is your mother's name?

14 A Tomasa.

15 Q I wrote Tomasa and MINOR , you said sometimes you
16 would sleep in that room?

17 A I slept in the room there always.

18 Q Okay.

19 A All the time.

20 Q Did I get it right, I had Miguel to the left of the
21 front door in that room?

22 A No, the living room was like right here and then you
23 went right there and then it was right here--

24 THE COURT: We can't hear that.

25 MR. SCOTT: Speak up.

1 Q You were saying, I wrote Miguel who is your brother,
2 I have him to, if you walk in the front door, his room is
3 to the left?

4 A Yes, sir.

5 Q And then I had Mario Hernandez being in the back left
6 corner of the trailer?

7 A Yes, sir.

8 Q And did he have that room to himself?

9 A Yes, sir.

10 Q Did your brother, Miguel, have his room to himself?

11 A Yes, sir.

12 Q And you and your mother would share this room?

13 A Yes, sir.

14 Q And I have this picture, it is State's number 1.
15 That was the bed that you and your mother used, was that
16 your room?

17 A Yes, sir.

18 Q Do you remember, I am talking about June 29th of last
19 year, do you remember that day?

20 A Kind of.

21 Q You know why you are here in court today?

22 A Yes, sir.

23 Q Do you remember that night, what was kind of
24 happening in your house?

25 A Yes, sir.

1 Q Who was home?

2 A It was my brother, me, my mom and Mario.

3 Q And do you remember your brother going to his room to
4 go to bed?

5 A Yes, sir.

6 Q Where was your mother?

7 A She was in the room with my brother before, after she
8 told me to go take a shower.

9 Q That was a Saturday night or do you remember?

10 A I can't remember.

11 Q But you were going to take your shower, did you end
12 up taking a shower?

13 A Yes, sir.

14 Q And when you came out of the shower what do you
15 remember? You said Miguel, your brother, was in his
16 bedroom going to sleep?

17 A Yes, sir.

18 Q And where did you say your mother was?

19 A In the room with my brother.

20 Q Is that something that she normally does to help him
21 go to sleep?

22 A Normally.

23 Q Does your mother get headaches?

24 A Yes, sir.

25 Q She has diabetes?

1 A Yes, sir.

2 Q Do you remember whether her head was hurting that
3 night or not?

4 A Yes, sir.

5 Q Tell me why was she sleeping in your brother's room
6 that night?

7 A She said that her head hurt a lot and that she was
8 going to go lay down with my brother. And then she told
9 me to go take a shower and that is when I went to take a
10 shower.

11 Q You know why she wasn't laying in her bed?

12 A No, sir.

13 Q Does she normally lay with your brother to help him
14 go to sleep?

15 A Not normally.

16 Q You remember that night she was in Miguel's room?

17 A Yes, sir.

18 Q Do you remember what was Mario Hernandez doing that
19 night?

20 A I can't remember.

21 Q You said you did go take a shower?

22 A Yes, sir.

23 Q And was, I guess this was nighttime if Miguel was
24 going to bed, do you remember that?

25 A Yes sir, it was nighttime.

1 Q You don't remember what time it was, do you remember?

2 A No, sir.

3 Q What happened after you got out of the shower?

4 A I remember that I got out of the shower and then I,
5 like got changed and brushed my teeth and I laid down in
6 my bed.

7 Q That bed right there?

8 A Yes, sir.

9 Q Did you put your pajamas on, is that what you said?

10 A Yes, sir.

11 Q What is State's number 4?

12 A My nightgown.

13 Q This nightgown is something you wear to bed?

14 A Normally.

15 Q I got to ask you some embarrassing questions. You
16 can answer them and it is okay to be a little bit
17 embarrassed. But did you put your underwear on too?

18 A Yes, sir.

19 Q And then did you get in bed?

20 A Yes, sir.

21 Q And were your lights on or off?

22 A Off.

23 Q Were there any other lights on in the house?

24 A Door from the kitchen.

25 Q And was there anything going on in the living room?

1 A I can't remember.

2 Q You got in your bed with your pajamas and what was
3 the next thing you remember happening?

4 A I really can't remember.

5 Q Do you remember Mr. Hernandez coming into your room?

6 A Yes, sir.

7 Q Had you fallen asleep when he came in or do you
8 remember him walking into the door?

9 A I remember him, well, I think I was asleep but I
10 could hear like footsteps.

11 Q And what did he do when he came into your room?

12 A I can't remember.

13 Q Are you embarrassed today, are you nervous?

14 A Yes, sir.

15 Q Okay. Just take a deep breath and look at me and
16 talk to me, okay.

17 A Yes, sir.

18 Q Do you recognize that blanket on your bed?

19 A No, sir.

20 Q You don't recognize that blanket?

21 A No, sir.

22 Q Do you recognize that bed?

23 A Yes, sir.

24 Q Do you remember lying on the floor that night?

25 A Yes, sir.

1 Q Why were you lying on the floor?

2 A I don't remember the details.

3 Q Tell us what you remember, MINOR ?

4 A I remember that Mario walked in my bedroom and he
5 just like, I was sleeping and he woke me up. And I was
6 like, what is wrong. And then he just got like the cover
7 and just threw me to the ground.

8 Q And then what did he do?

9 A He raped me.

10 Q What does that mean?

11 A For like he got on top of me.

12 Q Did your underwear stay on?

13 A No, sir.

14 Q How did they come off?

15 A He took them off.

16 Q Did you want him to take them off?

17 A No, sir.

18 Q Did he take his pants down?

19 A Yes, sir.

20 Q MINOR , you know what sex is?

21 A Yes, sir.

22 Q It is okay to be embarrassed when you tell me this,
23 all right. What is sex?

24 A When you have, I don't know the fully meaning of it
25 but I just, like I just know when you have relationships

1 like sexual.

2 Q Okay. And do you know, do you know what a man's
3 private part is?

4 A Yes, sir.

5 Q Okay. And you know what a female's private part is?

6 A Yes, sir.

7 Q Did you see Mr. Hernandez's private part that night?

8 A I can't remember.

9 Q Had you ever seen it before?

10 A If I did I probably can't remember.

11 Q Why can't you remember?

12 A It was a long time ago.

13 Q What was he doing while he was laying on top of you?

14 A I can't remember. It was a long time ago.

15 Q Do you remember--

16 MR. MCMULLEN: May we approach, Your Honor.

17 THE COURT: Yes.

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

21 THE COURT: We are going to take a break, y'all go to
22 the jury room and we will have you right back. Don't talk
23 about the case.

24 (Whereupon, the jury was excused from open court for
25 a break.)

1 (Whereupon, a short break was taken.)

2 THE COURT: Let's bring the jury back in.

3 (Whereupon, the jury came into open court at
4 approximately 4:30 p.m.)

5 CONTINUE DIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q Okay, MINOR, speak up so everyone can hear you.

8 You talked about being on the floor in your bedroom. Do
9 you remember when Mr. Hernandez came in?

10 A Yes, sir.

11 Q What do you remember?

12 A I remember that I was sleeping and he woke me up.
13 And I said, what was going on. And he didn't response, he
14 just got my arm and just like threw in the floor. After
15 he put the blanket and the, just the blanket in the floor.

16 Q And did you scream or anything?

17 A No, sir.

18 Q Do you know why you didn't scream?

19 A I don't know why.

20 Q Had you done this before?

21 A No, sir.

22 Q You had never had sex before?

23 A Well, yeah, but at force, not.

24 Q What is sex, you know what sex is?

25 A Yes, sir.

1 Q Tell me what it is, MINOR ?

2 A It is when a male puts his part in the female's part.

3 Q Inside the female's part?

4 A Yes, sir.

5 Q And have you ever done this?

6 A Not like, it is not the, like the only time, the
7 first time he done that to me.

8 Q When was the first time?

9 A When we moved in the house.

10 Q Do you know how old you were then?

11 A Around 8 or 9.

12 Q And what did he do to you when you were 8 or 9?

13 A I can't remember.

14 Q Has anyone ever, has any man ever put his part in
15 your part?

16 A Not before.

17 Q Has anyone done that to you before, has that happened
18 to you?

19 A No.

20 Q What do you mean it hasn't happened before?

21 A Like when, I mean it hasn't happened like when I was
22 1 or 2 or 3. It just started when I moved in.

23 Q What started?

24 A What started was he having sex with me.

25 Q And that was around 8 or 9, you said?

1 A Yes, sir.

2 Q And you said sex, that is putting a man's part inside
3 a girl's part?

4 A Yes, sir.

5 Q And did you tell your mother the first time it
6 happened?

7 A No, sir.

8 Q Why didn't you tell her?

9 A Because he threatened me.

10 Q How did he threaten you?

11 A Saying that she wasn't going to believe me.

12 Q Okay. Did you ever go to his church?

13 A Yes, sir.

14 Q What did he say about being a pastor?

15 A I don't know because my mom and him was talking and
16 that is when, I wasn't really listening to that.

17 Q Do you know, you said the first time is when you were
18 8 or 9. Do you know how many times that Mr. Hernandez had
19 sex with you after that?

20 A He did it constantly every time mom went to the
21 hospital.

22 Q And why would your mom go to the hospital?

23 A She had like a lot of headaches and her sugar was
24 down, like she had diabetes.

25 Q Okay. So she would have to go to the doctor a lot?

1 A Yes, sir.

2 Q And would, he would stay behind at the house when she
3 would go to the doctor?

4 A Yeah, like once he was done like dropping her off and
5 he will come back to the house and do what he did.

6 Q And where would that happen?

7 A That would happen sometimes in his bedroom or
8 sometimes in my bedroom.

9 Q And did it ever happen when your mom was home?

10 A No, sir.

11 Q You said it started when you were about 8 or 9?

12 A Yes, sir.

13 Q And in June of last year you were 12. So are you
14 saying he had been doing it for about four years?

15 A Yes, sir.

16 Q And you never told your mom about it?

17 A No, sir.

18 Q The night of June 29th when he put you on the floor,
19 you said he took your underwear off?

20 A Yes, sir.

21 Q What did he do with his pants or underwear?

22 A He like kept them on, half, like not the all the way
23 but just half.

24 Q Did you see his male part?

25 A No, sir.

1 Q You didn't see it? Did he have sex with you that
2 night?

3 A Yes, sir.

4 Q And what does that mean?

5 A When the male part, the male part goes into a girl's
6 part.

7 Q He put his male part in your part?

8 A Yes, sir.

9 Q And what happened, where was your mother?

10 A She was in my brother's bedroom with my brother.

11 Q What did she do?

12 A Well, she asked him first what was going on and I was
13 in the bathroom. And then--

14 Q Now wait a minute. She was in the bedroom--

15 A With my brother.

16 Q And when Mr. Hernandez is laying on top of you, when
17 did she come into the room?

18 A When, she woke up to go to the bathroom in my
19 bedroom. So, like she walked to my bedroom and put on the
20 lights and then she saw what was going on. And I just ran
21 to the bathroom.

22 Q Why?

23 A Like I was scared.

24 Q What were you scared about?

25 A I just wasn't thinking, what was I going to do.

- 1 Q Did you think your mom was going to be mad at you?
- 2 A Probably.
- 3 Q Was Mr. Hernandez your mom's boyfriend?
- 4 A I really don't know.
- 5 Q Why did you think she was going to be mad at you?
- 6 A Because when I didn't tell her, I didn't tell her
- 7 anything of it. I thought she was going to be mad because
- 8 I never told her.
- 9 Q And little girls aren't suppose to do that?
- 10 A No.
- 11 Q What did you do in the bathroom?
- 12 A I just like, I put my underclothes, inner clothes
- 13 with my clothes on.
- 14 Q Inner clothes, is that like--
- 15 A --like my underwear.
- 16 Q You got dressed?
- 17 A Yes, sir.
- 18 Q Did you shut the door?
- 19 A Yes, sir.
- 20 Q Did you stay in there for a while?
- 21 A Yes, sir.
- 22 Q Could you hear what was going on outside?
- 23 A No, sir.
- 24 Q When did you come out?
- 25 A I came out when I was done like changing.

1 Q And what was going on when you came out?

2 A I just saw mom, I just saw my mom sitting on my bed
3 and Mario was on the other end of the bed. And my mom was
4 crying. That is when she asked me, what was going on.

5 Q What did you tell her?

6 A I didn't tell her until Mario left the room and then
7 I told her.

8 Q You told her what had happened?

9 A Yes, sir.

10 Q And did you tell her what you just told us in court?

11 A Yes, sir.

12 Q What was Mario doing when you saw him?

13 A Saw him what?

14 Q When you came out of the bathroom, what was Mario
15 Hernandez doing?

16 A He was telling my mom not to call the police.

17 Q Was he mad, was he sad, was he crying, was he
18 yelling, what was he doing?

19 A I really can't remember.

20 Q Do you remember when the police got there?

21 A Yes, sir.

22 Q Where were you when they got there?

23 A I was in Liz Rivera's car with my brother.

24 Q Who is Liz?

25 A The interpreter.

- 1 Q That is Liz right there?
- 2 A Yes, sir.
- 3 Q Do you remember when she got to the house?
- 4 A No, because I was like, I was at a neighbor's house.
- 5 Q What were you doing at the neighbor's house?
- 6 A I went to call the police.
- 7 Q Did your mother speak any English?
- 8 A Not fluently.
- 9 Q Okay. So you had to go call the police?
- 10 A Yes, sir.
- 11 Q Have you spoken English your whole life?
- 12 A Yes, sir.
- 13 Q And were you the one that was talking, well, Liz was
- 14 there. When the police got there did you talk to them
- 15 too?
- 16 A Not with Officer Rowe but with Officer, it was
- 17 another office. I really couldn't remember his name.
- 18 Q Kind of a big black guy?
- 19 A Officer Kevin.
- 20 Q Yes, is that who you are talking about?
- 21 A Yeah.
- 22 Q He showed up in the yard too?
- 23 A Yes, sir.
- 24 Q And did you get a chance to talk with him?
- 25 A Yes, sir.

- 1 Q And what did you tell him?
- 2 A I told him what I said here in the court.
- 3 Q And did you remember taking a ride down to the
- 4 hospital that night?
- 5 A Yes, sir.
- 6 Q Do you remember having the exam?
- 7 A Yes, sir.
- 8 Q And do you remember talking to a nurse?
- 9 A Yes, sir.
- 10 Q Did you tell her what happened?
- 11 A Yes, sir.
- 12 Q And the exam wasn't very fun, was it?
- 13 A No, sir.
- 14 Q Okay. And when you went back to the [REDACTED]
- 15 address, did y'all have to move away from that?
- 16 A Not that exact day but we eventually had to move.
- 17 Q And how long have you been up in North Carolina? A
- 18 long time, not too long?
- 19 A Since August when we started school.
- 20 Q Do you like it up there?
- 21 A Yes, sir.
- 22 Q You said your birthday is [REDACTED], 2001?
- 23 A Yes, sir.
- 24 Q Where were you born?
- 25 A Atlanta, Georgia.

1 Q And where was your little brother born?

2 A Newberry, the hospital.

3 Q He was born in Newberry or Atlanta?

4 A Newberry.

5 Q So you two are American citizens, aren't you?

6 A Yes, sir.

7 Q Okay. Thank you. MINOR, they are going to ask you
8 some questions and just take a deep breath and answer
9 them. And don't be nervous, okay.

10 A Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. PINILLA:

13 Q You have been living in North Carolina since August,
14 is that correct?

15 A Yes, sir.

16 Q Since you have been back here in Newberry where have
17 you been staying?

18 A At, in a hotel.

19 Q And who takes you to the hotel and to the courtroom?

20 A Liz Rivera.

21 Q Do you remember how long you lived at [REDACTED]

22 [REDACTED]?

23 A No, sir.

24 Q Do you know when you moved in?

25 A No, sir.

1 Q Do you remember ever moving from that house where the
2 bedroom was to Atlanta?

3 A No, sir.

4 Q Did you ever go to school in Atlanta?

5 A Yes, sir.

6 Q Do you know how long you went to school in Atlanta?

7 A No, sir.

8 Q Do you remember how old you were when you went to
9 school in Atlanta?

10 A No, sir.

11 Q Do you remember what grade you were in when you went
12 to school in Atlanta?

13 A Sixth or seventh.

14 Q Sixth or seventh grade, you would be 11 or 12?

15 A Probably.

16 Q Now, did you ever tell your mom what was going on
17 back at [REDACTED] when you were in Atlanta?

18 A No, sir.

19 Q You never told her?

20 A No, sir.

21 Q Not once?

22 A No, sir.

23 Q Did you ever go to a counselor in Atlanta?

24 A No, sir.

25 Q Didn't see any therapist or anything?

- 1 A No, sir.
- 2 Q Did you ever get in trouble at school?
- 3 A Yes, sir.
- 4 Q What was that for?
- 5 A For hitting other people.
- 6 Q Hitting other people?
- 7 A Yes.
- 8 Q Did you ever lie in school?
- 9 A No, sir.
- 10 Q Have you ever told any lies?
- 11 A No, sir.
- 12 Q Do you know to call the police in case of an
13 emergency?
- 14 A Yes, sir.
- 15 Q Have you ever called the police before?
- 16 A Yes, sir.
- 17 Q Why did you call the police?
- 18 A I called the police, well once I called the police
19 because my mom was hitting me.
- 20 Q Your mom was hitting you?
- 21 A Yes.
- 22 Q You called the police?
- 23 A Yeah. I went to a neighbor's house and did call the
24 police.
- 25 Q So you would go to the neighbor's house sometimes?

1 A Yes, sir.

2 Q Why else would you call the police?

3 A I called the police when my mom told me to.

4 Q Did you ever call the police, do you remember calling
5 the police because you thought your mom was sick?

6 A If I can remember, probably I did.

7 Q Now, you said you called the police when your mom
8 would hit you, is that right?

9 A Yes, sir.

10 Q But you didn't call the police when something bad
11 happened with Mr. Hernandez or Mario?

12 A I called the police that day when my mom told me to.
13 But I called other times I didn't.

14 Q Okay. Do you remember who took you to Atlanta when
15 you moved there in the seventh grade?

16 A I think it was a taxi.

17 Q When you moved back from Atlanta do you remember
18 where you moved back to?

19 A I moved back to [REDACTED].

20 Q Did you ever tell your mom you didn't want to go
21 back?

22 A No, sir.

23 Q Did you, were you scared to go back?

24 A Yes, sir.

25 Q Why didn't you tell your mom?

- 1 A Because he had me threatened.
- 2 Q Even from Atlanta?
- 3 A No but I kept on remembering that if I told.
- 4 Q But you never told your mother in Atlanta though?
- 5 A No, sir.
- 6 Q Do you remember giving the police a written
7 statement?
- 8 A Yes, sir.
- 9 Q Do you remember saying that sometimes you lie?
- 10 A Yes, sir.
- 11 Q Why is that, MINOR ?
- 12 A Because, I really can't remember.
- 13 Q Okay. I beg the Court's indulgence. When you moved
14 to Atlanta do you remember who you lived with?
- 15 A My aunt.
- 16 Q Your aunt?
- 17 A Yes.
- 18 Q Did you ever tell your aunt what was going on with
19 you at [REDACTED] ?
- 20 A No, sir.
- 21 Q Are you sure?
- 22 A Yes, sir.
- 23 Q I have to ask you some embarrassing questions and I
24 apologize. It will be really brief, okay.
- 25 A Okay.

1 Q Do you remember after what happened that night, you
2 went to the hospital to see a nurse?

3 A Yes, sir.

4 Q And the nurse asked you certain questions?

5 A Yes, sir.

6 Q Do you remember telling her that you yelled out for
7 your mother?

8 A If I did I can't remember.

9 Q Do you remember telling her that Mr. Hernandez put
10 his private part on your bottom?

11 A No, sir.

12 Q You never said that?

13 A No, sir.

14 Q No further questions.

15 THE COURT: Any redirect?

16 MR. SCOTT: Nothing further.

17 THE COURT: You can step down.

18 MR. SCOTT: Your Honor, the State rest.

19 THE COURT: All right, ladies and gentlemen, we are
20 done for the day. Can y'all be here early in the morning,
21 say 9:00. If we can do that. My expectation is that the
22 State is finished, the defense can decide tonight if they
23 are going to call some witnesses or not. We will start a
24 little earlier and we will get done tomorrow. So, you
25 still can't begin discussing the case until you hear what

1 is going to be presented and you get my instructions. So,
2 enjoy your evening, go buy your Halloween candy and see
3 you in the morning at 9:00.

4 (Whereupon, the jury is excused from open court for
5 the day.)

6 THE COURT: Y'all want to make your motions this
7 afternoon?

8 MR. MCMULLEN: Yes, sir.

9 THE COURT: All right.

10 MR. MCMULLEN: If it please the Court. Your Honor,
11 we are, as you know, are required to make a motion for a
12 directed verdict. And I would respectfully submit that
13 the jury has no choice but to, well, but the State has not
14 proved the elements of the offenses, at least not with
15 credible testimony. And so there hasn't been any physical
16 evidence connecting and so I would respectfully request a
17 directed verdict. And also renew all of my previous
18 motions.

19 THE COURT: All of your motions and the rulings are
20 consistently, were shown on the record renewed. And my
21 rulings consistently, whether they were granted or denied,
22 or republished. On your directed verdict, that is a
23 factual question. Both cases will go to the jury, your
24 motion for directed verdict is respectfully denied. I
25 will, I don't think it is a complicated case to write

1 instructions for. I guess I have had three or four since
2 July 4th. If y'all have something in particular y'all
3 want me to instruct let me see it early, in the morning.

4 MR. MCMULLEN: May I ask, we just, is the jury just
5 going to be asked to decide guilty or not guilty, guilty
6 or not guilty or is the State asking for lessor included.
7 Because the law, the CSC with a minor third is not a
8 lessor included offense of first or second.

9 MR. SCOTT: We were talking about that, I think Timmy
10 Rice got third as a lessor. And testimony, if they were
11 to believe his statement at the time where he says that
12 there was no penetration, I inappropriately touched her
13 but there was no penetration. There was testimony
14 regarding that. So, if they find there was no sexual
15 battery then I guess the argument would be they should
16 consider a CSC.

17 MR. MCMULLEN: Can I do a little research on that
18 overnight?

19 THE COURT: You may. It seems to me they would be
20 allowed to consider CSC third. But I may be wrong on
21 that.

22 MR. SCOTT: And then the only other thing, two other
23 things that really consent by the minor to sexual battery
24 are lewd act is not a defense. Something to that effect,
25 maybe age of consent in South Carolina, what that is.

1 What was that other, corroboration of a--

2 MR. DANIEL: 16-3-657, Your Honor, I think we have
3 used that before in these cases.

4 MR. SCOTT: That is the one where minor's--

5 THE COURT: I don't think that is, I have charged
6 them before but I don't think I need to charge it.

7 MR. SCOTT: There has been other corroborating
8 testimony.

9 THE COURT: The charge in the statute, I mean I can
10 charge all the statutes. In regard to this, the elements
11 are is what you got to prove. I don't have to prove what
12 you are going to prove. I don't have to instruct what you
13 are going to prove. I am not going to charge the
14 corroboration statute.

15 MR. SCOTT: That is all.

16 MR. MCMULLEN: I will look at the argument of the
17 lessor included.

18 THE COURT: We will do that early in the morning.

19 MR. MCMULLEN: Thank you.

20 THE COURT: Y'all get here about quarter till.

21 MR. SCOTT: We have got Ruby here, I don't really see
22 where we will need her tomorrow. So, I would ask, can we
23 go ahead and admonish his as far as his right, otherwise
24 we are going to have to bring her back tomorrow for that.
25 As far as his right to take the stand or not.

1 THE COURT: Sure. All right. If you will stand.
2 Ms. Stephens, you are still under oath. Will you
3 translate this for me, please.

4 (Whereupon, Ms. Ruby Stephens is the interpreter for
5 Mr. Mario Hernandez.)

6 THE COURT: Senor Hernandez, you have the right to
7 testify or not to testify in this trial on these two
8 indictments. If you wish to testify you may but it is
9 your decision, you do not have to testify and if you
10 choose to not testify I will instruct the jury that they
11 may not discuss your not testifying, I will tell the jury
12 they will have to decide your guilt or innocence on the
13 testimony the State has presented. I will also tell them
14 that they may not discuss at all your not testifying. Do
15 you understand your rights?

16 MR. HERNANDEZ: Yes.

17 THE COURT: Have you had enough time to discuss both,
18 with both of your lawyers these rights not to testify?

19 MR. HERNANDEZ: Yes, they will answer.

20 THE COURT: Okay. Now, but it is your decision to
21 testify or not and have you made that decision at this
22 time?

23 MR. HERNANDEZ: They answer for me.

24 THE COURT: No, no. It is his decision. That is
25 what the purpose of this conversation is. Senor, they can

1 provide advice and their opinion but it is his decision.

2 MR. HERNANDEZ: I will not testify.

3 THE COURT: All right, thank you very much. We are
4 done and off the record, see y'all in the morning about
5 quarter till.

6 (Whereupon, the trial will resume the next morning at
7 8:45 a.m.)

8 October 30, 2014.

9 THE COURT: All right, we are back on the record. My
10 gut feeling is charge first, second, don't charge third
11 unless you want it. That is how we did Timmy Rice's, he
12 asked for it and the State didn't care and consented to
13 it. That is how we did it.

14 MR. MCMULLEN: We would rather not. I think that one
15 argument is that the State, when they did codify it made
16 it, gives the ABHAN and all of that, they said this is
17 lessor included, this is lessor included and this one.

18 THE COURT: I think it was but it is not now.

19 MR. MCMULLEN: But the three cases kind of say that
20 there is an element test and that the third degree has an
21 element that the other two don't.

22 THE COURT: I don't like three complications of the
23 law that I understood quite well. Ms. Georgia, how many
24 do we lack?

25 BAILIFF: They are all here.

1 THE COURT: Are you ready to go?

2 MR. DANIEL: Do we need to look at the instructions,
3 Your Honor.

4 THE COURT: We have agreed on them.

5 MR. DANIEL: Okay.

6 THE COURT: We are not doing the lessor included.
7 First and second. Are you closing?

8 MR. DANIEL: No sir, Dale is here.

9 THE COURT: We are just doing first and second, I am
10 not calling CSC third or lessor included. I think we did
11 on Timmy Rice, I think we agreed to it. Charles agreed he
12 wanted it, kind of, because of the statement. If you
13 remember, these statements of ideas or urges.

14 MR. SCOTT: I do.

15 THE COURT: Bring the jury in.

16 (Whereupon, the jury came into open court at
17 approximately 9:04 a.m.)

18 THE COURT: All right, folks, we will try to start
19 promptly. Y'all heard yesterday that the State rested.
20 After y'all left I heard some matters on the record. The
21 defense has informed me, you are still consistent with
22 what you informed me yesterday as to your position going
23 forward right now?

24 MR. PINILLA: That is correct, Your Honor.

25 THE COURT: All right, the defense is not going to

1 put forth anything and they don't have to. In all
2 criminal prosecutions the burden of proof is on the State.
3 A defendant charged with a crime doesn't have to prove
4 anything or disprove anything. So, with that being the
5 case the State will summarize its case first, the defense
6 will summarize its case last and then I will give you my
7 instructions on the law. So, the fact that the defense
8 puts up nothing you can take away nothing from that.
9 Y'all have got to consider the guilt or innocence based
10 upon what you have been presented, not on what you haven't
11 been presented. So, that being said, Mr. Scott is going
12 to summarize for the State and then Mr. Pinilla is going
13 to summarize for Mr. Hernandez. All right, Mr. Scott.

14 MR. SCOTT: Thank you, Your Honor, may it please the
15 Court.

16 THE COURT: Yes, sir.

17 MR. SCOTT: There really are wolves in sheep's
18 clothing that say, it is impairable, I guess, with
19 different origins. Matthew 7:15, beware of false prophets
20 that come to you clothed in skins of sheep that are rabid
21 wolves.

22 MR. MCMULLEN: Your Honor, I don't think he is
23 suppose to be quoting from the Bible during his closing.

24 THE COURT: I have heard it many times.

25 MR. SCOTT: Beware of wolves in sheep's clothing.

1 They are emotional manipulators. That is what the wolf in
2 the sheep's clothing is. They prey on our sensibilities,
3 they prey on our consciousness and they prey on our
4 emotional sensitivity. That is what the wolf in the
5 sheep's clothing is. An emotional manipulator that will
6 use his status, use his position in his community to his
7 advantage to take advantage of the vulnerable people. Is
8 that not what happens to Tomasa, is that not what happened
9 to MINOR . Tomasa is a mother of two small children,
10 speaks no English, is living here in Newberry County.
11 Finds herself living with a pastor, a respected Pastor
12 Hernandez. He has some status in that community as a
13 pastor. I am not going to tell you that Tomasa didn't
14 have some idea of maybe what was going on during that four
15 years. And, Tomasa, I don't blame you and I know you feel
16 guilt but it is not your fault. Did she maybe choose to
17 look the other way, maybe she did. But here she is, no
18 means of her own, living under the roof with a pastor,
19 does she choose to look the other way. Yes, she probably
20 does. And we are not trying to award her mother of the
21 year. Maybe she had some suspicions of what was going on,
22 probably so. But we are not here to blame her, it is not
23 Tomasa who is on trial this week, it is Mr. Hernandez.
24 Because people like Tomasa are a perfect target for the
25 wolf in the sheep's clothing. He begins an affair with

1 her, at some point he begins grooming the daughter who is
2 an even easier target. And so why didn't they disclose
3 it, why didn't the little girl tell the police. We know
4 why. Because this is an 8, 9, 10, 11, 12-year-old girl,
5 they are not going to believe you, they are not going to
6 believe you over me. I am a pastor. A 12-year-old girl
7 and she is constantly being told this. And when they
8 catch you lying you are going to get in trouble. So, that
9 goes on for four years and Tomasa can kid herself maybe to
10 some degree and look the other way for some time but
11 finally the night of June 29th of last year she couldn't
12 look the other way anymore. That is when she sees it,
13 there it is right in front of you, you can't turn away at
14 that point. You can look the other way when you are
15 bouncing her on his knee. You can look the other way when
16 maybe he grabs her butt or kisses her on the lips. But
17 when you see your 12-year-old daughter on the floor with a
18 man on top of her, you can't look the other way any
19 longer. And that was this watershed moment, I guess, we
20 are talking about here. And so what are we here for. We
21 talked about a CSC first and a CSC second case. This is
22 rape, that is the way we talk about it in legal terms,
23 criminal sexual conduct with a minor, first degree. That
24 is for every time he had sex with her before she reached
25 the age of 11. She talked about it from the time she was

1 8 or 9. So every time he penetrated her before she was
2 11, that is what the CSC first charge is. And then, of
3 course, when she is 12 years old, that is when Tomasa
4 walks in and actually witnesses it herself. That is the
5 CSC second charge. Once she obtains the age of 11 it
6 becomes a CSC second. Those are the two charges you are
7 here to decide. As I mentioned earlier, I am Dale Scott,
8 I am the prosecutor. And on TV they talk about district
9 attorneys and this and that. In our State we are called
10 Solicitors. What I do is I have to take these cases that
11 law enforcement makes and I have to sometimes get in front
12 of a jury like you guys and describe the case and tell you
13 why this person is guilty of a crime. I have got to do it
14 beyond a reasonable doubt. So what that means and they
15 are going to tell their version what reasonable doubt is
16 and finally the Judge is going to tell you his description
17 of reasonable doubt, is the only one that really matters.
18 But I have got to prove this case to you that leaves you
19 firmly convinced. When it is all said and done you have
20 got to be firmly convinced. It doesn't mean you can't
21 have a little doubt here or there because you can. I
22 can't ever prove to you a case where you, one-hundred
23 percent. I fill confident this way or that way
24 one-hundred percent, I wasn't there. Isn't that really
25 the only way you can be one-hundred percent sure, is if

1 you are there and you are watching the thing happen. That
2 is not what reasonable doubt is. I have to firmly
3 convince you of this man's guilt. And I think we have
4 done that over the last few days. All of the evidence you
5 have heard, here is what the defense has admitted. Tomasa
6 wanted a U Visa, they tried to tell you what a U Visa was.
7 That was the one defense. She wants a U-V, that has
8 something to do with immigration and status as an American
9 citizen, or something. It was fairly unclear to me. But
10 that is what the defense, that was the first kind of
11 rabbit they wanted to chase. Don't think about that man
12 laying on the floor on top of this 12-year-old girl.
13 Let's talk about the U Visa, okay. Here is the problem
14 with that. Miguel and MINOR are American citizens. Why
15 do they need a U Visa. That doesn't make any sense. Liz
16 was there, she is a very close family friend. So, she
17 shows up and all Liz was doing that night was translating
18 for Tomasa to the police. That is not their version of
19 it. Liz Rivera has some agenda where she has concocted
20 this thing and some how collude with Tomasa. Does that
21 make any sense. What is the end game for Liz Rivera. I
22 never understood that. Let's talk about June 29th, let's
23 not talk about that man on top of that little girl in the
24 bedroom. Let's talk about Liz Rivera. And what about
25 everything is lost in translation. I wish you could take

1 away the translation, the Spanish, English portion of this
2 trial. That has been a layer of complication but is it
3 really that difficult to translate one language into
4 another. Everything is lost in translation, okay, we
5 can't believe one thing that happened that we talked about
6 this week because it was just lost in translation. That
7 was the other defense in this trial. And what about
8 MINOR is untruthful. MINOR is a liar. Let's go ahead
9 and pound the little girl. Let's beat up on the little
10 girl, she is a liar. Guys, does it make sense to you that
11 a year and a half ago that these people would have made up
12 this story, okay, and here we are a year and a half later,
13 they had to move out of their home, they had to go up to
14 North Carolina. They had to come down here on their own
15 dime, they had to sit up here and tell you some very
16 embarrassing, very difficult things. And what is the end
17 game, what have they gained from this. I don't understand
18 the motive for them lying about this. Nevermind that
19 Hernandez basically told officers that he is a man with
20 needs. Take that with whatever it is worth. Nevermind
21 that, these people have lied and they have made this whole
22 thing up. I have never understood what they have gained
23 from it though. But that is the defense. DNA, it can be
24 included or excluded. I guess the jargon or the terms
25 SLED uses sometimes frustrate me. He can't be included

1 and he can't be excluded. What are we to take away, I
2 don't really fully know but when I look at this chart and
3 I look at Mr. Hernandez and I look at that nightgown I see
4 a whole bunch of numbers that match up. And I just don't
5 understand why a male's DNA is on her nightgown and I just
6 don't understand that this acid phosphate is present. And
7 they are going to tell you, well, what about the little
8 boy. Acid phosphate, there is male DNA in there but who
9 is it from. And what are we do with all of these numbers
10 that match up. And what are we suppose to do about the
11 nurse who came in here. That is her speciality, sexual
12 assault evaluation. We are just going to throw away her
13 testimony, when she says she examined the girl and her
14 findings were consistent with the allegations, consistent
15 with trauma. The mother saw it, the daughter admitted to
16 it, Mr. Hernandez got on his knees and cried and
17 apologized and begged them not to call the police. And
18 the police get there and he says, I am a pastor but I am
19 also a man, I have my needs too. These women walk around
20 in front of me dressed provocatively, what am I suppose to
21 do. That is what he tells the police. I can get on my
22 knees and beg you to find him guilty but ultimately all I
23 really can do is present the evidence that I am given and
24 have the testimony from that stand. Y'all remember
25 yesterday when MINOR was up there, I don't think it was

1 clear to everyone in this courtroom that that was a scared
2 little girl, frightening little girl. I have questioned
3 hundreds of people from here, on this side of the stand
4 and I have lobbed questions at them and done it a bunch of
5 times. But I have never actually had to sit up there. I
6 am told it is terrifying, it is nerve racking. I don't
7 know if y'all recall, but we had a classroom of students
8 back there and MINOR mother. The Judge was kind
9 enough to, he recognized the situation, so we took a
10 break. And MINOR had a glass of water and she said to
11 me, Mr. Scott, can we ask my mother to leave the
12 courtroom. She came back in, I asked the classroom to
13 leave, her mother left. And that is when she was able to
14 tell you what happened. I hate these cases, we have got
15 to do it, she has got to tell her side of the story no
16 matter how uncomfortable it is. MINOR, I hope that you
17 can put this behind you, I hope you can grow to be a
18 functioning adult who can somehow put Mr. Hernandez in the
19 past. What he has done to you. I hope that you can. I
20 don't know, I don't think anybody can ever really fully
21 carve that out of your consciousness. It will affect you
22 no matter what. But that is what I hope for you, MINOR.
23 This is the last time I get to talk to you guys. The way
24 the law works is the defense gets up to argue to you last.
25 And it is kind of a helpless frustrating thing for

1 somebody like me as a prosecutor. Because I have got to
2 sit down and they are going to get up here and they are
3 going to throw a bunch of things at you that have nothing
4 really to do with June 29th, 2013 and have nothing really
5 to do with the allegations. They are probably going to
6 talk about the U Visa case and they are going to talk
7 about how MINOR is a liar again. They are going to talk
8 about Liz Rivera, they are going to talk about all of that
9 stuff. And I have got to sit here and as much as I want
10 to jump up after them and say, well, let me address all of
11 those things. I can't do it. This is the last time I get
12 talk with you and so I kind of sit here and say, well,
13 what else can I tell them, what else can we talk about. I
14 really think everything that needs to be said has been
15 said. You guys were picked for a reason. You remember
16 Monday when y'all first got a chance to see us and you
17 were sitting, we were up in council room. But we had our
18 sheets of paper and then we were looking at them and we
19 would look at you and say, well, we are going to pick this
20 person and we really don't want this other person. We
21 knew a thing or two about you. And you are picked for a
22 reason. And that is because we think you can be fair and
23 we think that you can be impartial and we think you are
24 reasoning and logical people who when they hear testimony
25 like this can come to the real, really the only conclusion

1 a sensible person can and that is Mr. Hernandez is guilty
2 of these crimes. He is guilty of raping a child, he is
3 guilty of raping a child from the time she was 8 or 9 to
4 the time she was 12. It is not a pleasant thing, I am
5 sorry y'all got picked for this particular jury. You have
6 heard a lot of ugly things. But there really are wolves
7 in sheep's clothing, there are people that will hold
8 themselves out for the pastors but who are capable for
9 unspeakable things. You are looking at one right now.
10 You are looking at the wolf in sheep's clothing, the
11 emotional manipulation, Mr. Hernandez. After they get up
12 and they do their closing argument I ask that you just go
13 back to the jury room, talk with one another, ask yourself
14 what is reasonable, what makes sense, don't jump to
15 conclusions. Don't say, what if that, what if this. No,
16 just, what did you hear. Talk amongst yourselves,
17 recollect on what you heard and come back with the only
18 verdict, the only verdict that makes sense. That is
19 guilty and that is guilty on the CSC first with a minor
20 for every time he raped that girl before she was 11 years
21 old. And that is guilty on CSC second, that is every time
22 he raped that little girl after she was 11 to include June
23 29th, 2013. Thank you all for your service.

24 THE COURT: Mr. Pinilla.

25 MR. PINILLA: Ladies and gentlemen of the jury, let's

1 just jump right into what you heard over the last few
2 days. At the beginning of this trial the State told you
3 they were going to build you a house, piece by piece,
4 strong foundations, strong walls, strong roof to keep
5 leaks out. Let's start to talk about the foundation.
6 What is the foundation, an eyewitness, an eyewitness who
7 sits right over there, who sat up here in this chair and
8 perjured herself. She told you, my daughter told me that,
9 my daughter went to therapy in Atlanta. The therapist in
10 Atlanta told me to call the police in Atlanta but God told
11 me that Mr. Hernandez was hurting children. And I wanted
12 to move back in to that environment to catch him myself.
13 Mr. Hernandez is on trial for two charges. Two serious
14 charges. The charge of raping a child under the age of
15 11. But what real evidence did you hear about any rapes
16 happening before the age of 11. What did they tell you
17 besides the mother saying she heard this and the child
18 saying she heard this. Everything else had to do with
19 June 29th, 2013 when she was 12 years old. The warrants,
20 the indictments, they say 2011 to June 30th, 2013. Yet
21 the investigators knew for six, seven, possibly ten months
22 at that time, they were living in another state. They
23 were three and a half hours away. Yet they charge him for
24 the entire time. Now the State wants you to say, wants
25 you to think that we don't want to talk about June 29th.

1 Well, let's talk about it. What did the little girl tell
2 us about June 29th. She said nothing, she said I don't
3 remember, I don't recall, I can't remember. I stood right
4 over here and I asked her simple questions. I wasn't
5 yelling at her, I didn't want to beat her up, she is a
6 victim but she is a victim of her mother. If there is a
7 wolf in sheep's clothing it is sitting right over there.
8 She said I don't remember. The Solicitor pointed at this
9 picture right here and he asked her, do you remember that
10 blanket. She said, I do not. I don't remember that
11 blanket but this was the blanket that was supposedly used
12 in this crime. What else did this little girl tell you.
13 She told you that she knew how to call 911. I said, when
14 have you called 911. She said when my mom hit me. I
15 said, did you call another time. She said, I think I did
16 when my mom was sick. Yet, over a four year period she
17 didn't pick up the phone one time when someone was
18 brutally assaulting her. Not once, not once. Mom hits
19 her one time, calls the police. Runs next door for help.
20 Four years, not one call to the police. She then told us
21 that she came out of the bathroom and she saw her mother
22 and Mr. Hernandez sitting on the bed talking. And she
23 couldn't recall if Mr. Hernandez was upset. The police
24 will tell you that Mr. Hernandez had no physical marks on
25 him. A mother had just supposedly seen her child being

1 raped and Mr. Hernandez was not attacked in any fashion.
2 No scratches, no blood on him, nothing. Yet that is
3 supposedly our foundation, that is our roof. You heard
4 them both lie, you heard the daughter not corroborate the
5 mother's testimony. She said I never told my mom, I had
6 never went to therapy. What is she talking about then.
7 What mother calls a translator first instead of the
8 police. What mother says, get me a translator and then I
9 will worry about calling the police. It doesn't make
10 sense, do these stories make sense to you. Let's talk
11 about the experts. The experts, they were supposedly
12 suppose to shed some light with the State's case. What
13 did the forensic nurse tell us. Remember, forensic nurse,
14 she is just a collector, she is a collector of evidence.
15 She can't analyze it, she doesn't know what is going on.
16 What does she say that we know that she said from her
17 reports. She said, MINOR told me that Mr. Hernandez had
18 orally penetrated, vaginally penetrated and anally
19 penetrated me. All of that on June 29th, 2013, all that
20 from the time the mother had a premonition or she saw a
21 shadow. We don't know which way it happened, it is a
22 single wide trailer and she walked to the room and the
23 child had already been anally, orally and vaginally
24 penetrated. So she takes swabs. Okay. That will be
25 important later. What else does the forensic nurse tell

1 us. MINOR told me that she yelled out for her mother!
2 Mother, mommy. MINOR, do you remember yelling out for
3 your mommy. I don't recall. MINOR, do you remember
4 telling the forensic nurse that you were anally
5 penetrated. I don't remember. How can you not remember
6 something so serious. Okay. What else did the forensic
7 nurse tell us. There was blood in the vagina. Well, that
8 is pretty serious. And then later down the road she says,
9 oh, yeah, this child has started her period. She started
10 menstruating. And that was the first and the last time
11 you ever have heard about any blood. Did they say we
12 found blood on the blanket, we found blood on the bed, we
13 found blood on the carpet, we found blood on Mr.
14 Hernandez's underwear, we found blood on his clothes. No
15 blood. First and last time. Remember, she had started
16 her menstruation. She also told us that the hymen was
17 bruised and discolored. It wasn't in her initial report,
18 initial report just said it was a regular shape. And now
19 conveniently she comes back to court. She said, oh, I
20 looked at the picture, I pulled my microscope out,
21 whatever she used and it was bruised. But she can't tell
22 us what caused that, she said, she just says that it was
23 bruised. And it wasn't in the initial report. Okay. And
24 now we move on to the SLED experts. The DNA experts. And
25 what do they tell you, they tell you nothing, absolutely

1 nothing. She gets on here and shows this chart that is so
2 confusing, we can't include, we can't exclude, we can't
3 include. Well, what can you tell us. Well, there was no
4 sperm. She didn't want to say it, we had to pull it out
5 of her, there was no sperm. The cutting from that
6 nightgown is in the upper part. That is strange. What
7 could she tell us. She tested the buccal swab, she tested
8 the vaginal swab and she tested the anal swab. And what
9 did she say she found. No foreign DNA, nothing from Mr.
10 Hernandez, not touch DNA, not any kind of secretions,
11 nothing of his. We ask her about the panties, that whole
12 line of things. The whole line tested no foreign DNA.
13 Nothing and no blood. Tests don't lie, ladies and
14 gentlemen. He was there or he was not there. He is not
15 on trial for touching her, he is not on trial for tickling
16 her. Now, what they will tell you is that he admitted
17 these things. He said, I am a man. But you heard from
18 the investigators, two of the three people that testified
19 from Newberry Police Department had no idea what was
20 coming out of this man's mouth. Not one thing. Who did
21 they rely on. Liz. Who is Liz, just an acquaintance.
22 But I have known the child for four years, call me at
23 11:30 at night and I will be right over. Call me before
24 the police, it is all free charge. Not friends, just
25 acquaintances. Remember, all three police never recorded,

1 not one recording. The lead investigator, Kevin Goodman,
2 he sat in that chair and he told you, I had a tape
3 recorder right in my drawer. It is right there, why can't
4 I pull it out and use it. They asked him if it is usual
5 to use a tape recorder. He said it depends. Some cases
6 you use it and some cases you don't. In a case where you
7 can't understand a word coming out of this man's mouth you
8 don't think it is important to record it. Officer
9 Alvarado gets on the stand. I understand, he is saying
10 give him a chance to right or wrong his statement. We are
11 not going to ask him about it because it is voluntary, it
12 is his words. That was on July 1st, ladies and gentlemen,
13 they got the warrant for the arrest on 6/30. Why give him
14 a chance to say what he needs to say if you already
15 decided he needs to be arrested. The interpreting thing
16 was a huge problem. You witnessed it first hand.
17 Alvarado read the statement, word for word, in Mario
18 Hernandez's handwriting and the interpreter did. And I
19 don't know if you noticed but several times she said,
20 unintelligible. That wasn't what Alvarado was saying, she
21 just didn't understand it. Alvarado even told us
22 different words in Spanish mean different things. But
23 what we did hear and what was consistent through all of
24 the police department's testimony is that Mr. Hernandez
25 had never said he had done anything. In his own words he

1 said, no sexual acts. He said playing, he said tickling,
2 he never said touching, he never said inappropriate
3 touching. And remember, the State's case is penetrating.
4 He is not on trial for touching, he is not on trial for
5 tickling, he is not on trial for playing. It is
6 penetrating. Ladies and gentlemen, just ask yourself, is
7 that a kind of house that you would want to live in, is
8 that the kind of house that you would want to build. The
9 Solicitor said he should get on his knees and beg you. He
10 shouldn't have to get you, he should come in here with
11 some conclusive evidence, something that says this man did
12 it and here it is. He has got to prove that. The DNA
13 expert, we invited to come over to this box of goodies.
14 Pick one item that shows that Mr. Hernandez had done
15 something wrong. She said, I can't do it. I can't do it.
16 No physical evidence, the State has not proved its case.
17 No recordings and no physical evidence. And now we simply
18 ask you to have the courage to go in that room and talk
19 about this case and have the courage to come back and find
20 that Mr. Hernandez is not guilty of these serious crimes
21 because there is no evidence it happened before she was
22 11. On behalf of Mr. Hernandez and myself and Mr.
23 McMullen, thank you for your time, your service and your
24 dedication.

25 THE COURT: Ms. Ringer, and members of the jury, the

1 State of South Carolina charges, Mario Hernandez, with two
2 crimes. First, first degree criminal sexual conduct with
3 a minor. And secondly, with criminal sexual conduct with
4 a minor second degree. You, of course, bear in mind that
5 Mr. Hernandez has pled not guilty and by that plea he
6 denies all the charges alleged in both indictments. The
7 indictments are right here, y'all will have those in the
8 jury room.

9 Mr. Hernandez comes into court clothed with a
10 presumption of innocence. The presumption of innocence
11 continues throughout the case and entitles him to a
12 verdict of not guilty unless and until it is dispelled by
13 the evidence satisfying you, the jury, beyond a reasonable
14 doubt of his guilt of these offenses charged. The State
15 must prove each and every element of the alleged crimes
16 beyond a reasonable doubt.

17 Now, in South Carolina, the same Constitution of law
18 which makes you, the jury, the finders of facts, which I
19 explained to you earlier before the trial started, makes
20 me the Judge, the sole and exclusive instructor of the
21 law. We discussed that briefly. Y'all must accept as a
22 jury, fourteen, correct, the law which I am now
23 instructing it to you and apply it to the evidence which
24 you have heard and find and reach a unanimous verdict.

25 Now, if I should make an error in my instructions or

1 in my presiding in the case, there is another time, there
2 is another place where that error can be corrected if
3 necessary. For the purpose of the case today y'all must
4 accept the law as I am instructing it to you. So, I will
5 tell you that neither you nor I should be considered about
6 what the law ought to be, what you heard it might have
7 been but concern yourselves as I am instructing you the
8 law as I currently understand it as the instructor.

9 Now, in all criminal prosecutions, in South Carolina
10 and across the Country the State has the burden of proof.
11 A defendant has no burden whatsoever, as he is presumed
12 innocent. According to our Constitution the State must
13 prove its case to the standard of proof called beyond a
14 reasonable doubt before a finding of guilt may occur.
15 Now, if the State fails to meet that burden then the
16 defendant would be entitled to a verdict of not guilty or
17 an acquittal.

18 Now, under our Constitution and laws, you twelve,
19 once you begin deliberations I will remove the alternants,
20 are the sole finders of facts for this case. I am not
21 allowed to suggest in any way what I may think about the
22 guilt or innocence of Mr. Hernandez. It has been my
23 responsibility to rule on the issues of law as they come
24 up and instruct you on the law at this moment. You, as
25 the jury, are the judges of the credibility and the

1 believability of the witnesses who have testified in this
2 case. And I tell you, as you have observed the case, and
3 remember I moved the interpreter so you could observe the
4 demeanor of a couple of the witnesses who did not speak
5 English. And that was intentional because y'all twelve, I
6 say twelve but fourteen, can use whatever in your good
7 common sense and good judgment you wish to do to evaluate
8 one's credibility. And by that you may use in passing
9 upon one's credibility consider things such as the manner
10 and appearance of the witness who testified. Were they
11 straightforward or were they hesitant in answering. How
12 did the witness come to know the facts to which he or she
13 testified to. Is there some reason a witness would want
14 to give testimony which would help or hurt one side or the
15 other. In other words, was the witness biased or
16 prejudiced in either way for either side. Was the
17 testimony of a witness strengthened or weakened by other
18 testimony or other evidence. You, the jury, can believe
19 as much or as little of any witness' testimony as you deem
20 appropriate. You may believe the testimony of a single
21 witness gainst that of many or a part of a witness'
22 testimony and disbelieve the rest. The fact that
23 testimony is not controverted does not mean you have to
24 accept it as true. You still must gauge the credibility
25 of the witness who provided that testimony to prove the

1 believability or the truth of the facts offered through
2 that testimony and those pieces of evidence.

3 Now, as I instructed you during the trial, there are
4 certain exceptions to fact witnesses which are ones that
5 tell what they saw, they heard or they observed or
6 participated in. An expert witness is allowed, if they
7 are qualified by education, experience, to be an expert in
8 some art or science or profession may state an opinion
9 relevant to a material matter to which the witness claims
10 to be an expert in that field. And may also state the
11 reasons for this opinion. You may consider any expert
12 opinion received in evidence in this case and like any
13 other evidence which was presented to you, and if you
14 decide that the opinion of the expert witness is not based
15 upon sufficient education or experience or if you conclude
16 that the reasons given in support of the opinion are not
17 sound or that the opinion is outweighed by other evidence
18 you may disregard that opinion entirely. An expert
19 witness' opinion is to be given no greater weight or
20 lessor weight, it is just to be considered by you as
21 evidence received in this case. And I also tell you that
22 you are not required to accept the opinion even though it
23 is not controverted.

24 Now, as the sole fact finders you should have
25 listened and I observed you listening closely to the

1 evidence presented. Weighing evidence is entirely a
2 mental process. You do not put it on a scale to see which
3 way it tips. You must weigh the evidence using your
4 believability and credibility, evaluations I described to
5 you and use your good judgment and your common sense.

6 Two types of evidence are generally presented in
7 trials, and in this trial there were. It is direct
8 evidence and circumstantial evidence.

9 Direct evidence is testimony of a person who asserts
10 or claims to have actual knowledge of certain facts such
11 as an eyewitness. Circumstantial evidence is slightly
12 different, it is the proof of a chain of facts and
13 circumstances indicating the existence of another fact.
14 Our law makes no distinction between the weight or value
15 to be given to direct or circumstantial evidence. There
16 is no greater degree of certainty required of
17 circumstantial evidence than that of direct evidence. You
18 should weigh all the evidence in the case presented to
19 you. After weighing all the evidence if you are not
20 convinced of the guilt of the defendant beyond a
21 reasonable doubt you must find him not guilty.

22 We use the term reasonable doubt throughout, I told
23 you early on about what it was. What is it. A reasonable
24 doubt is just this. It is the kind of doubt which would
25 cause a reasonable person to hesitate to act. Reasonable

1 doubt may arise from evidence which is in the case or from
2 the lack or absence of evidence in the case. Proof beyond
3 a reasonable doubt is proof that leaves you firmly
4 convinced of the defendant's guilt. It is also a doubt
5 for which you can assign a reason, if the assignment of
6 the reason can be done reasonably, firmly and
7 convincingly. I charge you that the defendant is entitled
8 to every reasonable doubt that may arise in this case.
9 And what this means is that if you have any doubt about
10 anything during the trial you will be required to resolve
11 that doubt in favor of the defendant. The very fact that
12 you engage in full and free discussion on the issue of
13 guilt or innocence does not automatically mean that a
14 reasonable doubt exist. You must make the determination
15 of whether or not a reasonable doubt exist as to his
16 guilt. And I will tell you if the State has not met its
17 burden of proving beyond a reasonable doubt then the
18 defendant would be entitled to a verdict of not guilty.
19 However, if you are firmly convinced of his guilt you can
20 return a verdict of guilty.

21 Another element of most crimes is the intent.
22 Criminal intent is a necessary element of each crime. It
23 must be proved by the State beyond a reasonable doubt.
24 Criminal intent is always a matter that must be determined
25 by the jury from the circumstances surrounding the

1 situation. There is no way to prove intent to a
2 mathematical certainty. There is no way medical science
3 can dissect one's brain to determine what a person had in
4 mind. So our law simply states intent may be inferred
5 from the circumstances shown to have existed, both before
6 and after the fact. This is how you make the
7 determination of whether or not the element requiring
8 intent was present. Criminal intent is a state of mind
9 that operates jointly with an act or an omission in the
10 commission of a crime. It is a mental state of conscious
11 wrongdoing. It is up to you, the jury, to determine what
12 the defendant intended to do based upon the circumstances
13 shown to have existed.

14 Now, the specifics of the law of this case are the
15 defendant, Mr. Hernandez, is charged with two crimes on
16 these two indictments which I remember explaining to you
17 that they were amended with my blue ink, according to the
18 birthdate which was testified to of the young lady herein.
19 She was less than eleven during part of the allegations,
20 she was more than eleven during the other part of the
21 allegations. And her age is not disputed, it was
22 testified to and agreed to. So her birthdate of [REDACTED],
23 2001 is a stipulated fact as to her age. Now, Mr.
24 Hernandez is charged with a crime of first degree criminal
25 sexual conduct with a minor. In order to sustain a

1 conviction the State must prove beyond a reasonable doubt
2 that Mario Hernandez engaged in a sexual battery with the
3 victim. A sexual battery is sexual intercourse, oral sex,
4 anal intercourse or any intrusion however slight of any
5 part of a person's body or any object into the genital or
6 anal openings of another person's body except when that
7 intrusion is accomplished for a medically recognized
8 treatment. The State must then prove beyond a reasonable
9 doubt that the victim was less than eleven at the time of
10 the sexual battery. Consent, willingness, indifference or
11 ignorance on the part of the minor as to what was taking
12 place does not in any way affect the charge of criminal
13 sexual conduct with a minor because an unmarried woman
14 under the age of eleven cannot legally consent to sexual
15 intercourse.

16 Mr. Hernandez is also charged with the crime of
17 criminal sexual conduct in the second degree with a minor.
18 In order to sustain a conviction of that crime the State
19 must prove beyond a reasonable doubt that the defendant
20 engaged in sexual battery with the victim. A sexual
21 battery again is sexual intercourse, oral sex, anal
22 intercourse or any intrusion however slight of a person's
23 body or any object in the genital or anal openings of
24 another person's body. The State must then prove beyond a
25 reasonable doubt that the victim was more than eleven but

1 less than fourteen at the time of the battery. Again,
2 consent, willingness, indifference or ignorance on the
3 part of the minor, if any, as to what was taking place
4 dose not affect the charge of criminal sexual conduct with
5 a minor because an unmarried woman under the age of
6 fourteen cannot legally consent to sexual intercourse.

7 Now, Ms. Ringer, members of the jury, as y'all retire
8 to begin your deliberations, now you must be mindful of
9 the importance of your responsibility as jurors in this
10 case. You are not called upon often to be jurors in this
11 county. You and I are acting for the community and for
12 the State. And it is our responsibility to see to it that
13 this trial is fair and the verdict is just. It has been
14 my responsibility in this case to rule fairly and
15 impartially on issues of law and it is my job to make
16 certain that everyone receives fair and impartial justice.
17 So, I am asking you and instructing that you go in the
18 jury room and confine your decision as to the evidence
19 presented in this case from this witness stand, the
20 evidence which has been received. Discuss it, weigh it,
21 apply the law as I have instructed it to you and reach a
22 unanimous verdict. Disregard anything outside the jury
23 room other than what you have received here in this
24 courtroom for this case. I am convinced whatever verdict
25 you find will be a result of confining your decision to

1 those three things, the evidence and the law that you have
2 heard in this courtroom in reaching a unanimous decision.
3 Now, the indictments will be in there with you. Mr.
4 Ringer, I will show you here, this is the verdict form and
5 you find guilty or not guilty, sign your name and date it.
6 This is first degree and then this is second degree. They
7 are not long indictments but these will be in the jury
8 room with you. Now, I need to send you to the jury room,
9 and I will tell you a couple of things before I send you
10 in there. After you begin deliberations, I will pull the
11 alternates as soon as you do that, but if you need to hear
12 additional instructions from me, I have had a jury before
13 tell me that what you did to us was getting a drink of
14 water through a fire hose. I really threw a lot at you.
15 But that is just how it is. If you need instructions
16 reinstructed I am more than happy to do that. You need to
17 tell me by note, we would like to hear the definition of
18 reasonable doubt, we would like to hear the definition of,
19 whatever it is, just send me a note and I will try to
20 accommodate that. Sometimes I can send a note back with
21 the instructions or the answer to your question. If you
22 want to hear testimony replayed, we would like to hear the
23 testimony of, name the witness. Ms. Holston made a
24 recording of the entire testimony. She will be more than
25 happy to cue it up and y'all can come in here and listen

1 to it. The evidence, photographs and drawings and all the
2 things that were described and introduced into evidence,
3 y'all will have those in the jury room and y'all can look
4 at those as long as you like. If you need further
5 instructions or hear testimony played send me a note. If
6 anything comes up that you don't know which way to go send
7 me a note and I will try to respond to it or bring you
8 back in here and respond to it. But it helps me to be
9 able to discuss with the lawyers, when the jury has asked
10 for instructions on. And they can also assist with that.
11 So, I will send you to the jury room and I am going to ask
12 the lawyers were my instructions complete, is it
13 satisfactory. If they say those instructions were
14 complete and satisfactory to what they believe their case
15 has proved, you know what I didn't do, I did not, I just
16 remembered. I did not instruct y'all on the defendant not
17 testifying and I put that in there and did not print it
18 up. All right, let me instruct you on that.

19 The law of South Carolina is simply this. The State
20 has the burden of proof, they have got to prove their case
21 in each and every element of the crime beyond a reasonable
22 doubt. Everyone charged with a crime in South Carolina is
23 presumed innocent until proven guilty beyond a reasonable
24 doubt. A defendant, anyone accused has the right to
25 remain silent. They cannot be forced to waive that right

1 in any way by anyone. It is their right to exercise, it
2 is their protection afforded to them under our
3 constitution. And now I tell you that the fact that the
4 defense put up no witnesses nor did Mr. Hernandez testify
5 may not be discussed by you in the jury room. The fact
6 that he didn't testify is of no relevance to his guilt or
7 innocence. You must base your decision of guilt or
8 innocence on the evidence before you. And I tell you that
9 you may not discuss any reason why he decided to not
10 testify. That is his decision and his alone, the fact
11 that he exercised that right is not to be held against him
12 in any way. So I instruct y'all not to discuss his
13 failure to testify in any way. Confine your decision of
14 guilt or innocence on what evidence is before you. So,
15 you are not allowed to discuss his exercising his
16 Constitutional right. That is his right.

17 All right, y'all step in the jury room and I am going
18 to ask the lawyers if I got my instructions correct. And
19 y'all cannot begin discussing the case until I hand you
20 the evidence. Okay.

21 (Whereupon, the jury was excused to the jury room.)

22 THE COURT: Any exceptions to the instructions?

23 MR. MCMULLEN: No, sir.

24 THE COURT: The State?

25 MR. SCOTT: No, sir.

1 THE COURT: Good deal. Look at the exhibits.

2 (Whereupon, the jury started deliberations at
3 approximately 10:01 a.m.)

4 (Whereupon, the alternates were excused from the
5 trial of the case.)

6 THE COURT: We received a note regarding the
7 statement, translated from Spanish to English. The
8 witness, Alvarado read the Spanish and was translated by
9 the Court's interpreter. The Court Reporter transcribed
10 that last night and her transcription of the English
11 translation was sent to the jury in response to that
12 question as well as the definition for a sexual battery
13 which was the definition in the instruction itself. That
14 is Court's number 5.

15 (Whereupon, Court's Exhibit number 5 was marked for
16 identification only.)

17 (Whereupon, a break was taken waiting for the jury
18 verdict.)

19 THE COURT: I have got a question from the jury and I
20 would like to send them an answer. We will mark this one.
21 The gist of it is, do the verdicts have to be consistent.
22 And do both verdict have to be unanimous. And so I am
23 going to send them a note back that each indictment stands
24 independently of the other. Verdicts must unanimous
25 whether guilty or not guilty. And the verdicts do not

1 have to be the same. Fair enough?

2 MR. SCOTT: Yes, sir.

3 MR. PINILLA: Yes, sir.

4 THE COURT: All right. This is the jury note. This
5 is the response.

6 (Whereupon, Court's Exhibit 6 and 7 were marked for
7 identification only.)

8 THE COURT: I understand that the jury has reached a
9 verdict. Bring them in, please.

10 (Whereupon, the jury came into open court at
11 approximately 1:05 p.m.)

12 THE COURT: Ms. Ringer, has the jury reached a
13 verdict on both of the indictments?

14 MS. RINGER: Yes.

15 THE COURT: And were they unanimous?

16 MS. RINGER: Yes.

17 THE COURT: Very well, hand them to Ms. Folk. All
18 right, they appear to be in order.

19 CLERK OF COURT: The State of South Carolina versus
20 Mario Hernandez, indictment number 13-498; criminal sexual
21 conduct with a minor. Section 16-3-655(a). The verdict,
22 not guilty. Signed Jane Y. Ringer.

23 Indictment 13-500, Mario Hernandez for criminal
24 sexual conduct with a minor, 16-3-655(b). The verdict,
25 guilty. Signed, Jane Y. Ringer.

1 Madam Forelady, ladies and gentlemen, if this is your
2 verdict please indicate by raising your right hand.

3 (Whereupon, all jurors raised their hand.)

4 THE COURT: All right. Any issues for the jury
5 before I excuse them. From the defense?

6 MR. MCMULLEN: No, sir.

7 THE COURT: From the State?

8 MR. SCOTT: No, sir.

9 THE COURT: Ms. Ringer, Ms. Folk says they have your
10 checks ready and your letters from the Clerk in case you
11 need one for work. If y'all don't mind I would love to
12 speak with y'all in the jury room while they are handing
13 those checks out. So, y'all step back in there and I am
14 going to follow you in there.

15 (Whereupon, the jury was excused from court.)

16 THE COURT: Are y'all ready for sentencing?

17 MR. SCOTT: Yes, sir.

18 MR. MCMULLEN: Yes, sir.

19 THE COURT: All right. You want to present anything?

20 MR. SCOTT: Yes, sir. Judge, at the appropriate time
21 Ms. Tomasa, the victim's mother would address the Court.
22 On behalf of the Solicitor's office we respect the jury's
23 decision. We have always contended that the abuse did
24 start before she was eleven. And I understand we were
25 unable to really produce a whole lot of evidence other

1 than the victim's own testimony. I do fully believe this
2 abuse started very shortly after they moved in which would
3 have put her in the nine-year-old range. I guess the
4 quirk in the law, once you obtain the age of eleven the
5 crime of raping a child goes from 25 or life down to 0 to
6 20. And it is just, it could be a day that makes that
7 difference. And just kind of a quirky little part of the
8 law. But seeing that he has been found guilty of a crime
9 that does carry 0 to 20 we would ask for that full 20, to
10 get as close as we could to the sentence he would face had
11 he been found guilty of the CSC first. The prior record I
12 have comes from California. I see a conviction from 1994,
13 a felony burglary out of California.

14 MR. MCMULLEN: There is no conviction on this
15 defendant other than a traffic offense where he paid
16 \$40.00 dollars. There is no record whatsoever.

17 THE COURT: All right.

18 MR. SCOTT: And I can't, a lot of times when we have
19 Hispanic defendants it is difficult to run their rap
20 sheets. But I do have one on a Mario Hernandez.

21 MR. MCMULLEN: I understand but he would have been
22 deported because he is not in our Country legally. Had he
23 been convicted of a burglary anywhere he would have been
24 deported then.

25 THE COURT: Let me hear from Ms. Hernandez, Tomasa

1 Hernandez, is that right?

2 MR. SCOTT: I think it is Aguirre-Cruz is the last
3 name. Is that correct, Tomasa?

4 MS. AGUIRRE-CRUZ: Yes.

5 THE COURT: Ma'am, I will be glad to hear from you.
6 (Whereupon, Ruby Stephens is the interpreter for Ms.
7 Aguirre-Cruz.)

8 MS. AGUIRRE-CRUZ: Want to say that only, I want
9 justice to be done. I am not doing this to get my papers,
10 for nothing. My children are American. I just want him
11 to pay for the damages he did to my daughter. Because my
12 daughter has been very damaged and she has wanted to kill
13 herself. That is all I ask of you.

14 MR. SCOTT: Judge, I kind of neglected to say that.
15 This has traumatized her. I guess hope that she would be
16 able to put this behind her but children that are victim's
17 of a crime like this never can. He is going to get
18 whatever sentence he is going to get but he has in some
19 effect given MINOR a life sentence of her own. She is
20 going to have to deal with this for the rest of her days,
21 sir. We just ask for a sentence appropriate and to
22 recognize that.

23 THE COURT: All right. Mr. McMullen.

24 MR. MCMULLEN: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. MCMULLEN: I believe I am required by the rules
2 to move for judgment notwithstanding the verdict. So I
3 would like to do that.

4 THE COURT: And respectfully understanding the facts,
5 contradictory, for the facts for the jury to consider, to
6 weigh and deliberate upon and there is sufficient facts
7 presented to the jury to get by the directed verdict
8 motion at the end of the trial as well as to support the
9 jury's verdict at this time. And so respectfully I will
10 deny that motion.

11 MR. MCMULLEN: Thank you, Your Honor. I do
12 understand. Let me just please move on to say that I have
13 always respected jury's verdict when they go my way and I
14 respect them again now. We are not here to be impartial,
15 we are not paid to be impartial. The other side but, you
16 know, we just do the best job we can with what we are
17 presented and hope we did that. And hope we gave Mr.
18 Hernandez a good defense such that nothing will be
19 disturbed on appeal. So, having said that, the testimony
20 that we heard was at times quite contradictory and at
21 times quite difficult. And I do submit respectfully there
22 was no physical evidence from that night. Again, I don't
23 want to argue against the verdict but I would argue for
24 some leniency. I don't think that it is fair to say or
25 surmise whether this went on from the time she was nine

1 until the day he was arrested. Obviously the jury at
2 least believed it happened once. And so I know that he
3 was taken into custody the night this occurred. He has
4 not been out of jail since then. And so whatever the math
5 is, I think the Solicitor knows it is 480 something days.

6 MR. DANIEL: 487, Your Honor.

7 THE COURT: Since July 30th of '13?

8 MR. DANIEL: Yes, sir.

9 MR. MCMULLEN: He will be, at some point, deported
10 back to Guatemala. My hope, my belief is that this family
11 will be here where the children are citizens. Don't think
12 he will ever be in their path again, or they in his. And
13 I think that Mr. Pinilla would like to address the Court.
14 But I would remind you that he has no previous record and
15 I will just sit down.

16 MR. PINILLA: Just briefly, Your Honor. Just to
17 emphasize he has been incarcerated 487 days. He has got
18 no history of any type of physical charge, he has got no
19 history of being violent. He has got nothing, Your Honor,
20 I just emphasize, I have worked with Mr. Hernandez for the
21 last 10 or 11 months and we just ask for leniency.

22 MR. MCMULLEN: The Court is aware, whatever sentence
23 Your Honor sees fit to impose, he will serve eighty-five
24 percent before he is considered for parole if he should be
25 paroled. He will be on a plane to Guatemala.

1 MR. PINILLA: Thank you, Your Honor.

2 THE COURT: Anything else?

3 MR. MCMULLEN: No, sir.

4 THE COURT: All right. Having heard the trial, heard
5 the verdict read. The sentence of the Court is that Mr.
6 Gonzales Hernandez be committed to the Department of
7 Corrections for a term of 16 years. He is given credit
8 for the days served since June 30th, '13. Upon his
9 release he will be required to register as a sex offender.
10 Good luck.

11 MR. MCMULLEN: Thank you, Your Honor.

12 MR. SCOTT: Thank you, Judge.

13 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Newberry, South Carolina on the 28th day of October, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 30, 2015

Joy E. Holston

Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

LA RENUNCIA ADULTA DE DERECHOS

Yo, Mario Valerio Gonzalez Hernandez soy 42 años

Viejo. Mi dirección es [REDACTED] Newberry SC 29108
(Associate Degree)

He terminado el 14 el grado en la escuela y puedo/no puede leer. Yo ha sido dicho por
Inv. Gaudran / Cpl Alvarado, que yo entienda sea un Oficial de la Policía, que él/ella apreciaría
a Pregúnteme concerniendo el crimen de CSC w/ Minor 1st Degree. Este oficial ha explicado
también a mí y yo entiendo eso:

MG (1) tengo el derecho de permanecer silencioso. Eso significa que yo no tengo que decir nada
ni contestar que cualquiera pregunta.

MG (2) Algo yo digo puede ser usado contra mí.

MG (3) tengo el derecho de hablar a un abogado y para tener a un abogado aquí con mí ayudarme
y me avisa durante inquisitivo.

MG (4) Si quiero tener un abogado con mí durante inquisitivo, pero no puede proporcionar para
pagar un abogado, uno será proporcionado a mí en ningún costo antes yo soy preguntado.

MG (5) Si decido contestar las preguntas ahora, sin un abogado aquí, yo tengo todavía el derecho
de parar las preguntas que contestan cuando quiero a.

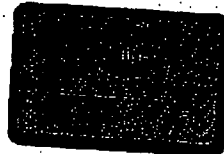
MG (6) tengo también el derecho de parar las preguntas que contestan hasta que haya hablado a
mí abogado.

Entiendo mis derechos como explicado por oficial. Yo ahora expreso que deseo contestar las preguntas en
este tiempo y que yo no deseo tener un abogado aquí durante inquisitivo.

Mi decisión de contestar las preguntas ahora, sin un abogado, se hacen libremente y son mi elección.
Nadie me ha amenazado en cualquier manera o me prometió tratamiento especial. Para mostrar mi
decisión, yo firmo mi nombre en el espacio abajo.

Firmado: la Fecha MG 7-1-13 : Tiempo 12.20 :

[Signature] (testigo) [Signature] (testigo)



ADULT WAIVER OF RIGHTS

I, Mario Valerio Gonzalez Hernandez, am 42 years old. My address is [REDACTED].

I have finished the ___ grade in school and can/can not read. I have been told by Inv. K. Goodman / Cpl. B. Alvarado who I understand is a Police Officer, that he/she would like to question me concerning the crime of CSC w/ Minor 1st degree.

This officer has also explained to me and I understand that:

- MG (1) I have the right to remain silent. That means I do not have to say anything or answer any questions.
- MG (2) Anything I say can be used against me.
- MG (3) I have the right to talk to a lawyer and to have a lawyer here with me to help me and advise me during questioning.
- MG (4) If I want to have a lawyer with me during questioning, but can not afford to pay a lawyer, one will be provided to me at no cost before I am questioned.
- MG (5) If I decide to answer questions now, without a lawyer here, I still have the right to stop answering questions whenever I want to.
- MG (6) I also have the right to stop answering questions until I have talked to my lawyer.

I understand my rights as explained by officer Goodman / Alvarado
I now state that I DO wish to answer questions at this time and
that I do NOT wish to have a lawyer here during questioning.

My decision to answer questions now, without a lawyer, is made freely and is my choice. No one has threatened me in any way or promised me special treatment. To show my decision, I am signing my name in the space below.

Signed: *my*

Date: 07-01-2013

Time: 12:00pm

K.P. [Signature]
(witness)

[Signature]
(witness)



Statement of
Mario Valerio Gonzalez Hernandez
MADE AT

Newberry, S.C., this 01 day of July, 20 13, at 1251 hours, in the presence of:
Inv. K. Goldman and/or Cpl. Alvarado of the Newberry City Police Department.

I, Mario Valerio Gonzalez Hernandez, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering questions at any time until I talk to a lawyer. Having been advised of these rights and understanding them I **DO MAKE THE FOLLOWING STATEMENT:**

9-2010. ellos se pasaron a vivir en mi casa
hubo respeto en todo yo no jugaba con
la niña ellos se fueran a vivir en Atlanta
en Diciembre 2011 y Regresaron Julio
2012. en Diciembre 2012. con un SDI
e juego con la niña cuando e hombre e PAPA
del niño se fue desde entonces hubo confianza
con la niña jugaba mucho ella me tocaba mis POMPIS
me mordía los cachete, asta sabía en la noche.
le estaba haciendo cosquillas en los brazos costillas y Pechos

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward, or hope of reward of any kind.

WITNESS: [Signature]

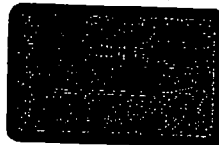
SIGNED: [Signature]

This is to certify that I have read or have had read to me the foregoing statement consisting of pages and a copy has been given me this 1 day of July, 20 13.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 01 DAY OF July, 20 13.

SIGNED: [Signature]

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES May 03, 2017



Arnfield's Printing, Office and School Supply, Inc.



STATEMENT OF

(CONTINUED)

Todo esto se daba con su mamá
 y en frente ellas no había ningún acto
 sexual.
 el sábado 30 estaba se cuando mi ropa
 y entre a ese el cuarto de a dejar la ropa
 de su mamá le pregunte a ella primero
 y me dijo que se iba a ir a su cuarto
 y cuando ella la niña estaba en baño. y la puerta abierta
 otra cosa también cuando yo me acostaba
 en el sofá la niña se en pie se tiraba
 encima de mí era siempre un regalo
 de la parte de su mamá.
 ahora me a causa de que yo la è Uelada
 a su hijo pero yo no lo he hecho eso.

~~MG
 MG
 MG~~

I have made the foregoing statement freely and voluntarily without fear, threat, promise, or reward, or hope of reward of any kind.

WITNESS: [Signature]

SIGNED: [Signature]

WITNESS: _____

This is to certify that I have read or have had read to me the foregoing statement consisting of 2 pages and a copy has been given me this 01 day of July, 20 13.

SWORN TO AND SUBSCRIBED BEFORE ME
 THIS 01 DAY OF July, 20 13.

SIGNED: [Signature]

[Signature]
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES May 03, 2017

Amfield's Printing, Office and School Supply, Inc., Newberry and Whitman, SC

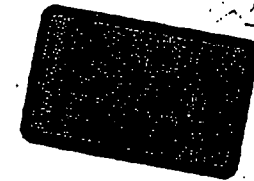


Table 1 - Identifier

Case Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	D5S818	FGA	AMEL
1.5 MINOR	14.15	30.31.2	11.13	12.13	15.16	6	10.12	9.10	19.25	12.14	16.18	8.12	12.16	10.11	23.25	X
4 Mario Gonzalez- Hernandez	12.15	31.2, 32.2	10.12	11	16	69.5	14.13	10	22.23	12.2.15	16.17	8.12	14.16	11	25.26	XY
1.2 Vaginal swabs	14.15	30.31.2	11.13	12.13	15.16	6	10.12	9.10	19.25	12.14	16.18	8.12	12.16	10.11	23.25	X
1.3 Rectal swabs	14.15	30.31.2	11.13	12.13	15.16	6	10.12	9.10	19.25	12.14	16.18	8.12	12.16	10.11	23.25	X
2.1 Nightgown	10.12, 14.15	30.31.2, (32.2)	(10)11, 12.13	(10)11, 12.13	15.16	(8)6, 9.3	10.11, 12	9.10	19,(23), (24)25	12,(22), 13,14, 15	16,17, 18	8.12	12.16, (17)	10.11	25.25, (26)	X(X)
5.1 Underwear	14.15	30.31.2	11.13	12.13	15.16	6	10.12	9.10	(19),(25)	12.14	16.18	8.12	12.16	10.11	23.25	X

() = alleles between 75 and 149 dfu - = no result Bold = major contributor Inc = inconclusive

Table 2 - Yfiler

Case Items	DYS456	DYS389I	DYS390	DYS389II	DYS458	DYS19	DYS385	DYS393	DYS391	DYS439	DYS635	DYS392	Y_GAT A_H4	DYS437	DYS438	DYS448
4 Mario Gonzalez- Hernandez	16	14	24	31	17	14	14,17	13	10	13	22	13	11	14	12	19
2.1 Nightgown	16	(13)	24	-	17	14	(13),14	13	10	12,13	22	(13)	11	14	12	19

() = alleles between 75 and 149 dfu - = no result Bold = major contributor Inc = inconclusive

ROA_0534



THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT
WITH A MINOR

16-03-0655

At a Court of General Sessions convened on the 23rd day of August, 2013, the Grand Jurors of Newberry County present upon their oath:

That Mario Valerio Gonzalez Hernandez, in Newberry County, between the dates of January 1, 2011 and June 30, 2013, being over the age of fourteen (14) years, did unlawfully, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: Y. A., a minor female, date of birth [REDACTED]/2001, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the said defendant, or of the said child, Y. A., a minor female, date of birth [REDACTED]/2001, in violation of Section 16-3-655(C) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Deputy Solicitor

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

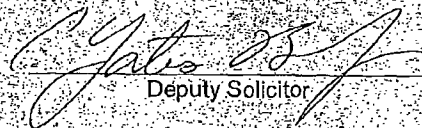
INDICTMENT FOR

Criminal Sexual Conduct with a Minor
§16-03-0655(A)

At a Court of General Sessions, convened on the 23rd day of August, 2013, the Grand Jurors of Newberry County present upon their oath:

That Mario Valerio Gonzalez Hernandez, in Newberry County, between the dates of January 1, 2011 and May 7, 2013 being older than the victim, did willfully and unlawfully commit criminal sexual conduct with a minor in the first degree, to wit: that the said defendant did engage in sexual battery upon a person under the age of eleven (11) years, a minor female, Y.A., date of birth [REDACTED] 2001, in violation of Section 16-3-655(A) (1) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided:


Deputy Solicitor

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

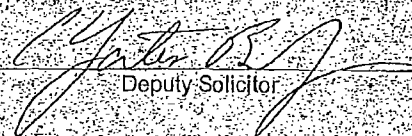
INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT
WITH A MINOR
16-03-0655 (B)

At a Court of General Sessions, convened on the 23rd day of August, 2013, the Grand Jurors of Newberry County present upon their oath:

That Mario Valerio Gonzalez Hernandez, in Newberry County, between the dates of May 7, 2013 and June 30, 2013 being older than the victim, did willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who was at least 11, but less than 14 years of age, Y. A., a minor female, date of birth [REDACTED] 2001, in violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Deputy Solicitor

WITNESSES

Kevin Atkins
Newberry Police Department

WARRANT NUMBER

2013D3600100060

TRUE BILL

Joseph Reynolds
Foreman of the Grand Jury
Date: *8-23-13*

VERDICT

Guilty
James Y. Ringer
Foreman
10/30/14

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

August Term, 2013
Indictment # 13GS36-0500

THE STATE

vs.

Mario Valerio Gonzalez Hernandez

INDICTMENT FOR

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR
16-03-0655 (B)**

CDR: 0396

ROA_0538

**NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2014-GS-36-500

The State,

Respondent,

v.

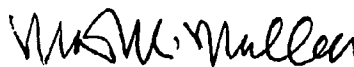
Mario V. Gonzalez Hernandez,

Appellant.

NOTICE OF APPEAL

Mario Valerio Hernandez Gonzalez appeals his conviction and sentence in this case. After a jury trial, the verdict was rendered by the jury and the sentence was imposed by the Honorable Eugene C. Griffith, Jr., on October 30, 2014.

November 7, 2014 .



Michael D. McMullen
Post Office Box 5027
Columbia, SC 29250
Phone: 803-252-4433
S.C. Bar # 0065483

Other Counsel of Record:
Taylor Daniel
Assistant Solicitor
Post Office Drawer 10
Newberry, South Carolina 29108
(803) 321-2123

Attorney for Respondent

Other Counsel of record for the Defendant/Appellant:
E. Michael Pinilla
PINILLA LAW FIRM, LLC
111 Executive Pointe Blvd, Suite B
Columbia, SC 29210
Phone: 803-728-0045

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

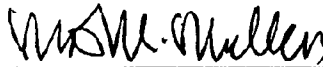
APPEAL FROM NEWBERRY COUNTY
COURT OF GENERAL SESSIONS

HONORABLE EUGENE GRIFFITH, JUDGE
Docket No./Indictment #'s: 2013-GS-36--500

THE STATE OF SOUTH CAROLINA V. MARIO HERNANDEZ

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THE FOREGOING NOTICE OF INTENT TO APPEAL filed by trial counsel on behalf of MARIO HERNANDEZ, who appeals from the verdict of the jury and the sentence of the Court imposed by the trial Judge, the Honorable Eugene Griffith, which jury verdict and sentence were handed down and imposed on October 30, 2014, in Newberry South Carolina, has been filed with the Honorable Newberry County Clerk of Court, at the following address: Jackie S. Bowers, Clerk of Court, P.O. Box 278, Newberry, SC 29108, and has been served upon opposing counsel, to wit: the Taylor Daniel, Assistant Solicitor, Eight Judicial Circuit, P. O. Drawer 10, Newberry, SC 29108, by placing those documents in the United States Mail, postage prepaid, to the addresses listed above.



Michael D. McMullen
Post Office Box 5027
Columbia, SC 29250
Phone: 803-252-4433
SC BAR# 0065483

The other attorney of record for the Defendant is:

E. Michael Pinilla
111 Executive Pointe Blvd, Suite B
Columbia, SC 29210
Phone: 803-728-0045

Dated: November 1, 2014

NOTICE TO CLERK OF COURT: Notify S.C. Court Administration immediately upon receipt of this Notice of Appeal, so that the Court Reporter may be directed to prepare the transcript.

SCCA 465 (12/2009)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Case No. 2013-GS-36-00500
Appellate Case No. 2014-002376

RECEIVED
JUN 07 2016
SC Court of Appeals

The State, Respondent

v.

Mario Valerio-Gonzalez Hernandez, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____

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Attorneys for Appellant Mario Valerio-Gonzalez Hernandez

Columbia, South Carolina
May 18, 2016