

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ELIDORO CARILLO ONTIVEROS,

APPELLANT

APPELLATE CASE NO 2017-000430

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

COURT'S EXHIBIT NO. 2 (DVD Recording of Defendant's First Interview)
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STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2014-GS-07-00327 & 2014-GS-07-00328

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

NOVEMBER 14, 15, 16, 17, 2016

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

ELIDORO CARRILLO ONTIVERO

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

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VOIR DIRE

1 DAY ONE, MONDAY, NOVEMBER 14,

2 2016, 11:32 A.M.

3 BY THE COURT:

4 BAILIFF: All rise.

5 THE COURT: Thank you. Please be seated. Can I
6 see the bailiffs, please.

7 DISCUSSION BETWEEN THE COURT AND

8 BAILIFFS.

9 END DISCUSSION.

10 THE COURT: Thank you. You want to come up. You
11 all approach.

12 OFF-THE-RECORD BENCH CONFERENCE, OUT

13 OF HEARING OF JURORS. PRESENT: THE

14 COURT, MS. KEENEY, MR. LYNCH, MS. SAXON,

15 MS. CAPPELMANN.

16 END BENCH CONFERENCE.

17 THE COURT: Solicitor, would you like to call your
18 case.

19 SOLICITOR KEENEY: The State calls Elidoro
20 Ontivero, Indictment Number 2014-GS-07-00327, criminal
21 sexual conduct with a minor, first degree; Indictment
22 Number 2014-GS-07-00328, also criminal sexual conduct
23 with a minor, first degree.

24 THE COURT: All right. And ma'am, would you please

1 introduce yourself and anyone you expect to sit with you
2 during the trial of this case on behalf of the State.

3 SOLICITOR KEENEY: Good morning. My name is Julie
4 Kate Keeney. I work for the Fourteenth Circuit
5 Solicitor's Office, in Beaufort County. Daniel Lynch
6 is, who is right up there, he will be sitting second
7 chair, and he also works for Beaufort County Solicitor's
8 Office.

9 THE COURT: Thank you. Ms. Cappelmann, you can go
10 ahead and introduce yourself and group.

11 MS. CAPPELMANN: Good morning. My name is Kate
12 Cappelmann. I'm an assistant Public Defender with the
13 Fourteenth Circuit Public Defender's Office. Sitting
14 with me is going to be Jessica Saxon, who is also a
15 public defender. This is Elidoro Ontivero. And this is
16 Freddie Ayala. He will translating for us.

17 COURT REPORTER: I'm sorry. Who will be what?

18 MS. CAPPELMANN: Will be translating for us.

19 THE COURT: All right. And we need to swear in Mr.
20 Ayala. Sir, I'll swear you in.

21 Do you swear or affirm you will give a true and
22 accurate translation, sir, from English to Spanish, and
23 Spanish back to English, sir, so help you God?

24 TRANSLATOR AYALA: Yes, and interpretation also.

25 THE COURT: And interpretation also. I appreciate

1 it, Mr. Ayala. Please be seated. Thank you. All
2 right.

3 Ladies and gentlemen, as you've heard, of course,
4 the case that we are calling today is the one that's
5 going to be tried before me this week is the State of
6 South Carolina versus Elidoro Carrillo Ontivero, who is
7 charged in the indictments with two counts of criminal
8 sexual conduct with a minor in the first degree.

9 Ladies and gentlemen, to begin with, you have been
10 introduced to the attorneys in this case, and also, the
11 defendant in this case, Mr. Elidoro Carrillo Ontivero.
12 Ontivero. I apologize.

13 My very first question is this. Is there any
14 member of the jury panel related by blood or connected
15 by marriage to the defendant in this case, Mr. Ontivero
16 If so, please stand.

17 Ladies and gentlemen, additionally, is any member
18 of the jury panel a close personal friend or share a
19 special relationship with the defendant in this case,
20 Mr. Ontivero? If so, please stand.

21 Ladies and gentlemen, does anyone have any business
22 connection or any connection whatsoever with the
23 defendant in this case, Mr. Ontivero? If so, please
24 stand.

25 Ladies and gentlemen, additionally, you've been

1 introduced to the attorneys trying this case. My
2 question is going to be the same. Are you related by
3 blood, connected by marriage, or have a close personal
4 relationship or friendship with either of the attorneys
5 trying this case? If so, please stand.

6 Sir, your name and juror number.

7 JUROR NUMBER 186: Wade Martin, Jury [sic] Number
8 186.

9 THE COURT: Mr. Martin, who do know?

10 JUROR NUMBER 186: Mrs. Saxon.

11 THE COURT: How do you know Ms. Saxon?

12 JUROR NUMBER 186: High School friends.

13 THE COURT: All right. Sir, do you talk to her on
14 a regular basis?

15 JUROR NUMBER 186: Saw her two weeks ago at the
16 Carolina game. Saw her and her father as well.

17 THE COURT: Okay. Sir, would you like me to excuse
18 you from the trial of this case because Ms. Saxon's
19 involved in it?

20 JUROR NUMBER 186: Please.

21 THE COURT: All right, sir. I'm going to excuse
22 you from the trial of this case, but I need you to sit
23 tight with me.

24 JUROR NUMBER 186: No problem.

25 THE COURT: You don't need to answer anymore

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VOIR DIRE

1 questions in regards to this case, but the next one that
2 Judge Nettles comes in and pulls, you can be subject to
3 that one. Okay?

4 JUROR NUMBER 186: No problem.

5 THE COURT: Thank you, sir. I appreciate it.
6 Anyone else?

7 Ladies and gentlemen, the following is a list of
8 potential witnesses in this case. And the question is
9 going to be, are you related by blood or connected by
10 marriage -- I'm sorry, my microphone's not even on --
11 have a close personal relationship or special friendship
12 with any of these potential witnesses?

13 And if any of these people happen to be in the
14 courtroom, I'd appreciate it if they would please stand,
15 although, I don't see anyone. We're not expected to
16 begin this trial until tomorrow afternoon, so all these
17 people were not required to be here this morning. But
18 if someone happens to be here, I would appreciate it if
19 you could stand for the jury now.

20 The first is Amber Allen. Lieutenant Robert
21 Arbelo. Lieutenant Brian Baird. Sergeant Angela Boland
22 Crumpton. Ashley Bratcher. Julio Cesar-Ontivero.
23 Kristen Dalton. Sergeant John Gobel. John Kelleher.
24 Sergeant Angel Machado. Master Sergeant George Moreno.
25 Sergeant at Rowell. Kendra Twitty. Younger Sister .

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VOIR DIRE

1 Older Sister

. Rosa Villalobos. And S.V.

2 S.V.

3 Elidoro Ontivero. Sarah McKenna. Ryan Chapman.
4 Dee Whitlaw. And Alicia Benedetto.

5 Again, ladies and gentlemen, the question is, are
6 you related by blood, connected by marriage, have a
7 close personal relationship or special friendship with
8 any of these potential witnesses?

9 Yes, ma'am.

10 JUROR NUMBER 251: I may be thinking it a bit too
11 far, but as knowing the type of practice I do, many of
12 those witnesses I've worked with in a professional
13 capacity on numerous occasions. I just think I need to
14 make the Court aware of that.

15 THE COURT: Okay. My question -- well, I would
16 like you to list who you actually worked with.

17 JUROR NUMBER 251: Yes, ma'am.

18 THE COURT: And I also need to know if you feel
19 like you have a close, personal relationship with these,
20 any of them, other than a working relationship.

21 JUROR NUMBER 251: Yes, ma'am. I would say that
22 the person that I would consider myself at minimum
23 acquaintance of is Dr. Alicia Benedetto. I've worked
24 with her on probably six to ten different cases. She's
25 been my pers -- my expert in my cases.

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VOIR DIRE

1 THE COURT: Okay.

2 JUROR NUMBER 251: I don't have a deep, close,
3 personal relationship with her, ma'am, but I do know her
4 personality.

5 I've worked with Ms. Kendra Twitty probably on a
6 handful of cases. As well, I do not have a personal
7 relationship; just a professional relationship.

8 Officer Chapman. Your list was long. There were
9 at least two or three other people on the list, ma'am.
10 I apologize. A couple of police officers; just in their
11 professional capacity, ma'am. I don't have a personal
12 relationship with any of them, but I feel ethically I'd
13 be remiss to tell the Court that I have had numerous
14 professional relationship with them.

15 THE COURT: All right. You're Number 251?

16 JUROR NUMBER 251: Yes, ma'am.

17 THE COURT: Okay. All right.

18 JUROR NUMBER 251: I recognize I'm probably just
19 going to sit, ma'am, but that's all right.

20 THE COURT: Okay. All right. Go ahead and take a
21 seat. I appreciate it.

22 JUROR NUMBER 251: You bet.

23 THE COURT: Okay. Yes, ma'am.

24 JUROR NUMBER 346: I am Meghan Young, Juror Number
25 346.

1 THE COURT: Yes.

2 JUROR NUMBER 346: I was employed with Hope Haven
3 as a therapist from January until December of 2014, and
4 all of the associates, I still have very close
5 friendships with them.

6 THE COURT: Okay. Ma'am, will you come approach me
7 for a moment.

8 JUROR NUMBER 346: Sure.

9 THE COURT: They attorneys are invited to come on
10 up.

11 Come on up, please.

12 BAILIFF: Juror 346, your Honor.

13 INDIVIDUAL VOIR DIRE, OUT OF HEARING

14 JURORS.

15 THE COURT: How are you?

16 JUROR NUMBER 346: Good. How are you?

17 THE COURT: Good. Good to meet you. Okay. Come
18 on up.

19 JUROR NUMBER 346: You, too.

20 THE COURT: Well, we are in the unusual position in
21 all three cases we're trying this week are criminal
22 sexual conduct cases. So, my question to you is,
23 obviously, based on your work, are you able to be fair
24 and impartial in the trial of these cases.

25 JUROR NUMBER 346: I feel that I am, probably.

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VOIR DIRE

1 Like I said, I do have personal relationship with them.

2 THE COURT: All of these people.

3 JUROR NUMBER 346: Sarah McKenna's partner, staff,
4 used to keep my kid. She babysat for me for the first
5 six months of her life. Kendra and Ashley and I still
6 keep very much in touch with each other through Facebook
7 and just how are you doing, you know, and Hope Haven.
8 However, my opinion can't be partial [sic]. I just do
9 have relationships with them.

10 THE COURT: Okay. Okay. All right. I'm going to
11 go ahead and excuse you. I just think this is a bad
12 week for you to be here, obviously.

13 JUROR NUMBER 346: I appreciate it. I appreciate
14 it.

15 THE COURT: But I appreciate it. I understand why.
16 I appreciate you being here, but I'm going to go ahead
17 and excuse you.

18 JUROR NUMBER 346: Okay.

19 END INDIVIDUAL VOIR DIRE.

20 THE COURT: Number 346 is excused.

21 MADAM CLERK: From this trial or from --

22 THE COURT: Everything for this year.

23 MADAM CLERK: For the week? Thank you, ma'am.

24 THE COURT: Sir, do you need to approach and speak
25 with me, or are you comfortable talking from there? I

1 think I can talk from here.

2 THE COURT: Perfect. Okay. Sir, give me your name
3 and juror number.

4 JUROR NUMBER 231: James Parrish, Juror 231.

5 THE COURT: Yes, Mr. Parrish, who do you know, sir?

6 JUROR NUMBER 231: John Gobel. He's a client of
7 mine, and has been for twenty-plus years. Also, his
8 wife, his mother- and father-in-law.

9 THE COURT: Sir, let me ask you. He's been a
10 client of yours. What I'm going to make sure you
11 understand is, he may testify in this case. He may not.
12 I don't know. But the fact that he testifies, would you
13 be more swayed, more slanted towards his testimony just
14 based on having known him?

15 JUROR NUMBER 231: I wouldn't think so.

16 THE COURT: Okay. You need to be sure. I don't
17 want you to openly disclose what type of client he is,
18 because I don't know. I wasn't here when we qualified
19 you. What type of field are you in?

20 JUROR NUMBER 231: I'm a certified public
21 accountant. I prepare his taxes.

22 THE COURT: Okay. All right. So, I'm not too
23 worried about disclosures. I just want to make sure --

24 SOLICITOR KEENEY: Who does he know?

25 THE COURT: He knows Mr. Gobel.

11-14-16 STATE V ONTIVERO

VOIR DIRE

1 SOLICITOR KEENEY: Gobel.

2 THE COURT: Yes. Okay? Sir, are you comfortable?
3 He may or may not testify in this case. Again, I don't
4 know to the extent that he was involved.

5 SOLICITOR KEENEY: Very limited.

6 THE COURT: Very limited. Okay. Would you agree,
7 Ms. Cappelmann, it's very limited?

8 MS. CAPPELMANN: I would agree.

9 THE COURT: Okay. Sir, we're going to keep you.

10 JUROR NUMBER 231: Okay.

11 THE COURT: Thank you. And I appreciate the
12 disclosure.

13 Anyone else?

14 Ladies and gentlemen, is there any member of the
15 jury panel or any member of your immediate family ever
16 been the victim of or accused of a crime? If so, please
17 stand.

18 Again, the question is, is there any member of the
19 jury panel or any member of your immediate family who
20 has ever been accused of or a victim of any crime?

21 And ladies and gentlemen, I want to tell you that,
22 if you don't feel comfortable disclosing what you need
23 to tell me from your spot there, when I call on you,
24 simply give me your name and number and ask to approach,
25 and we'll do it in relative private over here. Okay?

1 Sir, let me begin with you. Your name and juror
2 number.

3 JUROR NUMBER 7: Gary Ayers, Number 7.

4 THE COURT: Mr. Ayers, would you like to approach,
5 or are you comfortable?

6 JUROR NUMBER 7: Yes, I would like to approach.

7 THE COURT: Sir, come on up.

8 Let me ask, can I go through all the rest of them,
9 and we'll just re-visit them as they come up here. He
10 can come on and stay over.

11 Sir, your name and juror number.

12 JUROR NUMBER 112: Ken Greenwalt.

13 THE COURT: Do you want to approach, sir?

14 JUROR NUMBER 112: Please.

15 THE COURT: Come on up, sir.

16 Does anyone feel comfortable speaking where they're
17 at? Okay.

18 Ladies and gentlemen, when I say any crime, this
19 would include crimes like, if someone vandalized your
20 home, of a family member's. It could be anything along
21 those lines. Okay?

22 Ma'am, are you comfortable speaking where you're
23 at?

24 JUROR NUMBER 303: Yes.

25 THE COURT: Your name and juror number.

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VOIR DIRE

1 JUROR NUMBER 303: Teresa Stokes, Number 303.

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 303: And my husband was a victim of a
4 crime. He managed stores on Hilton Head. This has been
5 29 years ago this happened. Armed robbery.

6 THE COURT: Okay. Okay.

7 JUROR NUMBER 303: He wasn't hurt or anything, but
8 a gunshot went off, and they never found the robber.

9 THE COURT: Okay.. All right, ma'am, thank you.
10 Let me ask you. Is there anything about that experience
11 that would affect your ability to be fair and impartial
12 in the trial of this case?

13 JUROR NUMBER 303: No.

14 THE COURT: Again, understanding that it's a
15 completely different set of circumstances.

16 JUROR NUMBER 303: Right.

17 THE COURT: You understand that.

18 JUROR NUMBER 303: Yes, ma'am.

19 THE COURT: Thank you, ma'am. You may be seated.
20 For the rest of you, do you want to stay where you
21 are, or would you like to come around?

22 JUROR NUMBER 266: I can speak here.

23 THE COURT: Sir, your name and juror number.

24 JUROR NUMBER 266: My name is Bob Rosene. My Juror
25 Number is 266. My sister, Ruth Ann, was robbed at

1 gunpoint.

2 THE COURT: Okay. How long ago was that?

3 JUROR NUMBER 266: I'd say probably ten years ago.

4 THE COURT: Is there anyone about that experience
5 that would affect your ability to be fair and impartial
6 in the trial of this case?

7 JUROR NUMBER 266: I don't think so.

8 THE COURT: Okay. I need you to be sure.

9 JUROR NUMBER 266: I'm positive.

10 THE COURT: Okay. Thank you.

11 All right.

12 JUROR NUMBER 153: I'm Linda Kuhlman. My son is a
13 convicted felon.

14 THE COURT: Okay. Is he currently doing any type
15 of sentence, or can you tell me what he was convicted
16 of? Do you feel comfortable, or do you want to come
17 talk to me?

18 JUROR NUMBER 153: Drugs related, burglary related,
19 drugs.

20 THE COURT: Okay. Ma'am, anything about that
21 background and history that would affect your ability to
22 be fair and impartial in the trial of this case?

23 JUROR NUMBER 153: No.

24 THE COURT: All right. Thank you, ma'am. You may
25 be seated.

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VOIR DIRE

1 MADAM CLERK: Her juror number?

2 THE COURT: Ma'am, your juror number again?

3 BAILIFF: Juror number.

4 JUROR NUMBER 153: 153.

5 THE COURT: Thank you.. Sir.

6 JUROR NUMBER 7: I'd like to come up.

7 THE COURT: Come on. Yes, ma'am.

8 BAILIFF: Just go around and get in line. I'd like
9 to approach.

10 THE COURT: Please, come around.

11 And I need their last name as well.

12 BAILIFF: Juror Number 7, Mr. Ayers, your Honor.

13 THE COURT: Thank you.

14 INDIVIDUAL VOIR DIRE, OUT OF HEARING.

15 JURORS.

16 THE COURT: Mr. Ayers, it's a pleasure to meet you,
17 sir.

18 JUROR NUMBER 7: Yeah, thank you. I have a
19 grandson who's convicted of a sexting.

20 THE COURT: Okay.

21 JUROR NUMBER 7: With a minor. He was 18; she was
22 16.

23 THE COURT: Okay. Was that in this county, or?

24 JUROR NUMBER 7: Lexington.

25 THE COURT: In Lexington County.

1 JUROR NUMBER 7: Yeah.

2 THE COURT: I need to know -- you've heard what the
3 allegations are in this case.

4 JUROR NUMBER 7: I mean --

5 THE COURT: Can you be fair and impartial?

6 JUROR NUMBER 7: I doubt it.

7 THE COURT: You doubt it.

8 JUROR NUMBER 7: Yes.

9 THE COURT: Okay. And I appreciate your candor.
10 That's what I need to know. What I'm going to do is
11 this, sir, I'm going to go ahead and excuse you for this
12 week, because the only cases we are trying are sexual
13 conduct cases, so I think it's probably more appropriate
14 you be excused.

15 JUROR NUMBER 7: Okay.

16 THE COURT: I appreciate your willingness to be
17 here.

18 JUROR NUMBER 7: Thank you.

19 THE COURT: Thank you.

20 END INDIVIDUAL VOIR DIRE.

21 THE COURT: All right. Number 7 is excused.
22 Yes.

23 BAILIFF: Juror 112, Greenwalt, your Honor.

24 INDIVIDUAL VOIR DIRE, OUT OF HEARING

25 JURORS.

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VOIR DIRE

1 THE COURT: Sir, nice to meet you. Come on in.

2 JUROR NUMBER 112: Yes, ma'am.

3 THE COURT: Yes, sir.

4 JUROR NUMBER 112: In like '86, when I was in the
5 Navy, I was deployed, and my wife got raped.

6 THE COURT: Okay.

7 JUROR NUMBER 112: And I -- so.

8 THE COURT: Okay. I appreciate your disclosure of
9 that. What I need to know from you is, this case, the
10 allegation is an adult sexually molested a child. I
11 need to know if you can put aside any feelings you may
12 have about that case, and make sure you fairly decide
13 this case based on the evidence as presented before you
14 in the courtroom.

15 JUROR NUMBER 112: I'd have to say probably not.

16 THE COURT: Okay. All right. Mr. Greenwalt, I'm
17 going to go ahead and excuse you for the week, but thank
18 you.

19 END INDIVIDUAL VOIR DIRE.

20 THE COURT: Number 112 is excused.

21 BAILIFF: This way, sir.

22 BAILIFF: Juror 130, your Honor, Mr. Hodges.

23 INDIVIDUAL VOIR DIRE, OUT OF HEARING

24 JURORS.

25 THE COURT: Good to see you again, Mr. Hodges.

1 JUROR NUMBER 130: I wouldn't be able to talk in
2 front of everybody.

3 THE COURT: Okay, sir, come closer to me. Okay.
4 You having a hard time with this?

5 JUROR NUMBER 13: (Shook head.)

6 THE COURT: Okay. Okay. Let me ask you this. Do
7 you feel comfortable sitting in on a criminal sexual
8 conduct case? No? And obviously, you're emotional
9 right now.

10 JUROR NUMBER 130: I was molested in Boston in the
11 Catholic Diocese.

12 THE COURT: Okay.

13 JUROR NUMBER 130: And the priest was convicted.

14 THE COURT: Okay. Okay. Mr. Hodges, I'm going to
15 go ahead and excuse you, but I appreciate it. And I'm
16 so sorry to put you through this.

17 JUROR NUMBER 130: That's okay.

18 THE COURT: All right? But I'm going to go ahead
19 and excuse you, but thank you for being here. Okay?

20 END INDIVIDUAL VOIR DIRE.

21 THE COURT: All right. Number 130 is excused. You
22 can go ahead and go. Okay?

23 BAILIFF: Juror Number 49, Mr. Coaxum, your Honor.

24 INDIVIDUAL VOIR DIRE, OUT OF HEARING

25 JURORS.

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VOIR DIRE

1 THE COURT: How are you?

2 JUROR NUMBER 49: Fine. How are you?

3 THE COURT: Good. Come on over here. Yeah.

4 JUROR NUMBER 49: My brother is -- he's been
5 charged with child abuse.

6 THE COURT: Does he have a charge pending
7 currently?

8 JUROR NUMBER 49: Yes, it's pending.

9 THE COURT: Okay. Here in Beaufort County?

10 JUROR NUMBER 49: Yes, ma'am.

11 THE COURT: Okay. My question is this. Can you be
12 fair and impartial in the trial of this case, here in
13 this courtroom, putting aside whatever may be a question
14 against your brother?

15 JUROR NUMBER 49: I'm not sure.

16 THE COURT: No. You don't feel good about doing
17 that?

18 JUROR NUMBER 49: No.

19 THE COURT: All right, Mr. Coaxum, I'm going to go
20 ahead and excuse you, then.

21 JUROR NUMBER 49: Okay. Thank you.

22 THE COURT: Number 49 is excused. Thank you.

23 END INDIVIDUAL VOIR DIRE.

24 BAILIFF: Juror Number 268, Mr. Rothert.

25 INDIVIDUAL VOIR DIRE, OUT OF HEARING

1 OF JURORS.

2 THE COURT: How are you?

3 JUROR NUMBER 268: It's a number of things.

4 Fifteen years ago I was held up at gunpoint. I've been
5 arrested for disorderly conduct. Been arrested for
6 assault. Been arrested a handful of times on child
7 support charges.

8 THE COURT: Okay.

9 JUROR NUMBER 268: Been in jail twelve times.

10 THE COURT: Okay. You currently, my understanding,
11 is do alcohol and drug treatment?

12 JUROR NUMBER 268: Alcohol and drug treatment.
13 Turning my life around.

14 THE COURT: Okay. Okay. My question is, do you
15 feel comfortable sitting in, you know, in a jury trial
16 as a juror in a criminal sexual conduct case? I mean --

17 JUROR NUMBER 268: Honestly, I don't.

18 THE COURT: You don't? Do you feel comfortable at
19 all in any type of criminal court?

20 JUROR NUMBER 268: Not really.

21 THE COURT: Okay. Could you handle a civil court
22 at some point?

23 JUROR NUMBER 268: I could.

24 THE COURT: Okay. I think that might be more
25 appropriate. Okay.

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1 END INDIVIDUAL VOIR DIRE.

2 THE COURT: What we're going to do is this. We're
3 going to transfer Mr. Rothert to a civil term of court.
4 Go talk to them what would be a good time. Make sure
5 you've got coverage for your people. Thank you, sir.

6 BAILIFF: 169, your Honor, Mary Long.

7 INDIVIDUAL VOIR DIRE, OUT OF HEARING
8 OF JURORS.

9 THE COURT: How are you?

10 JUROR NUMBER 169: When I was sixteen, and my
11 sister was fourteen, we were held at gunpoint for about
12 an eight-hour period of time.

13 THE COURT: Okay.

14 JUROR NUMBER 169: My sister was sexually assaulted
15 by three different men on that occasion. I'm too upset.

16 THE COURT: And I understand that. You do not want
17 to sit on this case, correct?

18 JUROR NUMBER 169: No.

19 THE COURT: Listen, I understand. No worries. No
20 worries. Okay? That's okay. I'm going to go ahead and
21 excuse you. Okay? Are you okay to drive home?

22 JUROR NUMBER 169: Yeah, I think so.

23 THE COURT: Can you be positive? I want you to
24 take a deep breath. And if for some reason you are not,
25 if for some reason you're not, you just come grab one of

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1 the deputies, and I'll make sure someone takes you home.

2 Okay?

3 JUROR NUMBER 169: Okay.

4 THE COURT: I'll make sure you're okay.

5 JUROR NUMBER 169: Okay.

6 THE COURT: Okay? All right. Thank you for being
7 here.

8 JUROR NUMBER 169: Thank you.

9 THE COURT: But I'm going to excuse you. Okay?

10 JUROR NUMBER 169: Thank you.

11 THE COURT: Thank you. All right. Go ahead.

12 END INDIVIDUAL VOIR DIRE.

13 THE COURT: Number 169 is excused.

14 MADAM CLERK: Yes, ma'am.

15 BAILIFF: Number 15, your Honor.

16 INDIVIDUAL VOIR DIRE, OUT OF HEARING

17 OF JURORS.

18 JUROR NUMBER 15: I don't know how appropriate this
19 is.

20 THE COURT: Okay. What is it, sir?

21 JUROR NUMBER 15: My dad just passed away. He did
22 six years in Denmoor (phonetic spell) for racketeering
23 in the late '70s when I was in high school.

24 THE COURT: Okay. Obviously, that doesn't have
25 anything to do with any type of sexual charges.

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VOIR DIRE

1 JUROR NUMBER 15: No.

2 THE COURT: And I appropriate the disclosure,
3 because I needed to know that. But I'm going to ask
4 you, are you comfortable sitting on this case,
5 understanding one has absolutely nothing to do with the
6 other?

7 JUROR NUMBER 15: To be honest, yes, but I didn't
8 want it to come out later.

9 THE COURT: No, I appreciate that. So, I need you
10 to know that, so thank you.

11 JUROR NUMBER 15: Okay.

12 THE COURT: All right. I appreciate it, sir.
13 Thank you.

14 END INDIVIDUAL VOIR DIRE.

15 BAILIFF: Number 156, your Honor.

16 INDIVIDUAL VOIR DIRE, OUT OF HEARING
17 OF JURORS.

18 JUROR NUMBER 156: I thought I should disclose
19 this. My daughter's fifteen. She was sexuality
20 assaulted in June.

21 THE COURT: Okay.

22 JUROR NUMBER 156: So, I don't know the nature of
23 this, of course --

24 THE COURT: Okay.

25 JUROR NUMBER 156: -- but I just wanted to let you

1 know.

2 THE COURT: And I know you don't know anything
3 about the facts so far, which is meant to be that way.

4 JUROR NUMBER 156: Right.

5 THE COURT: But it is an allegation of an adult
6 assaulting a child. That's just an allegation, though.
7 I need to know whether or not you can separate
8 yourselves, your daughter's situation, from the case in
9 front of us. That's what's most important here. And if
10 you can't, I need you to be candid, because, obviously,
11 everyone's entitled to a fair trial.

12 JUROR NUMBER 156: I'd like to think so. I hope
13 so. I mean, I'm trying to be honest with you.

14 THE COURT: I understand that.

15 JUROR NUMBER 156: I don't, you know -- I

16 THE COURT: As you've heard me say a number of
17 times to people, you have to be sure.

18 JUROR NUMBER 156: Right.

19 THE COURT: You have to be fair to everybody. If
20 you have any doubt whatsoever, I need to know.

21 JUROR NUMBER 156: I think I can, yes.

22 THE COURT: You think you can?

23 JUROR NUMBER 156: Yes. Yes.

24 THE COURT: Okay.

25 JUROR NUMBER 156: I mean, that was with a young

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VOIR DIRE

1 adult, so.

2 THE COURT: Okay. Pardon?

3 JUROR NUMBER 156: This was -- she was assaulted by
4 a young adult, so.

5 THE COURT: Okay. This was a young adult.. Okay.
6 Okay.

7 JUROR NUMBER 156: But I just felt I needed to tell
8 you.

9 THE COURT: No, and I appreciate that. And I
10 appreciate your candor as well, saying you feel
11 comfortable. So, I'm going to ask that you stay with
12 us.

13 JUROR NUMBER 156: Okay.

14 THE COURT: Okay? If there are any other further
15 questions that I ask, though, that make you question
16 your ability, you need to respond to those questions and
17 come back up.

18 JUROR NUMBER 156: Okay.

19 THE COURT: Okay. Thank you.

20 END INDIVIDUAL VOIR DIRE.

21 THE COURT: All right, Number 156. Okay.

22 BAILIFF: Number 99, your Honor.

23 INDIVIDUAL VOIR DIRE, OUT OF HEARING
24 OF JURORS.

25 JUROR NUMBER 99: My name is Rex Gale. I have a

1 good family friend that -- who was convicted of child
2 sexual assault. And I also served on the board of
3 directors for Children's Advocacy Center for Hampton
4 County.

5 THE COURT: Okay. Okay.

6 JUROR NUMBER 99: And I just don't believe that I
7 can be truly impartial in this situation.

8 THE COURT: Okay. And I appreciate that, Mr. Gale.
9 I'm going to go ahead and excuse you for the week,
10 because all of our cases are of that nature.

11 JUROR NUMBER 99: Okay.

12 THE COURT: But thank you for being here.

13 END INDIVIDUAL VOIR DIRE.

14 THE COURT: Number 99 is excused. Thank you, sir.
15 Yes, sir.

16 BAILIFF: 123, your Honor.

17 INDIVIDUAL VOIR DIRE, OUT OF HEARING
18 OF JURORS.

19 THE COURT: Pleasure. How are you?

20 JUROR NUMBER 123: I have a convicted brother-in-
21 law for could molestation.

22 THE COURT: Okay.

23 JUROR NUMBER 123: And based on what I'm hearing, I
24 think that's going to be a problem for me. I'm going to
25 be so far to the right I might be off the chain, so.

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1 THE COURT: Okay.

2 JUROR NUMBER 123: I don't know if I'm going to be
3 impartial for this.

4 THE COURT: You do not know if you will?

5 JUROR NUMBER 123: I don't think I would.

6 THE COURT: Okay. And I appreciate your candor.
7 I'm going to go ahead and excuse you for the week. And
8 your number is 123?

9 JUROR NUMBER 123: 123.

10 THE COURT: All right.

11 END INDIVIDUAL VOIR DIRE.

12 THE COURT: Mr. Head is being excused for the week.
13 Thank you. Number 123.

14 Yes.

15 BAILIFF: Juror Number 6, Mr. Atkins, your Honor.

16 INDIVIDUAL VOIR DIRE, OUT OF HEARING
17 OF JURORS.

18 THE COURT: Good morning. Nice to see you.

19 JUROR NUMBER 6: Yes, ma'am. I was -- I was
20 sexuality assaulted by a family member when I was
21 younger.

22 THE COURT: Okay. Okay.

23 JUROR NUMBER 6: I was a child and the charges were
24 brought.

25 THE COURT: Okay.

1 JUROR NUMBER 6: I can't say with certainty that
2 I'd be able to be fair and impartial to this man during
3 the course of this trial.

4 THE COURT: Okay. I appreciate your candor, sir.

5 JUROR NUMBER 6: Yes, ma'am.

6 THE COURT: All right. I'm going to go ahead and
7 excuse you and excuse you for the week. But thank you
8 for being here.

9 JUROR NUMBER 6: Yes, ma'am.

10 THE COURT: Okay?

11 JUROR NUMBER 6: And thank you.

12 THE COURT: Thank you, sir.

13 END INDIVIDUAL VOIR DIRE.

14 THE COURT: Number 6 is excused.

15 OFF-THE-RECORD DISCUSSION, THE

16 COURT AND ATTORNEYS.

17 THE COURT: Ladies and gentlemen, is there any
18 member of the jury panel who is a member of any advocacy
19 organization such as MADD, Mothers Against Drunk
20 Driving; SADD, Students Against Drunk Driving; CAVE,
21 Citizens Opposed to Violence; or CAPA or CODA? Again,
22 is there any member of the jury panel who is a member of
23 or contributor to any of these types of groups or have
24 served on any of those types of groups' boards. If so,
25 please stand. If so, please stand.

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VOIR DIRE

1 All right. Ms. Quindlen, what's your number again?

2 JUROR NUMBER 251: 251, ma'am.

3 THE COURT: All right. You're a contributor or?

4 JUROR NUMBER 251: To CODA.

5 THE COURT: Okay. Thank you, ma'am. You may be
6 seated.

7 Sir.

8 JUROR NUMBER 58: Yes, Charles Counts, 58.

9 THE COURT: Yes.

10 JUROR NUMBER 58: My wife works for CODA, and I
11 help her out sometimes.

12 THE COURT: What does your wife do for CODA?

13 JUROR NUMBER 58: She's a housekeeper.

14 THE COURT: Thank you, sir. And do you mind
15 telling me her name, just for the record.

16 JUROR NUMBER 58: Pam Counts.

17 THE COURT: Thank you, sir.

18 Yes, ma'am.

19 UNIDENTIFIED JUROR: I'm a contributor to CODA and
20 CAPA through the Rotary Club and alumni.

21 THE COURT: Thank you. Sir.

22 JUROR NUMBER 195: 195. From up North, where I was
23 from, I served on the board of directors of an
24 organization called Children's Advocacy Counsel, which
25 dealt directly with sexuality abused children.

1 THE COURT: All right, sir. Thank you. Anyone
2 else?

3 Has any member of the jury panel or any member of
4 your immediate family ever been an employee of a fire
5 department or an emergency medical service corporation?
6 If so, please stand.

7 JUROR NUMBER 190: Yes. Number 190.

8 THE COURT: Yes.

9 JUROR NUMBER 190: Firefighter for Bluffton Fire
10 Township.

11 THE COURT: Currently?

12 JUROR NUMBER 190: Yes, ma'am.

13 THE COURT: How long have you been a firefighter?

14 JUROR NUMBER 190: About seven-and-a-half years.

15 THE COURT: Thank you, sir. You may be seated.

16 JUROR NUMBER 165: Yeah. 165. I have a nephew who
17 is married to my niece. He just became a fireman.

18 THE COURT: Okay.

19 JUROR NUMBER 165: And my brother's the coroner,
20 used to be a fireman.

21 THE COURT: Thank you, ma'am. You may be seated.
22 Sir.

23 JUROR NUMBER 320: 320. My brother also works for
24 the Bluffton Fire Department.

25 THE COURT: Thank you, sir.

1 Yes, sir.

2 JUROR NUMBER 48: Tyrone Clifford, 48. My son-in-
3 law was a fireman on Hilton Head for about five years.
4 He's no longer a fireman.

5 THE COURT: Thank you, sir.

6 Yes, ma'am.

7 JUROR NUMBER 152: 152. My brother-in-law is a
8 firefighter for the Bluffton Fire Department.

9 THE COURT: Thank you.

10 Sir.

11 JUROR NUMBER 201: Earl Monday, 201. My brother-
12 in-law's a retired firefighter in Wisconsin.

13 THE COURT: Thank you, sir.

14 Yes, ma'am.

15 JUROR NUMBER 269: 269. My husband was 25 years
16 with the fire service.

17 THE COURT: Thank you, ma'am. You may be seated.

18 Yes?

19 JUROR NUMBER 210: Lesa Murrel. My Jury [sic]
20 Number is 210. My daughter and her husband are
21 paramedics for Beaufort County.

22 THE COURT: Thank you, ma'am.

23 Has any member of the jury panel or any member of
24 your immediate family ever been employed by a law
25 enforcement agency, an attorney general's office, a

1 solicitor's office, or any prosecuting agency? If so,
2 please stand. All right.

3 JUROR NUMBER 251: My husband, Jeff Stephens, was a
4 solicitor previously to Beaufort County.

5 THE COURT: Thank you. And again, I can't remember
6 your number. 151?

7 JUROR NUMBER 251: 251. I apologize, ma'am.

8 THE COURT: 251. I apologize.

9 JUROR NUMBER 251: Yes, ma'am.

10 THE COURT: Okay. Yes, ma'am.

11 JUROR NUMBER 165: 165. David Atkins.

12 REPORTER'S NOTE: JUROR DAVID ATKINS

13 STATED HIS JUROR NUMBER AS 165, BUT

14 JUROR NUMBER 165 IS AVA P. LYNN.

15 THE COURT: Thank you.

16 JUROR NUMBER 165: He's a detective.

17 THE COURT: Thank you. Sir.

18 JUROR NUMBER 92: Number 92, Francis Marion
19 Fletcher. I have three nephews in Dallas, Texas that
20 are retired law enforcement officers. One was a NARC,
21 worked for.

22 THE COURT: Okay. Yes, sir.

23 JUROR NUMBER 195: Yes, ma'am. I have a brother-in-
24 law who's a retired law enforcement officer from
25 Colorado.

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1 THE COURT: Thank you. Sir.

2 JUROR NUMBER 195: My brother served as a public
3 defender, state's attorney, and now judge.

4 THE COURT: Thank you, sir.

5 JUROR NUMBER 210: Lesa Murrell. My Jury [sic]
6 Number is 210. My husband used to be with Beaufort
7 County Sheriff's Department.

8 THE COURT: Thank you.

9 Has any member of the jury panel or any member of
10 your immediate family ever volunteered for a law
11 enforcement agency, participated in a citizen's police
12 academy course, or attended a crime prevention seminar.
13 If so, please stand.

14 JUROR NUMBER 259: Ed Pappas, 259. I attended
15 citizen's police academy.

16 THE COURT: How long ago did you do that?

17 JUROR NUMBER 259: About four or five years ago.

18 THE COURT: And that was for Beaufort County, sir?

19 JUROR NUMBER 259: Yes.

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

21 Sir.

22 JUROR NUMBER 48: Tyrone Clifford, 48. I went to
23 the CPA Beaufort County Sheriff's Department on Hilton
24 Head about probably five years ago.

25 THE COURT: All right, sir. Thank you.

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1 Yes, sir.

2 JUROR NUMBER 333: I'm currently in a -- I'm sorry.
3 Number 333. I'm currently attending Bluffton Police
4 Academy.

5 THE COURT: Thank you, sir. You may be seated.

6 Sir.

7 JUROR NUMBER 339: My number is 339. And I've been
8 to a certified police academy. I attended the police
9 academy.

10 THE COURT: Okay. Thank you. You've attended one.
11 Okay. Thank you, sir.

12 Yes, sir.

13 JUROR NUMBER 18: Colonel Bloom, Number 18. I did
14 my collegiate internship with the city police department
15 while attending Penn State University. And I was the
16 president of the Youth Police Athletic Group.

17 THE COURT: Thank you, sir.

18 Does any member of the jury panel volunteer or work
19 with children? If so, please stand.

20 All right. I'm going to go ahead and start with
21 you, ma'am. Your name and juror number.

22 JUROR NUMBER 117: Kristen Habberstad, Number 117.

23 THE COURT: Yes, sir.

24 JUROR NUMBER 117: Kindergarten teacher for five
25 years.

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VOIR DIRE

1 THE COURT: Where do you teach?

2 JUROR NUMBER 117: At M.C. Riley Elementary.

3 THE COURT: Thank you, ma'am. You may be seated.
4 Yes.

5 JUROR NUMBER 13: Janet Betts, Juror Number 13.
6 I'm a preschool teacher. I have been for almost twenty
7 years on Hilton Head Island.

8 THE COURT: Thank you, ma'am. You may be seated.
9 Sir.

10 JUROR NUMBER 201: I taught for 38 years in
11 Christian high schools in Wisconsin and Minnesota. And
12 I recently started a Christian academy.

13 THE COURT: Sir, your name and juror number.

14 JUROR NUMBER 201: Earl Monday, 201.

15 THE COURT: Thank you, sir. You may be seated.
16 Sir.

17 JUROR NUMBER 53: Craig Collinson, Juror Number 53.
18 I currently volunteer in Franklin Pre-K, Play Pal, with
19 the Pre-K kids.

20 THE COURT: Thank you, sir.

21 Yes, sir.

22 JUROR NUMBER 339: Willie Wilson, 339. And as
23 pastor of the Baptist church, I'm obviously involved
24 with children.

25 THE COURT: Thank you, sir. You may be seated.

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1 JUROR NUMBER 251: Mary Fran Quindlen, 251. I'm a
2 guardian ad litem. I'm also a member of the Beaufort
3 High Theater Guild. We work with the children in
4 Beaufort Theater. And I'm a VIRTUS-trained volunteer at
5 Saint Peter's Catholic School.

6 THE COURT: Thank you.

7 JUROR NUMBER 95: Juror 95, Nancy Forbes. I taught
8 middle school here and Hilton Head for several years.
9 Now I'm at the Early Childhood Center.

10 THE COURT: Okay. Thank you.

11 JUROR NUMBER 165: Ava Linn, 165. I help with the
12 nursery at my church.

13 THE COURT: Okay. What church is that?

14 JUROR NUMBER 165: Christ Assembly of God. And I
15 also did it for a living off and on for like fourteen
16 years.

17 THE COURT: Okay. Thank you.

18 Sir, I'm in the back to you.

19 UNIDENTIFIED JUROR: Juror 285. VIRTUS training
20 for John Paul and Saint Mary's Schools, as well as a
21 Beaufort County assistant coach with sports.

22 THE COURT: Okay. Thank you, sir.

23 Yes, ma'am.

24 JUROR NUMBER 131: I'm a volunteer for the
25 Creative Arts School on Hilton Head.

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1 THE COURT: Thank you.

2 JUROR NUMBER 115: 115. I've coached wrestling and
3 football at Hilton Head High and Hilton Head Prep.

4 THE COURT: Thank you, sir.

5 JUROR NUMBER 266: Bob Rosene, Juror Number 266. I
6 run a basketball program on Hilton Head Island. And I
7 also coach in my son's athletic team.

8 THE COURT: Thank you, sir. I'm going to go back
9 to you. And you're a firefighter.

10 JUROR NUMBER 190: Yes, ma'am. Warren McGarvey,
11 190. I do volunteer coaching through Bluffton Sports.
12 And I also do some private baseball training with kids.

13 THE COURT: Thank you. Yes, ma'am.

14 JUROR NUMBER 3: Deborah Albert, Jury [sic] Number
15 3. I work for Beaufort County Schools. I'm a teacher
16 assistant.

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

18 JUROR NUMBER 226: Dawn Page, 226. As a counselor,
19 I see twelve and up ages.

20 THE COURT: Thank you, ma'am. Sir.

21 JUROR NUMBER 182: Dayle Marshall, 182. I coached
22 Little League Baseball and Football for fifteen years.

23 THE COURT: Thank you. Maybe I should have asked
24 this before, because a number of you are going to be
25 required to stand again. But is any member of the jury

1 panel or any member of your immediate family ever been a
2 teach, psychologist, medical professional, or any other
3 professional that requires mandatory reporting of sexual
4 or physical assault cases? If so, please stand. Of
5 course, some of you are going to be repeated. I
6 understand that. These questions are meant to elicit
7 responses. All right.

8 Ma'am.

9 JUROR NUMBER 117: Kristen Habberstad, 117. I'm a
10 teacher and mandate reporter.

11 THE COURT: Thank you, ma'am. You may be seated.

12 JUROR NUMBER 113: Janet Betts, Number 13. I'm a
13 teacher, also a mandated reporter.

14 THE COURT: Sir.

15 JUROR NUMBER 201: Earl Monday, 201. Teacher.

16 THE COURT: Mandatory reporter, yes, sir. Okay.
17 Sir.

18 JUROR NUMBER 55: So, we were speaking for who is
19 current. In the past, soccer coach a long time for you
20 to have to, you know --

21 THE COURT: Okay. Sir, are you a mandatory
22 reporter? Were you back then?

23 JUROR NUMBER 55: I guess it was like, you know,
24 you have it was like a criminal report. The kind of
25 thing to find out if you're -- you know the thing you

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1 fill out.

2 THE COURT: Okay. This would be is whether or not
3 you're required by law that if you hear of something.
4 So, that's fine. Sir, give me your name and juror
5 number again.

6 JUROR NUMBER 55: John Comfort.

7 THE COURT: Okay.

8 JUROR NUMBER 55: Juror 55.

9 THE COURT: Thank you, sir. You may be seated.
10 Yes, ma'am.

11 JUROR NUMBER 95: Juror 95, Nancy Forbes. Public
12 school teacher.

13 THE COURT: Mandatory reporter.

14 Yes, sir.

15 JUROR NUMBER 285: 285. I believe the Merry Tots
16 training requires it. And then, my wife is a R.N. as
17 well.

18 THE COURT: Okay. Where is she an R.N.?

19 JUROR NUMBER 285: Memorial, Savannah.

20 THE COURT: Thank you. All right.

21 Ma'am in the blue sweater.

22 JUROR NUMBER 121: 121, Faith Harper. My daughter-
23 in-law was a -- an examiner for physically abused
24 children.

25 THE COURT: Okay. Thank you.

1 Yes, sir.

2 JUROR NUMBER 115: 115, Tim Griffith. I was a
3 coach. My mother was an educator. My little sister is.

4 THE COURT: Thank you, sir.

5 JUROR NUMBER 131: 131. I used to do pediatric
6 therapy.

7 THE COURT: Thank you. Okay. Sir.

8 JUROR NUMBER 266: Bob Rosene, 266. I'm a physical
9 therapist that works for Hilton Head Hospital, so we are
10 mandatory reporters. And also, my father is an
11 educator, and my sister is an educator, and my brother
12 is an educator.

13 THE COURT: Thank you, sir. Yes.

14 JUROR NUMBER 190: 190, firefighter, mandatory
15 reporter.

16 THE COURT: Thank you. Yes, ma'am.

17 JUROR NUMBER 3: Number 3, Deborah Albert, Beaufort
18 County Schools, and also, my mother was a teacher.

19 THE COURT: Okay. And you're a mandatory reporter
20 obviously, working in the schools.

21 JUROR NUMBER 26: 26, licensed counselor.

22 THE COURT: Thank you, ma'am. Sir.

23 JUROR NUMBER 320: 320. My sister-in-law's a
24 teacher for Prichardville Elementary.

25 THE COURT: Thank you, sir. Yes.

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1 JUROR NUMBER 182: 182. I'm kind of in a gray
2 area, so I wanted to have full disclosure with respect
3 to the Court. My -- my late wife was manager for the
4 Beaufort County School District.

5 THE COURT: Thank you, sir. I appreciate that.
6 Yes, sir.

7 JUROR NUMBER 180: Juror 180. My mother was a
8 teacher with the Detroit School System.

9 THE COURT: Thank you, sir. Go ahead.

10 JUROR NUMBER 101: Juror Number 101. My currently,
11 or just recent ex-wife, is a pyche -- psychiatric nurse
12 with Beaufort Memorial Hospital.

13 THE COURT: All right. Thank you, sir. Yes, sir.

14 JUROR NUMBER 216: Juror 216, James Ordiorne. I've
15 worked a -- I have ecclesiastical position in my church.

16 THE COURT: Yes.

17 JUROR NUMBER 216: So, you may know better than I
18 do with this, but I -- I know that if it's a confession,
19 no; but if it's a third party, then, yes.

20 THE COURT: Okay. Thank you, sir. Okay.

21 JUROR NUMBER 229: Ed Pappas, 229. My wife worked
22 with Beaufort County School District for a number of
23 years.

24 THE COURT: Thank you, sir. You may be seated.

25 Ladies and gentlemen, has any member of the jury

1 panel or any member of your immediate family ever been
2 involved in any way in a sexual assault case? And that
3 would include even if there were no criminal charges
4 involved. Again, the question is, is any member of the
5 jury panel or any member of your immediate family ever
6 been involved in any way in a sexual assault case, even
7 though no charges were filed?

8 That's a bit of an obtuse question. I understand.
9 But I want to know if you have any experience whatsoever
10 in being involved in any type of sexual assault case,
11 regardless of what that experience is.

12 All right. Ms. Quindlen. 251?

13 JUROR NUMBER 251: Yes, ma'am. 251, yes, ma'am.
14 My husband's currently a criminal defense counsel. And
15 I previously, on active duty, was a criminal defense
16 counsel for the Marine Corps, and I'm a family law
17 attorney. So, periodically, we encounter criminal
18 sexual cases.

19 THE COURT: Thank you, ma'am. Yes. Would you like
20 to come see me? Absolutely. Come on around. Or you
21 all, does everyone need to come speak with me? Okay.
22 All right, if you need to come speak with me, come on
23 around.

24 Sir, I'll go ahead and start with you. If you're
25 comfortable where you are.

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1 JUROR NUMBER 101: Sure. Earl Monday, 101. When I
2 taught in Jasper County, I sent the State Department of
3 Education over 100 pages of documentation that included
4 sexual assaults that the district was not reporting.

5 THE COURT: Okay. Thank you, sir.

6 JUROR NUMBER 18: Colonel Bloom, Juror 18.

7 THE COURT: Yes, sir.

8 JUROR NUMBER 18: While at the news media, I
9 routinely covered pedophile cases as a court
10 correspondent as well.

11 THE COURT: Okay. Thank you, sir.

12 Yes, sir.

13 JUROR NUMBER 195: Yes, 195. My brother, in his
14 previous career, has experienced all -- all sides of --
15 of law enforcement.

16 THE COURT: Okay. Thank you, sir. All right.

17 BAILIFF: Juror Number 13, Ms. Betts, your Honor.

18 INDIVIDUAL VOIR DIRE, OUT OF HEARING
19 OF JURORS.

20 THE COURT: How are you?

21 REPORTER'S NOTE: JUROR NUMBER 13
22 BEGAN SPEAKING BEFORE I REACHED THE
23 DISCUSSION.

24 THE COURT: Okay. Okay. And I appreciate the
25 disclosure. Thank you. All right. Thank you, Ms.

1 Betts. Thank you.

2 BAILIFF: Juror Number 210, Ms. Murrell.

3 THE COURT: Hey, how are you?

4 JUROR NUMBER 210: How are you?

5 THE COURT: Pleasure.

6 JUROR NUMBER 210: I haven't been involved in a
7 case, but I have been abused as a child myself.

8 THE COURT: Okay.

9 JUROR NUMBER 210: And on several different
10 occasions.

11 THE COURT: Okay. Okay. I need to know if you'd
12 feel comfortable sitting on a case of this nature.

13 JUROR NUMBER 210: No.

14 THE COURT: And I understand that.

15 JUROR NUMBER 210: No.

16 THE COURT: So, I'm going to go ahead and excuse
17 you for the week.

18 JUROR NUMBER 21: Okay.

19 THE COURT: But thank you for being here.

20 JUROR NUMBER 210: Thank you.

21 THE COURT: Thank you, Ms. Murrell.

22 BAILIFF: Juror Number 207, Ms. Morson.

23 THE COURT: How are you again? Come on up here.

24 JUROR NUMBER 207: Very well. Thank you.

25 THE COURT: Yes, ma'am.

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1 JUROR NUMBER 207: Thirty years ago or more, my
2 husband and I adopted his daughter --

3 THE COURT: Okay.

4 JUROR NUMBER 207: -- from a previous marriage.
5 The birth mother gave up rights because there were
6 allegations that her husband sexually abused the child.

7 THE COURT: Okay.

8 JUROR NUMBER 207: Never proven or taken to court.

9 THE COURT: Okay.

10 JUROR NUMBER 207: But she's been my girl ever
11 since.

12 THE COURT: Okay. Well, thank you for your
13 disclosure. I appreciate it. Okay.

14 BAILIFF: Ms. Hooks, your Honor, 131.

15 THE COURT: Okay. Nice to meet you.

16 JUROR NUMBER 131: My sister was sexually assaulted
17 by my grandfather.

18 THE COURT: Okay.

19 JUROR NUMBER 131: It was not -- no charges were
20 filed. I didn't find out about it until about ten years
21 ago.

22 THE COURT: Okay.

23 JUROR NUMBER 131: And then, it was just kind of --

24 THE COURT: Okay. Do you feel comfortable sitting
25 in this case, understanding that one has nothing to do

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1 with the other, or do you have any hesitation?

2 JUROR NUMBER 131: Well, there's a little bit of
3 bias, obviously, because of that situation.

4 THE COURT: Okay. Okay. Well, I'm going to have
5 to excuse you, then, because I can't have you having any
6 type of bias.

7 JUROR NUMBER 131: Okay.

8 THE COURT: But I appreciate it. I'm going to go
9 ahead and excuse you. Okay?

10 JUROR NUMBER 131: Okay. Thank you.

11 END INDIVIDUAL VOIR DIRE.

12 THE COURT: Number 131 is excused. Can I see
13 Number 156.

14 OFF-THE-RECORD DISCUSSION, THE COURT
15 AND ATTORNEYS.

16 INDIVIDUAL VOIR DIRE, OUT OF HEARING
17 OF JURORS.

18 THE COURT: I'm going to send you home for the
19 week. You're good. You can leave right now. Okay?

20 JUROR NUMBER 156: Okay.

21 THE COURT: I appreciate it.

22 JUROR NUMBER 156: You bet.

23 END INDIVIDUAL VOIR DIRE.

24 THE COURT: 156 is excused for the week. Okay.

25 Does any member of the jury panel currently have

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1 children under the age of sixteen in their household?

2 If so, please stand.

3 All right. I am going to start with Ms. Quindlen.

4 And I just need the age of your children and the sex of

5 your children. So, if it's a boy, five; girl, eight,

6 whatever. Okay? I'll start with you, Number 1 -- 251.

7 Sorry.

8 JUROR NUMBER 251: Yes, ma'am. Girl, 16; a boy 14;

9 a girl, 9.

10 THE COURT: Thank you. Sir.

11 JUROR NUMBER 285: 285. Fifteen-year-old girl;

12 thirteen-year-old son; nine-year-old son; and a five-

13 year-old girl.

14 THE COURT: Thank you, sir.

15 JUROR NUMBER 216: 216. Thirteen-year-old girl.

16 THE COURT: Thank you, sir. Yes, ma'am.

17 JUROR NUMBER 152: 152. Eight-year-old boy and

18 two-year-old boy.

19 THE COURT: Thank you. Yes, ma'am.

20 JUROR NUMBER 206: 206. I have a fourteen-year-old

21 son.

22 THE COURT: Thank you.

23 JUROR NUMBER 266: 266. Fourteen, twelve, and ten,

24 and they're all boys.

25 THE COURT: Thank you, sir. Yes, ma'am, on the far

1 right.

2 JUROR NUMBER 175: 175. Thirteen-year-old girl.

3 THE COURT: Thank you.

4 JUROR NUMBER 190: 190. Six-year-old boy; four-
5 year-old girl.

6 THE COURT: Thank you.

7 JUROR NUMBER 333: 333. Fifteen-year-old son.

8 THE COURT: Thank you. Sir?

9 JUROR NUMBER 252: 252. A one-year-old girl.

10 THE COURT: Thank you, sir.

11 JUROR NUMBER 180: 180. Fifteen-year-old boy.

12 THE COURT: Thank you, sir.

13 JUROR NUMBER 207: 207. Two boys, nine and eleven.

14 THE COURT: Thank you. Sir?

15 UNKNOWN JUROR: I want to be safe, but I have two
16 sixteen-year-olds, boy and a girl.

17 THE COURT: Thank you, sir.

18 JUROR NUMBER 55: 55. Twelve-year-old boy.

19 THE COURT: Thank you.

20 JUROR NUMBER 304: 304. A ten-month-old.

21 THE COURT: Thank you.

22 JUROR NUMBER 282: 282. I got two boys, one and
23 two.

24 THE COURT: Thank you. And I had someone who had
25 to run to the restroom, and I don't know if you got the

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1 last question. My question was, is there any member of
2 the jury panel that currently has children under the age
3 of sixteen in their household.

4 JUROR NUMBER 327: (Shook head.)

5 THE COURT: No? Give me your number again, just
6 for the record.

7 JUROR NUMBER 327: 327.

8 THE COURT: Thank you, ma'am. I appreciate it.

9 Ladies and gentlemen, has any member of the jury
10 panel received any special training or education in the
11 subject of sexual abuse offenses, whether it involves
12 minors or adults? If so, please stand.

13 All right. Ladies and gentlemen, what I'm going to
14 ask again is your name and juror number and what type of
15 education it is; if you were a teacher and it was
16 through your teaching certificate and whatever, or
17 through continuing education or however. Okay?

18 Yes, ma'am.

19 JUROR NUMBER 117: Kristen Habberstad, Number 117.
20 Through college classes, so it was mandatory, and also
21 continuing education here in Beaufort County.

22 JUROR NUMBER 13: Janet Betts, Number 13,
23 continuing education and through Hope Haven.

24 THE COURT: Thank you, ma'am.

25 Yes. I'm sorry, sir. Yes.

1 JUROR NUMBER 201: Earl Monday, 101 -- 201.
2 Mandatory training.

3 THE COURT: Thank you, sir.

4 JUROR NUMBER 252: Mary Fran Quildlen, 251. I'm
5 guardian ad litem. I'm a family practitioner; through
6 continuing legal education; and I'm VIRTUS trained
7 through the Catholic church.

8 THE COURT: Thank you. Yes, sir.

9 JUROR NUMBER 48: Ron Clifford, 48. I worked with
10 a church on Hilton Head and took a course from the
11 Dioceses about how to screen people that are going to
12 work with the kids in the church.

13 THE COURT: Thank you, sir.

14 JUROR NUMBER 95: Nancy Forbes, Juror 95.
15 Continuing education.

16 THE COURT: Thank you. Sir.

17 JUROR NUMBER 285: Steve Slusne, 295. VERTIS
18 training with the Catholic church.

19 THE COURT: Thank you, sir.

20 JUROR NUMBER 266: 266. Just mandatory education
21 through the hospital.

22 THE COURT: Thank you, sir.

23 JUROR NUMBER 190: Warren McGarvey, 190. Training
24 thru the fire department and also P.D.

25 THE COURT: All right. Thank you. Yes, ma'am.

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1 JUROR NUMBER 226: 226. Clinical training, sex
2 offenders, and sex abuse families.

3 THE COURT: Thank you. Sir.

4 JUROR NUMBER 180: Juror 180. I had mandatory
5 training for hospital, plus, I had mandatory training at
6 the Charleston School System while I was there.

7 THE COURT: Thank you, sir.

8 JUROR NUMBER 216: 216. It was through my church.

9 THE COURT: Thank you, sir.

10 Ladies and gentlemen, I know you know very little
11 about this case, but you, at this point, I'm sure
12 understand this case involves allegations of sexual
13 molestation of a child. Does anyone feel that subject
14 matter is such that you cannot be fair and impartial in
15 the trial of this case?

16 Ladies and gentlemen, does anyone have any concern
17 whatsoever whether or not they can be fair and impartial
18 in the trial of this case? If so, please stand.

19 Are there any further questions requested of this
20 panel from the State?

21 SOLICITOR KEENEY: No, your Honor.

22 THE COURT: From the Defense?

23 MS. CAPPELMANN: Respectfully, your Honor, 13, 14,
24 15, 16, 17, 18, and 19.

25 THE COURT: All right. Respectfully, we'll put

1 those on a side bar. Anything else from anyone?

2 All right. I have this panel qualified.

3 Ladies and gentlemen, what is going to happen is
4 this. Those of you that are qualified as jurors in the
5 trial of this case, your name is going to be placed into
6 a computer. It is going to randomly draft a list. If
7 your name is called, you are going to simply stand in
8 place. You do not have to do or say anything.

9 Each side is given an opportunity to either accept
10 you as a juror or strike you as a juror. If you are
11 accepted by both sides, you are going to then come and
12 take a seat over here.

13 Ladies and gentlemen, I will tell you this, if you
14 get sat on this jury, once we're done with this process,
15 and after a few short instructions, I'm going to send
16 you home for the day, and you are not going to return
17 until 2:00 o'clock tomorrow. So, just to let you know
18 for scheduling purposes, that's what we're going to
19 order. So, we are going to pull this jury, and you all
20 are going to be relieved.

21 Anyone who wasn't selected for that jury, I am
22 going to send to lunch and ask you to come back,
23 depending on what time it is when we finish this
24 process, roughly an hour later, where you are going to
25 be subject to being chosen for the second jury. Okay?

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JURY SELECTION

1 So, ladies and gentlemen, with that said, does
2 anyone need a break? because I know I've kept you here a
3 long time this morning. So, anyone need a break?

4 Let's do this. It's going to take them a few
5 minutes to do this. If you need to refresh yourself,
6 please feel free to, but please let the bailiffs know
7 when you are going to the restroom. If not, please just
8 stay in your seats, because the faster we get everyone
9 back. Please go, but just let them know you're going.
10 Okay? Thank you.

11 OFF-THE-RECORD BENCH CONFERENCE, OUT
12 OF HEARING OF JURORS. PRESENT: THE
13 COURT, MS. KEENEY, MR. LYNCH,
14 MS. CAPPELMANN, MS. SAXON.
15 END BENCH CONFERENCE.

16 OFF THE RECORD.

17 BACK ON THE RECORD.

18 JURY SELECTION:

19 BAILIFF: All jurors present and accounted.

20 THE COURT: Thank you. All right, let's go,
21 Patrick.

22 Ladies and gentlemen, when your name is called
23 again simply stand. Don't say or do anything. If both
24 sides accept you to be a juror, take all your belongings
25 with you, and you'll have to go around the back of the

1 courtroom to get over to the jury box. All right?

2 MADAM CLERK: Juror 13, Janet Betts. What says the

3 State?

4 SOLICITOR KEENEY: Please present the juror.

5 MADAM CLERK: What says the Defense?

6 MS. CAPPELMANN: Please excuse this juror.

7 MADAM CLERK: Juror 92, Francis Fletcher. What

8 says the State?

9 SOLICITOR KEENEY: Please present this juror.

10 MADAM CLERK: What says the Defense?

11 MS. CAPPELMANN: Please seat this juror.

12 THE COURT: Come on around, sir.

13 MADAM CLERK: Juror 229, Edward Pappas. What says

14 the State?

15 SOLICITOR KEENEY: Please present this juror.

16 MADAM CLERK: What says the Defense?

17 MS. CAPPELMANN: Please seat this juror.

18 THE COURT: Come on around, sir.

19 MADAM CLERK: Juror 273, Susan Schiavon. What says

20 the State?

21 SOLICITOR KEENEY: Please present this juror.

22 MADAM CLERK: What says the Defense?

23 MS. CAPPELMANN: Please seat this juror.

24 MADAM CLERK: Juror 316, Ivy K. Torres. What says

25 the State?

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1 SOLICITOR KEENEY: Please present this juror.

2 MADAM CLERK: What says the Defense?

3 MS. CAPPELMANN: Please seat this juror.

4 MADAM CLERK: Juror 117, Kristan Happerstad. What
5 says the State?

6 SOLICITOR KEENEY: Please present this juror.

7 MADAM CLERK: What says the Defense?

8 MS. CAPPELMANN: Please excuse this juror.

9 MADAM CLERK: Juror 303, Teresa Stokes. What says
10 the State?

11 SOLICITOR KEENEY: Please present this juror.

12 MADAM CLERK: What says the Defense?

13 MS. CAPPELMANN: Please seat this juror.

14 MADAM CLERK: Juror 182, Dale Marshall. What says
15 the State?

16 SOLICITOR KEENEY: Please present this juror.

17 MADAM CLERK: What says the Defense?

18 MS. CAPPELMANN: Please seat this juror.

19 MADAM CLERK: Juror 304, Kristina Stratton. What
20 says the State?

21 SOLICITOR KEENEY: Please present this juror.

22 MADAM CLERK: What says the Defense?

23 MS. CAPPELMANN: Please excuse this juror.

24 MADAM CLERK: Juror 79, Valerie Douglas. What says
25 the State?

1 SOLICITOR KEENEY: Please present this juror.
2 MADAM CLERK: What says the Defense?
3 MS. CAPPELMANN: Please excuse this juror.
4 MADAM CLERK: Juror 195, Steven Meersman.
5 SOLICITOR KEENEY: Please present this juror.
6 MADAM CLERK: What says the Defense?
7 MS. CAPPELMANN: Your Honor, may we briefly
8 approach?
9 THE COURT: You may.
10 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
11 HEARING OF JURORS. PRESENT: THE COURT,
12 SOLICITOR KEENEY, SOLICITOR LYNCH, MS.
13 CAPPELMANN, MS. SAXON.
14 END BENCH CONFERENCE.
15 MS. CAPPELMANN: Please excuse this juror.
16 MADAM CLERK: Juror 320, Nathaniel Urys.
17 SOLICITOR KEENEY: Please present this juror.
18 MADAM CLERK: What says the Defense?
19 MS. CAPPELMANN: Please seat this juror.
20 MADAM CLERK: Juror 48, Tyrone Clifford. What says
21 the State?
22 SOLICITOR KEENEY: Please present this juror.
23 MADAM CLERK: What says the Defense?
24 MS. CAPPELMANN: Please excuse this juror.
25 MADAM CLERK: Juror 55, John Comfort. What says

11-14-16 STATE V ONTIVEROJURY SELECTION

1 the State?

2 SOLICITOR KEENEY: Please present this juror.

3 MADAM CLERK: What says the Defense?

4 MS. CAPPELMANN: Please seat this juror.

5 MADAM CLERK: Juror 201, Earl Monday. What says

6 the State?

7 SOLICITOR KEENEY: Please present this juror.

8 MADAM CLERK: What says the Defense?

9 MS. CAPPELMANN: Please excuse this juror.

10 MADAM CLERK: Juror 266, Robert Rosine. What says

11 the State?

12 SOLICITOR KEENEY: Please present this juror.

13 MADAM CLERK: What says the Defense?

14 MS. CAPPELMANN: Please seat this juror.

15 MADAM CLERK: Juror 18, Colonel Bloom III. What

16 says the State?

17 SOLICITOR KEENEY: Please excuse this juror.

18 MADAM CLERK: Juror 153, Linda Kuhlman. What says

19 the State?

20 SOLICITOR KEENEY: Please excuse this juror.

21 MADAM CLERK: Juror 269, Carolyn Ruba. What says

22 the State?

23 SOLICITOR KEENEY: Please present this juror.

24 MADAM CLERK: What says the Defense?

25 MS. CAPPELMANN: Please seat this juror.

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1 MADAM CLERK: Juror 339, Willie Wilson. What says
2 the State?

3 SOLICITOR KEENEY: Please present this juror.

4 MADAM CLERK: What says the Defense?

5 MS. CAPPELMANN: Please seat this juror.

6 MADAM CLERK: Juror 82, Ronald Droop. What says
7 the State?

8 SOLICITOR KEENEY: Please present this juror.

9 MADAM CLERK: What says the Defense?

10 MS. CAPPELMANN: Please excuse this juror.

11 MADAM CLERK: Juror 30, Katherine Builder. What
12 says the State?

13 SOLICITOR KEENEY: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 MS. CAPPELMANN: Please excuse this juror.

16 MADAM CLERK: Juror 165, Ava Linn. What says the
17 State?

18 SOLICITOR KEENEY: Please present this juror.

19 MADAM CLERK: What says the Defense?

20 MS. CAPPELMANN: Please excuse this juror.

21 MADAM CLERK: Juror 209, Joseph Murphy. What says
22 the State?

23 SOLICITOR KEENEY: Please present this juror.

24 MADAM CLERK: What says the Defense?

25 MS. CAPPELMANN: Please seat this juror.

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1 MADAM CLERK: Judge, are we doing one alternate?

2 THE COURT: Yes.

3 MADAM CLERK: Now choosing Alternate One. Juror
4 254, Eric Rebmann. What says the State?

5 SOLICITOR KEENEY: Please present this juror.

6 MADAM CLERK: What says the Defense?

7 MS. CAPPELMANN: Please seat this juror.

8 MADAM CLERK: Juror 180, Steven D. Markiw. What
9 says the State?

10 SOLICITOR KEENEY: Please present this juror.

11 MADAM CLERK: What says the Defense?

12 MS. CAPPELMANN: Please excuse this juror.

13 MADAM CLERK: Juror 216, James Odiorne. What says
14 the State?

15 SOLICITOR KEENEY: Please present this juror.

16 MADAM CLERK: What says the Defense?

17 MS. CAPPELMANN: Please seat this juror.

18 THE COURT: Come on around, sir.

19 Are there any matters of law we need to take up
20 regarding the jury selection process?

21 SOLICITOR KEENEY: None from the State?

22 THE COURT: From the Defense?

23 MS. CAPPELMANN: Nothing, other than what we
24 discussed before.

25 THE COURT: All right. Ladies and gentlemen, those

1 of you in the back of the courtroom, obviously you're
2 not sitting as jurors in the trial of this first case.
3 However, Mike Nettles is going to go ahead and pull a
4 second jury this afternoon, and my understanding is that
5 case is to begin tomorrow morning.

6 Ladies and gentlemen, I need to ask you to be back
7 here in the courthouse, in this jury -- or in this --

8 BAILIFF: Assembly room.

9 THE COURT: Sorry. In the assembly room, as
10 they're pointing in the other direction for me, in the
11 jury assembly room, ladies and gentlemen, at 2:30, where
12 Judge Nettles is going to come pull the second jury.

13 Ladies and gentlemen, feel free to go grab a bite
14 to eat, and we look forward to seeing you back at 2:30.

15 JURORS NOT CHOSEN LEAVE COURTROOM.

16 GENERAL GUIDELINES FOR JURY SERVICE:

17 THE COURT: You all please sit. Thank you.

18 Ladies and gentlemen, welcome. As you know, I'm
19 Carmen Mullen. I'm the resident Circuit Court judge
20 here, and I am the trial judge for this case. As I told
21 you earlier, I have some pretrial matters to take up
22 this afternoon in regards to this case, and then, I have
23 a previous obligation tomorrow morning that I have to
24 attend to.

25 So, we are going to start back with the trial of

11-14-16 STATE V ONTIVEROGENERAL GUIDELINES - JURY

1 this case tomorrow at 2:00 p.m. I'll be here before
2 that, but there are some other matters I need to take up
3 with the attorneys. I want you all to know I endeavor
4 to put things up in front of a jury as quickly as I can,
5 and to try to keep you from waiting. With that said,
6 there will be times when you're going to be back in your
7 jury room waiting on us, and I want you to know that.
8 But I also want you to know that we're out here working
9 to streamline the case.

10 Tomorrow, I think we should be fine. We should be
11 able to start right at 2:00 o'clock, when you all get
12 here.

13 There are a few guidelines that I need to tell you
14 before we go ahead and part for today. To begin with,
15 if you came in with a cell phone today, you are to leave
16 it back in the car or leave it at home. I know for some
17 people that's difficult. However, you can get so much
18 information from a cell phone these days, and I would
19 not want you to be tempted. What we are going to do is
20 give you a card with a phone number up here. If someone
21 in your family or friends or work has an emergency, you
22 tell them to call that line; give them your name and
23 that you are a juror in Carmen Mullen's trial. I assure
24 you, I will come and get you immediately.

25 Additionally, if you need to use the phone while

1 you are here during break for some reason, to tell
2 someone you might be running late, whatever is going to
3 happen, simply ask the bailiffs for a line, and they
4 will give it to you. Please understand that their sole
5 job is to take care of you, and if you need anything
6 while you're performing your jury duty here, you are to
7 ask them directly, and they will immediately come to me.
8 All right?

9 Secondly, I know you know very little about this
10 case. However, it would be inappropriate, first, for
11 you to discuss this case with anyone. When you go home
12 tonight and see a friend, a family member, or a co-
13 worker, the only thing you are permitted to say is, I've
14 been chosen as a juror in a trial of a criminal case.
15 You are not to say the charges, any of the people
16 involved, or the lawyers involved. And the reason is
17 this. Inevitably, someone's going to try to tell you
18 something about something, when they know nothing about
19 this case. And because I would never want you to be
20 influenced by any outside source, I am instructing you
21 and ordering you not to discuss it.

22 Additionally, you are not to do any independent
23 research. I know we have computers today. You are not
24 to get on it. You are going to have everything you need
25 to decide this case right here in the courtroom. The

1 facts are going to be presented. I'm going to charge
2 you on the law that's applicable to this case, and you
3 should not be influenced by any outside source
4 whatsoever.

5 Which reminds me, if you are on any type of social
6 media networking or social media, you are not to post
7 that you are a juror in the trial of this case. It
8 invites comment, ladies and gentlemen. Again, we want
9 to avoid that in every way.

10 Lastly, ladies and gentlemen, you've been
11 instructed and introduced to the attorneys trying the
12 case, the defendant in this case, the interpreter. We
13 have another interpreter over there as well. Please
14 understand something. They have been instructed not to
15 speak to you in coming and going from the courthouse.
16 And the reason is this. Even an innocent conversation
17 walking down the steps of the courthouse of, it's really
18 gotten chilly this weekend, is going to be reported, and
19 it can be misconstrued; and then, I'm going to have to
20 ask you about it. So, out of an abundance of caution, I
21 have ordered all of them, including the witnesses, not
22 to speak to you in coming and going. So, if you happen
23 to pass them in the hallway, and they do not smile,
24 please don't be offended. They are following my orders.
25 All right?

1 Ladies and gentlemen, I can tell you that tomorrow
2 night, I can roughly expect to run until 5:00-ish or so,
3 maybe a little after that. What I'm going to ask you to
4 do, ladies and gentlemen, is, if anyone has a conflict
5 this week, starting tomorrow, obviously, I need you to
6 let me to know what time you need to be out of here. It
7 might be that you have a special party, or you have a
8 special service or something you have to go to. Let me
9 know. I just need to know how long it's going to take
10 you to get where you're going.

11 I'll tell you all, I live on Hilton Head, so I
12 certainly understand. It's an hour to get back there on
13 the south end of the island any way you cut it. Same
14 thing with going out to Saint Helena at certain times.
15 I certainly appreciate that, and I want to account for
16 it. But I want you to also know, ladies and gentlemen,
17 every time we part and we come back, I cannot start
18 until all fourteen of you are here. So, if something
19 happens overnight, you fall ill, if there is an issue,
20 we are going to be looking for you. So, please, if you
21 do have a problem, call in, because, if you are not
22 here, we are going to come looking for you. All right?
23 I would hate to have to do that, but it's occurred
24 before.

25 So, with that said, ladies and gentlemen, again,

1 thank you for your service. You are going to help us
2 resolve this case, ladies and gentlemen. We appreciate
3 that. And I assure you, the lawyers are well known to
4 be me. They're very professional. They're going to put
5 this case in front of you as quickly as they possibly
6 can, and as fully as is necessary, ladies and gentlemen.
7 You can expect nothing but professionalism from them.

8 The office staff, Jerri Roseneau, your Clerk of
9 Court, is wonderful. If you need anything while you're
10 here performing jury service, again, ask the bailiffs.
11 They will come and get us immediately, and we'll take
12 care of you. All right?

13 So, again, ladies and gentlemen, you are excused.
14 You're going to get a few short instructions of where
15 you are to report tomorrow at 2:00 p.m. You're not
16 going to come back to the jury assembly room. You're
17 going to come back through a hallway, and all meet back
18 in the jury room.

19 And lastly, I don't know if I actually said this,
20 you are also not to discuss the case with each other
21 until you've heard all of the evidence, you've heard the
22 lawyers' arguments on the case, and I've charged you on
23 the law.

24 So, there is going to be some down time back there
25 in your jury room during the trial. But again, because

1 you haven't heard all of the evidence, it would be
2 inappropriate for any of you to discuss this case until
3 the case has been sent to you before its final
4 deliberation.

5 So, sometimes I tell people, if you choose to, you
6 certainly are welcome to bring a book, any work. The
7 only thing I have to ask is that you don't bring a
8 computer, because, again, you can access so much
9 information. All right?

10 So, ladies and gentlemen, thank you. Thank you for
11 your service. I'm going to excuse you back to your jury
12 room.

13 BAILIFF: Follow me, please.

14 JURORS LEAVE COURTROOM 1:03 P.M.

15 RULINGS ON DEFENDANT'S REQUESTS TO

16 CHARGE:

17 BAILIFF: Jury is clear, your Honor.

18 THE COURT: Okay. We need to put on the record,
19 Ms. Cappelmann, very quick. I intend on taking a lunch
20 break right now before we do pretrial motions.

21 MS. CAPPELMANN: Yes, ma'am.

22 THE COURT: I'm hoping maybe we can come back at
23 2:15-ish, is what my goal is. But we want to go ahead,
24 you asked me to put on the record my reasons for not
25 putting -- or not asking the jury questions 13 through

1 19.

2 13 is:

3 *Is there any member of the jury panel*
4 *who believes a person is guilty of a crime*
5 *simply because he or she was arrested?*

6 And I think that's a question that baits a juror
7 and encourages them to agree. So, and again, it's not a
8 proper charge on the law. It wouldn't be appropriate.
9 At the end of the charge, or the end of the case, I will
10 charge them, obviously, that they are innocent until
11 proven guilty. I don't think it's an appropriate
12 question.

13 Number 14, it talks about and invites them to start
14 questioning from the get-go whether or not a defendant
15 testifies. As we all know, no defendant is ever
16 required to be witness against themselves, and that
17 would be appropriately in my jury charge to the jury.

18 Number 15:

19 *Is there any member of the jury panel*
20 *who has particular opinions or feelings --*
21 *opinions or feelings about sexual assault*
22 *cases?*

23 I think I, ad nauseam, asked that question and all
24 the other questions. And we certainly got a large
25 response, and certainly disqualified a number of people.

1 And Number 16:

2 Does any member of the jury panel
3 believe that, if a child tells an adult or
4 parent they have been touched inappropriately,
5 that the child must be telling the truth?

6 I think that's clearly a comment on the facts, and
7 the Court would never do that.

8 Number 17, it says:

9 If you return a verdict of not guilty,
10 would that be a problem for you with regard
11 to friends or family members, since the case
12 involves accusations of sexual assault of a
13 child?

14 Again, I don't think it's an appropriate question.
15 I think it invites for them to start worrying about an
16 issue like that, which just simply doesn't exist.

17 18:

18 Does any member of the jury panel have
19 strong feelings about the rule of law and
20 American justice that requires a jury to
21 stand firm on the principle that an accused
22 is presumed innocent.

23 Again, I think we're inviting more comment.

24 And lastly, Number 19:

25 Does any member of the jury panel have

1 *strong feelings about the rule of law and*
2 *American justice that requires the State to*
3 *prove an accused guilty by proof of guilt*
4 *beyond a reasonable doubt?*

5 It doesn't matter what they think. It matters on
6 what the law is. So, I do not think inviting those
7 types of questions is good, probably, in particularly,
8 in the aftermath of our presidential election last week.
9 I think people have high emotions and feelings and
10 beliefs, and I think this jury panel was excellent as
11 far as what their disclosures were, and certainly let us
12 know if they had any prior history in regards to this
13 type of case or law enforcement. And I'm comfortable
14 with that on the record.

15 Anything else we need to put on the record?

16 MS. CAPPELMANN: I just wanted to briefly put on
17 the record as to just blanket all these questions. And
18 the reason we crafted them like this is because your
19 Honor pointed out, this is a very emotionally driven
20 type of case. And just kind of these questions help to
21 gain a better understanding of where jurors might be on
22 that spectrum of emotion regarding these -- this
23 particular type of case, because sexual abuse cases are
24 different than, you know, just an armed robbery or a
25 drug case or something like that. So.

1 THE COURT: Okay. Well, respectfully, again,
2 they're going to have a charge on the law, which is that
3 they have to decide the case based on the facts, and
4 they can't be moved by emotion in any way. So, again, I
5 think this jury panel is excellent. The panel was good.
6 I think the jury that is sat certainly understands the
7 nature of the case, and I'm confident that they can make
8 a decision that reflects truth and justice.

9 So, with that said, 2:15. Is that enough time for
10 everybody?

11 MS. CAPPELMANN: Yes, ma'am.

12 THE COURT: Okay.

13 MS. CAPPELMANN: And I guess -- I guess, for
14 purposes of a complete record, I'll need to make a
15 Court's exhibit, Wanda, of the copies.

16 THE COURT: The defendant's voir dire? That'll be
17 a good idea.

18 MS. CAPPELMANN: Yes, ma'am.

19 THE COURT: The requested voir dire? Certainly.
20 Okay. We'll be at ease until 2:15.

21 MS. CAPPELMANN: Thank you. Thank you.

22 COURT REPORTER: That will be Court's Exhibit 1.

23 ITEM IDENTIFIED AS ORIGINAL OF
24 DEFENDANT'S REQUEST TO VOIR DIRE
25 MARKED COURT'S EXHIBIT NUMBER 1.

1 THE COURT: And we'll be back in Courtroom 3.

2 Okay?

3 OFF THE RECORD.

4 BACK ON THE RECORD 2:15 P.M.

5 PRETRIAL MOTIONS AND RULINGS:

6 THE COURT: All right. What would you like me to
7 hear first?

8 SOLICITOR KEENEY: I think Ms. Cappelmann had a
9 matter that she wanted to take up first while Beverly is
10 still here.

11 THE COURT: Okay.

12 MS. CAPPELMANN: Yeah, Ms. Neiderhiser is here
13 pretty much as a rebuttal witness for the State's motion
14 regarding the lost video. So, I don't know if you
15 wanted me to present the issue or --

16 SOLICITOR KEENEY: Your Honor, I submitted, over
17 the weekend, a brief regarding an interview that was --
18 I don't know if the right word is lost, but that's what
19 I'm going to call it.

20 The defendant did an initial interview on February
21 6 of 2014. We have that video. February 11, 2014, the
22 defendant did a polygraph. The polygraph is on video.
23 The only part -- the State obviously knows I can't admit
24 a polygraph into evidence, but the part that I wanted
25 was after the polygraph was over, still on video, just

1 the audio. I mean, that's been done in the past in a
2 previous trial with our office, *State versus Cornelius*
3 *Watson*. So, I was hoping to get the audio in for that.

4 Right after that, the defendant was taken the same
5 day to the sheriff's office investigative office across
6 the street from the Law Enforcement Command Center.

7 That was supposed to be audio/videotaped. However, law
8 enforcement did not download it from the server, and at
9 the time, it's required. It re-writes over itself over
10 a certain amount of days. And so, it's gone. We don't
11 have it.

12 I submitted a brief on the issue. And basically,
13 in *Arizona versus Youngblood*, that's really a motion to
14 dismiss the indictment because of lost evidence. But
15 I'm really comparing it to I want just the testimony in
16 it. There are requirement under case law that law
17 enforcement even videotape it.

18 I think if your Honor finds that it was voluntary
19 under *Jackson v. Denno*, and no *Miranda* rights were
20 violated, that the officer, Machado, particularly,
21 because he's the one that speaks Spanish. He was the
22 one that actually could understand what the defendant
23 was saying. There's no reason why he shouldn't be able
24 to testify, assuming that your Honor finds it admissible
25 under *Jackson v. Denno*.

1 THE COURT: Okay. Who all was there during that
2 interview?

3 SOLICITOR KEENEY: It was Investigator John
4 Kelleher and Angie Boland.

5 THE COURT: Okay.

6 MS. CAPPELMANN: For initial interview.

7 SOLICITOR KEENEY: For the interview that we do not
8 have.

9 THE COURT: Okay. The interview you don't have.
10 Okay.

11 MS. CAPPELMANN: Corporal Machado was the -- I'm
12 sorry -- the translator for both the polygraph and the
13 third interview, what I'm calling the third interview.
14 Is that right?

15 SOLICITOR KEENEY: That is correct.

16 MS. CAPPELMANN: So, in response, your Honor,
17 certainly this is -- and I think the State raised this
18 in her motion -- our objection to bringing the statement
19 in isn't necessarily a spoliation type of argument.
20 It's really more that there are certain parts of the
21 conversation that were lost in translation. And we know
22 this because there are parts of the polygraph interview
23 in which Mr. Elidoro -- or Mr. Ontivero initially makes
24 certain incriminating statements to Detective Baird and
25 Corporal Machado. So, I wanted to play for your Honor

1 that segment of the interview -- of the polygraph
2 interview, and have Ms. Neiderhiser point out those
3 discrepancies.

4 THE COURT: Okay.

5 MS. CAPPELMANN: Well, he -- right, at the --
6 during the polygraph interview, after the polygraph, he
7 makes statements. Where were we? I apologize, your
8 Honor. But because we don't know what those
9 translations were in the third interview, it would be
10 highly prejudicial to bring in that testimony against
11 Mr. Ontivero, because the State doesn't -- or the
12 Defense doesn't have the ability to make sure everything
13 was properly translated, make sure that what his
14 statements are via the translator are actually what he
15 is saying, because things can be interpreted different
16 ways.

17 And further, it's really hearsay within hearsay,
18 because it's not exactly what my client is saying.

19 THE COURT: So, let me ask you. Was your client,
20 Mr. Ontivero, speaking with the Spanish-speaking deputy,
21 and he was the one asking questions? Is that correct?

22 MS. CAPPELMANN: Initially, Brian Baird was asking
23 the questions. And the Corporal Machado would then
24 translate, but then also, entered his own investigative
25 questions and statements. So, it's kind of a mix of

1 both Brian Baird and Machado interviewing Mr. Ontivero.

2 THE COURT: Yes.

3 SOLICITOR KEENEY: Your Honor, the State's response
4 is, Ms. Cappelmann can certainly cross-examine Officer
5 Machado and any discrepancies in the first interview, or
6 the polygraph interview, the audio; and then, argue to
7 the jury that, if he messed up, then, she can argue that
8 there are these discrepancies.

9 As a hearsay issue, Officer Machado was translating
10 what the defendant was saying, and we all know that,
11 under the hearsay rules, that's considered non-hearsay.
12 Now, the question is being related to the defendant.
13 The questions aren't really the important part. It's
14 what the defendant said is what the State's trying to
15 elicit.

16 THE COURT: Okay. Let's just go ahead and put up
17 the testimony, and let me see what you're talking about.

18 MS. CAPPELMANN: That's what I was going to ask.
19 So, I guess the Defense would call Beverly Neiderhiser.

20 THE COURT: Come on forward.

21 MADAM CLERK: Do you solemnly swear or affirm to
22 truthfully answer all questions asked of you by this
23 court, so help you God?

24 BEVERLY NEIDERHISER: I do.

25 MADAM CLERK: Thank you.

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 BEVERLY NEIDERHISER, PROFFER

2 DIRECT EXAMINATION

3 BY MS. CAPPELMANN:

4 Q All right, Ms. Neiderhiser, you had a chance to
5 review polygraph interview -- a video of a polygraph
6 interview of my client.

7 A Yes.

8 Q So, what I'd like to do is bring that up and play
9 it. And I'm going to start -- there is actually three
10 different video files on this disc. I'm going to just
11 go with the third one, which is the post-polygraph
12 interviews.

13 PLAYING ITEM IDENTIFIED AS INTERVIEW OF
14 DEFENDANT.

15 PAUSE PLAYING ITEM IDENTIFIED AS
16 INTERVIEW OF DEFENDANT.

17 BY MS. CAPPELMANN:

18 Q I'm just going to go ahead and fast-forward,
19 because they leave the room for about ten to fifteen
20 minutes. So, I'm just going to forward it to where law
21 enforcement comes back in.

22 And so, Ms. Neiderhiser, if you could just --
23 whenever you hear a discrepancy in either the
24 questioning or the interpretation that -- just please
25 tell me to pause, and we can address that.

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 THE COURT: And this is, what you're showing me, is
2 post-polygraph.

3 MS. CAPPELMANN: That's correct. This is the
4 interview in which my client initially makes --

5 THE COURT: What's the matter with his arm there?
6 is my question. Or is that just his shirt?

7 MS. CAPPELMANN: No, he's connected to the machine
8 that does the polygraph.

9 MS. SAXON: His blood pressure.

10 MS. CAPPELMANN: Yeah, that's the blood pressure
11 cuff.

12 THE COURT: Oh, blood pressure cuff, so.

13 MS. SAXON: So, he's got little bands and things
14 around him.

15 CONTINUE PLAYING ITEM IDENTIFIED AS

16 INTERVIEW OF DEFENDANT.

17 PAUSE PLAYING ITEM IDENTIFIED AS

18 INTERVIEW OF DEFENDANT.

19 A He's going on. He interpreted, but then, he's
20 going on, and like, I don't know what he's going on with
21 this. He's continuing the conversation.

22 THE COURT: And what does he say?

23 A He's saying it's -- it's --

24 MS. CAPPELMANN: Do you want me to keep playing?

25 THE COURT: No. I want to know what he's saying,

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 though.

2 MS. CAPPELMANN: Well, I meant, would it be helpful
3 to keep playing?

4 A Yes, it would help. It would.

5 THE COURT: Oh, so you know -- okay.

6 A Yeah. I just know he's going on. It's not what --

7 THE COURT: Okay.

8 CONTINUE PLAYING ITEM IDENTIFIED AS

9 INTERVIEW OF DEFENDANT.

10 PAUSE PLAYING OF ITEM IDENTIFIED

11 AS INTERVIEW OF DEFENDANT.

12 A I'm sorry. It's really hard to hear. Yeah, I'm --

13 MADAM CLERK: Is it too loud?

14 MS. CAPPELMANN: It's easier to listen to when it's
15 on a smaller --

16 SOLICITOR KEENEY: When they speak English, you can

17 hear more clearly what they're saying. But when they

18 speak in Spanish, it's difficult to understand.

19 Especially when you're not there, present during the

20 interview, listening to it.

21 MS. CAPPELMANN: Maybe if we -- should I turn it

22 down here or --

23 MADAM CLERK: Yeah. Well, I turned it down here.

24 You may want to turn it down a little bit there, and see

25 if that's it.

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 CONTINUE PLAYING ITEM IDENTIFIED

2 AS INTERVIEW OF DEFENDANT.

3 PAUSE PLAYING ITEM IDENTIFIED AS

4 INTERVIEW OF DEFENDANT.

5 THE COURT: Do you want to stop? Stop for a
6 second, Ms. Cappelmann.

7 A One thing I can say is, they're having a
8 conversation in Spanish.

9 THE COURT: Between the two of them?

10 A Yes. And it's not being interpreted into English.
11 That was one of the big things that I did notice when I
12 listened to it, so.

13 THE COURT: Okay. Okay.

14 A I haven't been taking notes like I normally would
15 be doing. I'm sorry.

16 MS. CAPPELMANN: Can you tell -- and I'm sorry the
17 quality is so bad. Can you tell what they're saying at
18 all? Like, what they're discussing?

19 A I mean, they're talking about the polygraph.
20 They're talking about the differences about the two
21 questions, And then, -- but it's -- it's really, really
22 bad quality. I'm so sorry.

23 MS. CAPPELMANN: Okay. Maybe if I turn this volume
24 down it might --

25 MS. SAXON: Your Honor, just because we have

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 multiple translators, everybody's having an easier time
2 hearing it. I think, it's the speakers back here.

3 A Oh.

4 MS. SAXON: He's translating in my ear, too. So,
5 maybe -- I don't know if it would help to have Beverly
6 maybe step back. Would it be too awkward?

7 THE COURT: Is there a better way? I mean, even if
8 -- it doesn't matter to me if she wanted to stick
9 earphones in off the computer, I'm fine with that.
10 Because the truth is this, I have no idea what they're
11 saying. So, until she tells me what's happening, it
12 doesn't matter.

13 MS. CAPPELMANN: That's right. Okay. I think --

14 MS. SAXON: I think, even if you just pull it off
15 of the ELMO, it'll be easier to understand.

16 MS. CAPPELMANN: What is an ELMO.

17 MS. SAXON: It's this thing. Whatever it's called.
18 Something like that.

19 MS. CAPPELMANN: Oh, oh, then you can play it from
20 --

21 MS. SAXON: Just play it from --

22 MS. CAPPELMANN: Unsynch it, and play it just from
23 a laptop?

24 MS. SAXON: Um-hmm. That's how you watched it the
25 first time, correct, Beverly?

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 BEVERLY NEIDERHISER: Yes.

2 OFF-THE-RECORD DISCUSSION BETWEEN
3 ATTORNEYS.

4 MS. CAPPELMANN: All right. If I may I approach?
5 Okay.

6 COURT REPORTER: Do you want to try my earphones?

7 MS. SAXON: I was going to say, I bet that would
8 help her.

9 A A lot of times it does.

10 MS. SAXON: Yeah.

11 A That's how I do it at home.

12 COURT REPORTER: These are Linear and they work
13 really well.

14 A That's higher this side.

15 COURT REPORTER: You've got two plugs there, so
16 we'll see which one is the correct one.

17 MS. CAPPELMANN: And then, I guess we'll just let
18 you handle the audio.

19 A Okay. Well, is it going? No, that's not it.

20 COURT REPORTER: Is that it?

21 A Thank you.

22 COURT REPORTER: Good.

23 OFF-THE-RECORD DISCUSSION, SEARCHING
24 FOR A PARTICULAR SECTION OF THE
25 AUDIO.

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 MS. CAPPELMANN: I think we'll let it play for
2 another minute or two, because there's a part that we
3 have been over. I do have a plan.

4 MS. NEIDERHISER CONTINUES TO LISTEN
5 TO AUDIO.

6 BY MS. CAPPELMANN:

7 Q Okay.

8 A Okay. There are several parts that are just -- and
9 I stopped it in the middle. There are times where he's
10 saying, I didn't do it; I'm not lying; I don't know why
11 you're going on. And it's not even interpreted. And
12 then, the -- the English-speak -- I guess, investigator
13 is saying -- he goes on and says, we're past this. And
14 he goes on, and he talks about the girls; did the girls
15 like it. And then, he goes -- they go into there are
16 two kinds of people, dangerous or not dangerous. I need
17 to know what I'm going to say, is what the investigator
18 is saying; I need to know what kind of person you are so
19 I know how to go in to -- to tell them, recommend what
20 to do.

21 And all of the sudden, it's interpreted. He goes
22 into -- the interpreting is like -- no, it's not
23 interpreted. He interprets that part, and then, they
24 ask, did the girls like it; did you like it; is that --
25 and he -- the defendant comes back and says, you're

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 asking if my cousin liked it, because I don't know if my
2 cousin liked it. I wouldn't know that. Who would know?
3 And then, they're going -- the interpreter asks, who
4 liked it? Who -- who -- who are you talking about? And
5 it's just very confusing, like they're trying to find
6 out if the girls liked it, it sounds like⁷.

7 THE COURT: Um-hmm.

8 A I'm not sure. Or if he liked it. It's very -- it's
9 not clear.

10 BY MS. CAPPELMANN:

11 Q So, if you think about it, there is kind of the
12 main conversation that's between Brian Baird and Mr.
13 Ontivero, and then, Corporal Machado and Mr. Ontivero.
14 What Corporal Machado and Mr. Ontivero are talking about
15 is very different than what the English part of this
16 video is showing. Is that what you're saying?

17 A Um-hmm. Yes.

18 Q Okay. There's one other part. Actually, the --
19 And I'm just going to ask you this, because I can't
20 hear. Is this the part where he's talking about the two
21 girls again, and --

22 A He's asking about the danger, whether you're a
23 dangerous person, we're trying to figure out.

24 Can you go back just a little bit?

25 Q Yes. Is that far enough? Do you need a little bit

11-14-16 STATE V ONTIVERO - PRETRIAL - NEIDERHISER - DX - CAPPELMANN

1 more?

2 A Yeah. Okay, he's talking. Thank you.

3 It paused.

4 Q Oh. It --

5 A It went on.

6 Q Okay.

7 A You can probably stop it. Okay. So -- sorry. The
8 investigator -- the investigator is saying, I think
9 maybe he made a mistake.

10 THE COURT: Is this Baird or Machado?

11 A The one speaking English.

12 THE COURT: Thank you.

13 A I'm sorry.

14 THE COURT: That's okay. No, no, no. No, no, no.
15 I just want to make sure I understand. That's fine.

16 A He said, I think you made a mistake with these two
17 promiscuous girls, so I just want to clarify what
18 happened. That's not interpreted.

19 Q Okay.

20 A But it is asked about the girls, like, did you --
21 did it -- did you do it; we're trying to figure that
22 out. And then, it goes on to Baird. Did you --

23 THE COURT: Baird.

24 A Baird says that you're the only one who can tell
25 us.

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1 THE COURT: Okay.

2 A That's not actually even said in the
3 interpretation. And then, they go into, there's only
4 one perfect -- he begins to speak, but it's not
5 addressed. The defendant begins to speak, but it's not
6 addressed. And then, they go into, there's only one
7 perfect person, who is Jesus. And so, go into that.

8 THE COURT: I guess the question really is, is what
9 they're doing is, it's a technique they're allowed to do
10 when they're investigating someone, so it doesn't have
11 to be a perfect interpretation, and he can attempt to
12 lead him. What I'm concerned about is what this
13 defendant is saying in response. I want to know what
14 Mr. Ontivero is saying in response, and I want to know
15 if they're promising him anything, or saying, you tell
16 us X, then, this is what's going to happen. That's the
17 kind of thing that I need to know. So, is he saying
18 that he did this in any way?

19 A Not -- not what I heard, no.

20 THE COURT: Not what you've heard so far.

21 MS. CAPPELMANN: Not -- not yet, your Honor. And I
22 guess just to kind of clarify what I'm getting at is
23 that, there are side conversations that happened that we
24 don't understand and that the jury isn't going to get to
25 hear. There is actually -- I'm trying to get to it.

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1 There's a specific spot where what Mr. Ontivero says --
2 is not interpreted to -- correctly through Machado to
3 Brian Baird. And I thought that I had found it, but I
4 guess I have not. It's difficult when I can't hear as
5 well, so I'm just going to kind of just try to find it.
6 But if I could just --

7 BY MS. CAPPELMANN:

8 Q Can you tell if this is after he has made the
9 statements regarding ^{Younger}_{Sister} ?

10 A Possibly, because what he's actually saying is, now
11 they're going to take him somewhere else.

12 Q Oh. Then, I went too far.

13 A Okay.

14 Q Again, so, I think he had a question.

15 A Did I go too far? No. It says.

16 Q Okay.

17 A I was just wondering if you went --

18 Q I think that's -- I think that's where we're trying
19 to get.

20 A Okay. Okay.

21 Okay. I was confused about that, because he
22 mentioned something, and I just wanted to make sure we
23 were on the right one.

24 He said --

25 THE COURT: Baird or Machado or?

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1 A Yeah. I'm trying to -- I'm not writing none of
2 this down.

3 THE COURT: Mr. Ontivero.

4 A The interpreter, Machado --

5 THE COURT: Okay, Machado.

6 A -- is saying, the girls say that there's more. And
7 the defendant says, she might have, but I -- but no, I
8 have kids; how would I do that. And then, he continues
9 to ask, he says, well, could it -- I'm not exactly sure
10 how, but he kept pressing. And then, the defendant
11 repeated, I'm sorry, it didn't happen. So.

12 MS. CAPPELMANN: So, and if I'm right, there's --
13 this is the point -- and I guess, to clarify, because I
14 don't think we've actually talked -- talked about it.
15 So, after -- after the polygraph interview and
16 throughout this interview that we're going through, Mr.
17 Ontivero does make a statement -- make a statement
18 regarding ^{Younger}_{Sister} and activities that happened with her on
19 two separate occasions. But then, they keep pressing
20 that there was more. He says there wasn't, and quite
21 frankly, those things are not brought out on the video.
22 Those aren't interpreted back.

23 And specifically, what I'm trying to get at,
24 there's a point where Mr. Ontivero is asked -- or Mr.
25 Ontivero says that it only happened with one girl, not

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1 both of them; because he does, like I said, give a
2 statement about one of the girls. But then, he says --
3 or I'm sorry -- then Machado says that he thought only
4 one girl would accuse him. And that's completely
5 different than what he said. It makes it sound more
6 devious than it actually was, and that's kind of what
7 I'm getting at with the interpretation that happened
8 with these interviews.

9 The defendant has a right to question the integrity
10 of those interviews, and because we don't have them, we
11 can't do that. And quite frankly, it's kind of related.
12 It's kind of going more into the *Jackson-v.-Denno*-type
13 of motion, but I can't really get on the -- have the
14 jury understand everything, all the issues involved with
15 this interview, because it'd be highly prejudicial for
16 them to understand that this was a polygraph interview,
17 post-polygraph. And it's difficult to point out some of
18 the credibility issues or the tactics that were used
19 without going into the fact that it was a polygraph.
20 So, it's sort of impinging upon Mr. Ontivero's due
21 process rights and confrontation clause.

22 You know, I don't want to delay the Court too much.
23 I know that we've been doing this awhile now, but that's
24 basically where I'm going. If you want me to find that
25 specific part of the video so that Ms. Neiderhiser can

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NEIDERHISER - CROSS - KEENEY

1 go through it with your Honor, we can do that. But I
2 think my purposes for Ms. Neiderhiser have kind of been
3 met at this point.

4 SOLICITOR KEENEY: Can I just ask her one question?

5 THE COURT: Sure.

6 BEVERLY NEIDERHISER

7 CROSS-EXAMINATION

8 BY SOLICITOR KEENEY:

9 Q Did you hear -- and you've listened to the video
10 from start to finish, correct? Before court.

11 A Yes.

12 Q Did you hear the defendant say on the video that
13 there was two incidents involving ^{Younger Sister}

14 A May I be quite frank?

15 Q Yes.

16 A It was months ago, and I don't remember.

17 Q Okay. And you didn't do a transcript, right?

18 A No, I did not. Not for this, no. No.

19 Q You never did a word-for-word one, no. So, you're
20 not really sure exactly who said what without going over
21 it again? Is that a yes?

22 A That -- I'm sorry. Yes.

23 SOLICITOR KEENEY: Okay. No further questions. I
24 do have an argument about if there's a confrontation
25 clause issue.

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BY THE COURT

1 THE COURT: Hold on a sec. So, do you need her
2 anymore or not?

3 SOLICITOR KEENEY: I don't need her.

4 THE COURT: You may step down for a moment.

5 A Thank you.

6 BY THE COURT:

7 THE COURT: Okay. Let me tell you what my concerns
8 are on this. I don't know how a jury puts what they're
9 watching in context. So much of it is not translated.
10 So much of it is not relayed. Why isn't the best way to
11 handle this just to ask the officer to testify as to
12 what he said or what occurred?

13 SOLICITOR KEENEY: So, there are two parts. He's
14 going to have to do that for the third interview that we
15 don't have.

16 THE COURT: Right.

17 SOLICITOR KEENEY: For the polygraph, the only
18 reason that I wanted to even play the audio is because
19 that's the only -- I mean, the jury can't understand
20 what the defendant's saying. They're going to have to
21 rely on Machado's word anyway.

22 THE COURT: Right.

23 SOLICITOR KEENEY: But just to prove that it is his
24 voice, he is speaking to the defendant, because I know
25 that, in her closing argument, she's going to argue all

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BY THE COURT

1 day long that we lost the third interview, if that makes
2 sense; that I wanted to give some credibility that these
3 interviews did take place. I don't know if I'm
4 articulating that well, but.

5 THE COURT: I mean, why can't they just stipulate
6 that they took place? Can you stipulate they took
7 place, in lieu of playing them and showing? Because the
8 problem is, the jury is not going to know. She sat
9 there and is watching a video. I have no idea what
10 anyone said in that. The only person I understood was,
11 you know, was Lieutenant Baird. And apparently, that
12 wasn't even what was translated. So, again, how would I
13 know? And so, all it's proving to the jury is, is that
14 they interviewed him. And I guess that they did another
15 interview of him and lost it. But other than that --

16 MS. CAPPELMANN: Okay. To me, this is kind of two-
17 pronged. On the one hand, I don't think that the jury
18 should be able to hear anything from the polygraph
19 interview at all, any of the video, any of the audio,
20 any of that, for those reasons that your Honor just
21 pointed out. As far as asking Corporal Machado what was
22 said and what went on, as far as I know, he didn't write
23 a report in this -- in this case.

24 THE COURT: He can testify as to what he remembers
25 him having said. It wouldn't be the first time I've

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BY THE COURT

1 heard an officer say something that they didn't write in
2 their report.

3 MS. CAPPELMANN: But I would have absolutely
4 nothing to impeach him on at all, if there -- any kind
5 of impeachment issues that there would be. Because like
6 I said, I think it would be improper to reference the
7 polygraph interview in an attempt to impeach anything he
8 was saying. Well, right, because he's -- he's not --
9 he's not exactly translating word-for-word what's
10 happening. He's not translating verbatim what Mr.
11 Ontivero is saying to law enforcement and vice-versa.

12 So, that actually really kind of gets into more of
13 a problem with *Jackson v. Denno* and, you know, coercion,
14 whether this actually happened correctly. I mean, I
15 understand that Machado can testify as to what he
16 remembers, but he never made any record of what
17 happened. And asking him to remember something that
18 happened two years ago, I think, is problematic.

19 THE COURT: Well, why can't Machado just listen to
20 it himself, because he was there?

21 SOLICITOR KEENEY: He already listened to it.
22 Didn't remember at all. So, as for the coercion aspect,
23 the true essence of *Jackson v. Denno*, whether or not
24 it's voluntary to the truth of the matter asserted is --
25 I didn't hear -- I can't say your last name. I'm sorry.

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BY THE COURT

1 BEVERLY NEIDERHISER: Neiderhiser. That's fine.

2 SOLICITOR KEENEY: -- did Ms. Beverly say anything
3 about any threats. And she just testified that --

4 THE COURT: And that's what I want to hear, is
5 whether or not they promised him anything.

6 SOLICITOR KEENEY: Right.

7 THE COURT: Whether or not they held any -- or
8 reward, threatened him, and said, if you tell us this,
9 we're going to let you go, or we're going to do
10 something other than that. They are allowed to lead him
11 down the wrong path. They are allowed to mislead him.
12 They're allowed to say someone else said X and Y, even
13 if it's not true. They're permitted to do that. I'm
14 more concerned about whether or not they did any other
15 type of undue pressure, threatened him, said we're going
16 to kill you if you don't confess to this, or something
17 along those lines. So, I'm looking for that.

18 And then, I'm looking for what he says in response,
19 if there is any admissions to having done anything. The
20 State seems to think there was, but you say it's been so
21 long. You haven't had an opportunity to review it,
22 correct?

23 MS. NEIDERHISER: Correct.

24 THE COURT: Do the alleged victims in this case
25 speak English?

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BY THE COURT

1 SOLICITOR KEENEY: The victims speak English.

2 THE COURT: And do they expect to testify or not on
3 this case?

4 SOLICITOR KEENEY: Our victims will be testifying.

5 THE COURT: And how old are they now?

6 SOLICITOR KEENEY: They are fifteen and sixteen
7 years old.

8 THE COURT: Okay. Okay: And they speak English?

9 SOLICITOR KEENEY: They speak English. The mother
10 speaks Spanish. Their mother.

11 THE COURT: Okay.

12 SOLICITOR KEENEY: So, she would need an
13 interpreter. But other than that, that's my witness
14 that will need an interpreter.

15 THE COURT: Okay.

16 MS. CAPPELMANN: And your Honor, I didn't quite
17 mean to mix motions, because I don't believe the State
18 has really presented their *Jackson v. Denno* type of
19 testimony yet, I was really just speaking to just
20 precluding the State from having Detective Boland
21 testify as to what was told to her through Corporal
22 Machado because of the problems that there were. You
23 know, whether it's the gist of what he might have said,
24 it there was any artistic license taken, it would be
25 improper for a jury to hear that.

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BY THE COURT

1 SOLICITOR KEENEY: And Sergeant Boland will not be
2 testifying to what the defendant said, because Sergeant
3 Boland couldn't understand it. Only the person that's
4 testifying to what the defendant said would be Officer
5 Machado.

6 THE COURT: I guess the way you cross-examine that,
7 Ms. Cappelmann, is then, he testifies as to what he
8 said, and if you have an expert, Ms. Neiderhiser, who
9 testifies that's not what was said in the video that I
10 listen to it.

11 MS. CAPPELMANN: Well, and that's what I mean.
12 There's no way to do that with the third interview,
13 because --

14 THE COURT: It doesn't exist.

15 MS. CAPPELMANN: Exactly. It doesn't exist. It's
16 not available for me to do that with.

17 SOLICITOR KEENEY: But she gets to argue to the
18 jury, because, like many cases, I know your Honor has
19 seen many drug cases where none of the drug guys even
20 bother to videotape or audiotape anything. And so, all
21 you have is that officer's word of what they said. And
22 during closing arguments, Ms. Cappelmann can go all day
23 long. Like she can say they lost the video, you know;
24 all you have is this officer's word, you know; you could
25 -- they should have saved the video. She gets to go

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BY THE COURT

1 into that. And I mean, frankly, Machado's up there. .
2 She can question him. Like you can't review the video,
3 but there's many cases where we don't have videos ever
4 that existed and -- of defendants saying this, and the
5 officer still gets to testify to what the defendant
6 said, so long as the other *Denno* requirements are met.

7 MS. CAPPELMANN: Well, and, I mean, if there is
8 maybe a jury instruction on spoliation, that would be
9 one thing, you know, but it also almost forces the
10 Defense to put up a case when we don't have to. I mean,
11 we have constitutional protections about having to put
12 up a case at all, as the State has the burden. And to
13 require me to put up someone in order to explain to the
14 jury legal issues --

15 THE COURT: Well, that's why you -- that's why you
16 cross-examine Mr. Machado, and say, you didn't take note
17 one in this, did you; and how many investigations have
18 you done since then. And I mean, you can go into those
19 cross-examinations. This isn't necessary -- you can
20 cross-examine them, and you argue that, certainly, to
21 the jury. I mean, wouldn't it be nice for us to all be
22 able to see it.

23 MS. CAPPELMANN: And I agree with your Honor on
24 that. Absolutely. And that is what I would intend to
25 do. But just -- I still think it's imperative that the

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BY THE COURT

1 interpretations weren't really there, necessarily. And
2 not all -- I just -- I don't know exactly what was
3 interpreted and what was told to Investigator Boland. I
4 don't know if there were promises made or not. I don't
5 know, because I wasn't there.

6 THE COURT: Why can't Beverly, though, listen to
7 the whole thing and tell me whether or not and testify
8 whether or not there were any threats made or any
9 promises made?

10 MS. CAPPELMANN: Well, if your Honor wants to do
11 that, we absolutely can. To my remembrance, I don't
12 recall any. And I'll say that as an officer of the
13 Court. I don't recall there being any threats.

14 THE COURT: I mean, he doesn't look under distress
15 in the video. I haven't seen the whole thing, but it's
16 not like they're, you know, withholding anything from
17 him. I don't know if any of that was, I need to use the
18 restroom, please, or may I have some water, and they say
19 no. I just don't know that based on what I have seen
20 here.

21 The part I'm having a tough time getting past is,
22 they weren't required to video and audiotape him. So,
23 and they can testify to what he said, you know. You're
24 telling me how do I impeach it. Well, how do you
25 impeach it when there is no video or audio? You do the

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BY THE COURT

1 same way like you're saying, you haven't taken note one;
2 how long has this been?

3 MS. CAPPELMANN: Well, and I -- I apologize for
4 having kind of a disjointed argument. My issue is that
5 every single other interview with anybody else is
6 properly recorded and saved, and especially a case like
7 this, where the translator is so important -- or the
8 translation, rather, is so important. And the State
9 lost that, to Mr. Ontivero's detriment. And I can't
10 just make a stipulation to make that detriment better.
11 Certainly, spoliation jury charge would help.

12 THE COURT: And now you're talking about the second
13 interview, so. I mean, we're jumping on two different
14 things, so. So, I'm sorry, third interview that's lost,
15 it's the third.

16 MS. CAPPELMANN: Yes, ma'am.

17 THE COURT: Correct?

18 MS. CAPPELMANN: Yes.

19 THE COURT: Okay. And in that third interview,
20 what is Machado going to testify, that he said the
21 incident happened twice with Younger Sister Is that correct?

22 SOLICITOR KEENEY: Younger Sister

23 THE COURT: Okay.

24 SOLICITOR KEENEY: So, in the polygraph video, the
25 defendant says there were two incidents of Younger Sister First

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BY THE COURT

1 was when he was in the shower, getting out. He had a
2 towel around him, towel around his head. ^{Younger} came in
3 there and grabbed his penis. He told her to get out;
4 didn't say anything to the parents.

5 He doesn't go into -- my recollection, he doesn't
6 go into detail during the polygraph interview about the
7 second incident. He goes into detail when they take him
8 across the street. And the second, he reiterates the
9 first incident. And the second incident is, he's in bed
10 watching T.V., halfway falling asleep with his boxers
11 on, tee shirt on. ^{Younger Sister} who is six at the time, comes
12 into the room, grabs his penis, through, like, I guess
13 the hole in his boxers, and puts his penis in her mouth.
14 And he couldn't -- he eventually got her off. It's my
15 understanding that that will be the testimony. That's
16 the testimony that Machado recollects. That's what's in
17 Angie Boland's report.

18 Ms. Cappelmann knows exactly what law enforcement
19 is alleging that he said during that interview. And
20 it's more to the State's detriment that we don't have a
21 video, because that's our best evidence. We've got the
22 video of him denying everything and that's wonderful,
23 but the fact that we don't have the actual admission
24 video, that's worse for us than it's worse for her, and
25 that's what she gets to argue to the jury.

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BY THE COURT

1 THE COURT: Yes.

2 MS. CAPPELMANN: In response, part of what the
3 State is alleging that my client did, I didn't know
4 about until I read this motion on Friday. For instance,
5 the fact that he did a re-enactment of what happened.
6 That wasn't anywhere in the police reports at all. I
7 don't know how much the State is going to get into that,
8 or if they're going to re-enact, supposedly, whatever he
9 re-enacted. It's just -- it's new information that I'm
10 assuming came from Machado, but that I'd never heard
11 before.

12 All right. And because this is kind of talking
13 about the different interviews, and it's really two
14 different issues, so, I'm not trying to confuse the two.
15 There was a good point brought up that, in the second
16 interview, he says he didn't do it over and over and
17 over again. And that's true. But I think, going back
18 to the issue of, while allowing the State to play just,
19 I guess, Corporal Machado telling Brian Baird what he
20 heard, the jury would not be allowed to hear all of the
21 other times where he said, I didn't do it, I didn't do
22 it. And that's kind of getting into the, sort of,
23 problems, evidentiary problems, that *Brewer* was designed
24 to alleviate. And I'm kind of switching back and forth.
25 We're sort of talking about both of these issues

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BY THE COURT

1 simultaneously.

2 THE COURT: Okay. I think we do need to discuss
3 this case, the two sets of issues. Let me tell you what
4 I think on this. I think you both need to do some legal
5 research. This can't be the first time this came up.
6 I'm just trying to back up. I know the police officer
7 is allowed to interrogate and interpret. We all know
8 that is permissible for him to do. The question becomes
9 whether or not we allow the second interview into
10 evidence in its totality.

11 And again, I guess the next question is, is that
12 the best evidence, or can we just have Machado testify
13 as to what he said in the second interview and the third
14 interview? Because obviously, we don't have the
15 videotape of the third interview. So, that's what's
16 going to have to happen, provided I find that it is,
17 under *Jackson v. Denno*, voluntarily made.

18 So, I think, backing up, what's more difficult for
19 me is the second interview with what is it going to do
20 to help the jury, and I think that determination has to
21 be made. And I guess you're going to decide, based on
22 whether or not I allow that interview in, or whether or
23 not -- or whether I just allow Machado to testify to
24 what occurred. You know what's on there. You certainly
25 can ask, did he, in fact, say a number of times, this.

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BY THE COURT

1 And I guess that's when you put, you know, Mrs.
2 Neiderhiser up here and say, did he not say, you know,
3 eight times in this video, I didn't do it, I didn't do
4 it, I didn't do it.

5 I'm just worried about confusing the jury, because
6 we're having a very difficult time with the language
7 barrier here and knowing exactly what was said. I am
8 inclined to just have Machado testify as to those two
9 interviews. That's what I'm inclined to do, because, to
10 me, that seems the cleanest and the most fair across the
11 board. Either that, or we're going to get into a
12 swearing match with, you know, a translation/
13 interpreter.

14 I mean, I don't know. You all haven't given me any
15 case law on this at all, and I haven't done any research
16 on it myself. So, if I need to do that overnight, I'm
17 happy to. But I would agree that no one is being clear
18 as to what they're arguing. I mean, I think you have a
19 problem with not having another interview, and clearly
20 you're going to have to explain it, and you're going to
21 point it out. I'm just having a hard time with what
22 good playing that video is going to do for a jury.
23 Because, again, you would need an additional interpreter
24 for the second video. And what you're alleging is that
25 Machado is improperly interpreting, which, I think he's

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BY THE COURT

1 doing a high rate of interpreting/interrogation. That's
2 really what's going on here. He isn't interpreting
3 directly. He's interrogating, because he's a police
4 officer. He's not an interpreter. So, I guess that's
5 what the problem is. He's got this dual role, and I'm
6 not quite so sure where that fits, but I would like to
7 do some of my own research. I know he's permitted under
8 the law to be the police officer and be interrogating
9 him in Spanish. I certainly know that. So, I'm just
10 trying to figure out exactly how the Court deals with
11 it. And I'll invite you to both, if you go ahead back
12 and do some research, if you will just email, and carbon
13 both Paige and myself at our personal or our work email
14 addresses, I'll take a look at what you've got, and
15 we'll do some of our own research.

16 Again, it's been falling back on the issues of, you
17 know, I hate to say, I'm almost looking at you, Ms.
18 Neiderhiser, to tell me whether or not he's being, you
19 know, coerced in some way, promised anything. It's
20 difficult. So, it would have been better to be able to
21 -- if we had an actual transcript of it and I could read
22 it, so.

23 So, I guess my answer to you all on that issue is,
24 I don't know yet, because we need to do some research on
25 the case law. I think next time the best course

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BY THE COURT

1 probably would be to actually do a transcript of it.

2 MS. CAPPELMANN: Yes. This was my first case
3 dealing with this type of issue, and I do agree with
4 your Honor that a transcript next time would be the best
5 way to go.

6 As far as the *Jackson v. Denno* issue, though, are
7 we also kind of putting that one on hold? Because there
8 were a few other issues I wanted to argue as to those
9 types of issues.

10 SOLICITOR KEENEY: My witnesses are here. I'm
11 ready to call them.

12 THE COURT: Okay. Well, let's go ahead and call
13 them.

14 SOLICITOR KEENEY: The State calls Lieutenant
15 Robert Arbelo.

16 THE COURT: I don't know if they need you or not.
17 I am wondering. You know, why don't we go ahead and
18 take just a two-minute break in between, if that's okay?
19 She was just looking at me saying, do I need to stay
20 here, or do I need to go? And I was saying, I have no
21 idea. So, could we just go ahead, and we'll just take a
22 few-minutes' break and be right back, and we'll keep
23 going? Okay? Is that okay? Okay.

24 OFF THE RECORD 3:29 P.M.

25 BACK ON THE RECORD 3:38 P.M.

11-14-16 STATE V ONTIVERO

ARBELO - DIRECT - ARBELO

1 BAILIFF: All rise. Please come to order.

2 THE COURT: Thank you. Please be seated. Okay.

3 SOLICITOR KEENEY: Ms. Cappelmann indicated in an
4 email last week that she was going to make a motion to
5 sequester, which is standard. So, I would just ask that
6 my case officer, Angie Boland, be present throughout the
7 trial.

8 THE COURT: Okay. That's fine. Okay. Who are you
9 calling first?

10 SOLICITOR KEENEY: State calls Robert Arbelo.

11 THE COURT: Okay. Is someone getting him? Come on
12 up, sir, and be sworn.

13 MADAM CLERK: Just raise your right hand; left hand
14 on the Bible. Do you solemnly swear or affirm to
15 truthfully answer all questions asked of you by this
16 court, so help you God?

17 LIEUTENANT ROBERT ARBELO: I do.

18 MADAM CLERK: Thank you.

19 SOLICITOR KEENEY: May it please the Court?

20 LIEUTENANT ROBERT ARBELO

21 DIRECT EXAMINATION

22 BY SOLICITOR KEENEY:

23 Q Officer, where do you work?

24 A At the Beaufort County Sheriff's Office.

25 Q How long have you worked there?

- 1 A Twenty-seven years.
- 2 Q What's your position?
- 3 A I'm a lieutenant in charge of northern enforcement.
- 4 Q What was your position back in January of 2014?
- 5 A I was a master sergeant with the Sheriff's Office.
- 6 Q On February 6, 2014, did you have an encounter with
- 7 the defendant?
- 8 A I did.
- 9 Q Where did that encounter take place?
- 10 A At the Investigations Office of the Sheriff's
- 11 Department.
- 12 Q What was the purpose of this encounter?
- 13 A To assist in investigations and translating.
- 14 Q Okay. And you speak Spanish?
- 15 A I do.
- 16 Q Fluent Spanish?
- 17 A I do.
- 18 Q Okay. Who was present during this -- was this an
- 19 interview?
- 20 A It was their interview, yes.
- 21 Q When you say *they*, was it --
- 22 A The investigators were interviewing the defendant.
- 23 Q Who was present?
- 24 A Sergeant Boland. And at the time it was Sergeant
- 25 Kelleher; now it's Vester. Kelleher, John; Angie

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ARBELO - DIRECT - ARBELO

1 Boland; and Sergeant John Kelleher.

2 Q Where did this interview take place?

3 A At their office on Duke Street.

4 Q Okay. Was this interview audio- and video-
5 recorded?

6 A It was.

7 Q And the interview was in Spanish, correct?

8 A It was.

9 Q Because the defendant speaks Spanish.

10 A Correct.

11 Q Did you --

12 SOLICITOR KEENEY: May I approach the witness?

13 THE COURT: You may.

14 BY SOLICITOR KEENEY:

15 Q I'm showing you what's been marked as Court's
16 Exhibit 3. Do you recognize this document?

17 A Yes, ma'am.

18 Q What is that document, and how do you recognize it?

19 A I recognize it, because it has my signature. I
20 also recognize it because it is the Sheriff's Office
21 Miranda advisement form.

22 Q Is that form dated?

23 A It is dated.

24 Q What is the date on it?

25 A The date is 02/06/14.

1 Q Did the defendant -- did you present that form to
2 the defendant?

3 A I did.

4 Q How did you present it? Did you read it out loud?

5 A I read it and asked him if he understood it, and
6 then, instructed him that, if he understood it, to put
7 his initials by each statement of rights.

8 SOLICITOR KEENEY: And your Honor, I know we all
9 know the *Miranda* rights, but since the *Miranda* form in
10 Spanish, would you like for him to go through each
11 number?

12 THE COURT: No. I think it's fine. Is it the
13 *Miranda* form, typically?

14 A It is exactly that.

15 THE COURT: Okay. Thank you.

16 BY MS. KEENEY:

17 Q So, the defendant agreed to waive those rights,
18 correct?

19 A Yes, ma'am.

20 Q Did he ask for an attorney?

21 A No, ma'am.

22 Q Did he ever indicate to you that he wished to stop
23 this interview?

24 A No, ma'am.

25 Q When speaking with him, did you -- do you know if

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ARBELO - DIRECT - ARBELO

1 the defendant speaks any English?

2 A I believe he understands English, some English.
3 Maybe a few words, because he's like, you know, does
4 some contracting or something.

5 Q Okay. Thank you. During this interview, did you
6 or any of the other investigators in the room threaten
7 the defendant in any way?

8 A No, ma'am.

9 Q Did you coerce him into making a statement?

10 A No, ma'am.

11 Q Did you or anyone else in the room make any
12 promises to the defendant?

13 A No, ma'am.

14 Q Did the defendant appear to be under the influence
15 of any alcohol or drugs?

16 A Not that I'm aware -- not that I could tell.

17 Q Did the defendant appear to have any physical or
18 mental disabilities to the extent they would impair his
19 understanding of what was going on?

20 A Not that I could tell.

21 Q If the defendant needed to go to the bathroom,
22 would you have let him go to the bathroom?

23 A Absolutely.

24 Q If the defendant had needed some water, would he
25 have been given water?

1 A Yes, ma'am.

2 Q If the defendant wanted to use the telephone, would
3 he have access to a telephone?

4 A Yes, ma'am.

5 SOLICITOR KEENEY: May I approach the witness?

6 BY MS. KEENEY:

7 Q I'm showing you what's been marked as Court's
8 Exhibit 2. Do you recognize this?

9 A Yes, ma'am.

10 Q How do you recognize it?

11 A I -- I see that it is -- has a case number on it,
12 and my initials are on it. This is a copy of the video.

13 Q And have you reviewed this video?

14 A I have.

15 Q Is it a fair and accurate copy of the interview
16 that took place on February 6 of 2014?

17 A Yes, ma'am, it is.

18 SOLICITOR KEENEY: Your Honor, I know I submitted
19 this to you last week. Would you like me to still play
20 it for the Court? It's about an hour long.

21 THE COURT: Do you need her to, Ms. Cappelmann?

22 MS. CAPPELMANN: No.

23 THE COURT: Okay. You've seen it, correct?

24 MS. CAPPELMANN: Yes, ma'am.

25 THE COURT: Okay.

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ARBELO - CROSS - CAPPELMANN

1 SOLICITOR KEENEY: No further questions for this
2 witness.

3 THE COURT: Ms. Cappelmann?

4 LIEUTENANT ROBERT ARBELO

5 CROSS-EXAMINATION

6 BY MS. CAPPELMANN:

7 Q At this interview, do you recall whether Mr.
8 Ontivero was handcuffed or not?

9 A I do not recall.

10 Q To your knowledge, was he under arrest at that
11 point?

12 A I'm not sure.

13 Q Was he, assuming that he was not handcuffed, to
14 your knowledge, was he free to leave?

15 A I believe he was.

16 Q And during that interview, did he make any
17 statements that would in any way incriminate him?

18 A No, he did not.

19 MS. CAPPELMANN: I have no further questions.

20 THE COURT: Anything further?

21 SOLICITOR KEENEY: No, your Honor.

22 THE COURT: When's the last time you saw the video?

23 A Actually, I saw the video a few weeks ago, ma'am.

24 And then, I just saw the video a few moments -- well,

25 maybe an hour ago, just to make sure that it was the

1 correct one.

2 THE COURT: And you couldn't tell whether or not he
3 was handcuffed during the video?

4 A I really wasn't paying attention to whether he was
5 handcuffed or not, because I was listening to make sure
6 it was what I was hearing. My voice, his voice, and --
7 because I was hearing in bits and pieces to hear what he
8 was saying.

9 THE COURT: Okay.

10 SOLICITOR KEENEY: State calls --

11 THE COURT: You may step down, sir.

12 A Thank you, ma'am.

13 SOLICITOR KEENEY: Would it be easier, just since
14 there's so many interviews, just to address one
15 interview at a time with the officers?

16 THE COURT: Is that fine? Was he in the second one
17 as well?

18 SOLICITOR KEENEY: He is done.

19 THE COURT: Okay.

20 SOLICITOR KEENEY: He has no more involvement.

21 THE COURT: Okay. So, he can step down, then,
22 correct?

23 MS. CAPPELMANN: Yes. We have no cross.

24 THE COURT: Okay. You can step down, then.

25 A Thank you, ma'am.

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BOLAND - DIRECT - KEENEY

1 SOLICITOR KEENEY: State calls Sergeant Angie
2 Boland.

3 MADAM CLERK: Place your left hand on the *Bible*,
4 and raise your right hand. Do you solemnly swear or
5 affirm to truthfully answer all questions asked of you
6 by this court, so help you God?

7 SERGEANT ANGIE BOLAND CRUMPTON: I do.

8 MADAM CLERK: Thank you.

9 SERGEANT ANGIE BOLAND CRUMPTON

10 DIRECT EXAMINATION

11 BY SOLICITOR KEENEY:

12 Q Officer, where do you work?

13 A I work for the Beaufort County Sheriff's Office in

14 Q How long --

15 A Go ahead.

16 Q How long have you been there?

17 A With Beaufort County, I have been there for about
18 -- since 2009, August 2009.

19 Q What's your position?

20 A I'm a sergeant within the Criminal Investigations
21 Section, assigned to Northern Beaufort County.

22 Q Were you in that same position in January of 2014?

23 A I was.

24 Q Did you interview the defendant on February 6 of
25 2014?

1 A Yes.

2 Q Who was present during that interview?

3 A It would have been myself, Investigator Kelleher,
4 and Lieutenant Arbelo, as well as the defendant.

5 Q Was the defendant under arrest at that time?

6 A Yes, he was under arrest.

7 Q Where did this investigation -- or this interview
8 take place?

9 A It took place at the Northern Investigations
10 Section Office.

11 Q And this first interview was audio and video
12 recorded?

13 A It was.

14 Q And the interview was in Spanish?

15 A Yes.

16 Q So, you really couldn't understand what the
17 defendant was saying, correct?

18 A That is correct.

19 Q You said that Arbelo was there to translate.

20 A That is correct.

21 Q During the interview, did you threaten the
22 defendant in any way?

23 A No.

24 Q Did you coerce him in any way?

25 A No.

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BOLAND - DIRECT - KEENEY

1 Q Did you make him any promises in exchange for a
2 statement?

3 A No.

4 Q Did he appear to be under the influence of any
5 alcohol or drugs?

6 A Not that I could tell.

7 Q Did he appear to have any physical or mental
8 disability?

9 A No.

10 Q If he needed to go to the bathroom, would you have
11 let him go to the bathroom?

12 A Yew.

13 Q If he needed water, would you have given him water?

14 A Yes.

15 Q If he needed to use the telephone, would he be
16 allowed to have access to the telephone?

17 A Yes.

18 Q After the interview, where did the defendant go?

19 A After the interview, he was transported to the
20 Beaufort County Detention Center.

21 Q At the conclusion of the interview, did you make
22 reference to a polygraph exam?

23 A Yes. Through the translation, I made the offer of
24 a polygraph exam, and the defendant agreed that he would
25 be interested in taking that. Due to the scheduling

1 requirements for a polygraph, I couldn't just take him
2 over to have one done. So, I told him, through
3 translation, that we would get that settled, and get it
4 scheduled.

5 Q And was the polygraph, in fact, scheduled?

6 A It was.

7 Q Do you know much longer? Does February 11, 2014
8 sound correct?

9 A That is correct.

10 Q Okay. And how did your contact initiate at that
11 point, on February 11, 2014, with the defendant? Where
12 was the defendant?

13 A The defendant was over at the Beaufort County
14 Detention Center. Myself and Corporal Machado went to
15 the Detention Center. And then, through, -- again, all
16 of my communication with the defendant was through
17 translation. But through translation, it was Corporal
18 Machado confirmed that he was still interested, that the
19 defendant was still interested in taking the polygraph,
20 still wanted the polygraph test, and which he indicated
21 yes. At that point, we then took him from the Detention
22 Center over to the main Sheriff's Office to Lieutenant
23 Baird's office, where the polygraph was conducted.

24 Q Did you stay in the polygraph room when it was
25 conducted?

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BOLAND - DIRECT - KEENEY

1 A No, I did not.

2 Q Any time between -- any time on February 11, 2014
3 did you threaten the defendant in any way?

4 A No.

5 Q Did you coerce him in any way?

6 A No.

7 Q Did you make him any promises?

8 A No.

9 Q Did he appear to be under the influence of alcohol?

10 A No.

11 Q Drugs?

12 A No.

13 Q After the polygraph exam was concluded, what
14 happened next?

15 A After the polygraph exam concluded, I was advised
16 by Lieutenant Baird that there seemed to be deception in
17 some of the questions that were asked. And I was also
18 advised that he, the defendant, had indicated that he
19 had not been truthful with us during the first
20 interview. So, we brought -- Corporal Machado and I
21 brought the defendant over to Northern Investigations
22 Section Office. And at this point, Investigator
23 Kelleher came in to sit with me during the interview.
24 And it would have been the defendant, Investigator
25 Kelleher, myself, and Corporal Machado present.

1 Q Was this interview, this third interview we'll call
2 it, was it audio and video recorded?

3 A It was audio and video recorded.

4 Q What happened to it?

5 A At that time, in January of 2014, our procedures
6 were different than they are now for obtaining that, and
7 I failed to follow through to assure that that video
8 was, in fact, downloaded. And by the time it was
9 discovered, which was earlier this year, in 2016, that
10 that video had not been downloaded, it was too late, and
11 it was already lost on the system.

12 Q So, when you say *downloaded*, is it on a server?

13 A Correct.

14 Q And back in January of 2014, do you recall how many
15 days you had to request that it be saved?

16 A I do not. I do know that it was a -- it was a
17 different procedure than we do now. We would send an
18 email requesting, and we would get it a week or so
19 later. Where now, it's more streamlined and tracked.
20 So, we -- we do know that we don't have it.

21 Q So, you simply -- you just made a mistake?

22 A I did.

23 Q And there's no way to recover this video, correct?

24 A From what I understand, there's not. I've tried
25 everything I could do.

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BOLAND CROSS CAPPELMANN

1 SOLICITOR KEENEY: No further questions for this
2 witness.

3 MS. CAPPELMANN: Thank you, your Honor. May it
4 please the Court?

5 THE COURT: Yes.

6 SERGEANT ANGIE BOLAND CRUMPTON

7 CROSS-EXAMINATION

8 BY MS. CAPPELMANN:

9 Q All right. So, go back to the February 6 -- or I'm
10 sorry -- the February 11 interview, but before he was
11 transferred -- or Mr. Ontivero was transferred to the
12 polygraph, you say that you and Corporal Machado, or
13 Machado, met with Mr. Ontivero at the Detention Center?

14 A That is correct.

15 Q Okay. How long did you speak to him at that point?

16 A I didn't speak with him, per se. Corporal Machado
17 just inquired whether or not he was still -- wanted the
18 polygraph, if he was still interested in taking the
19 polygraph. He indicated yes. Explained then that we'd
20 be going then to do so.

21 Q Okay. So, the only purposes of that interaction
22 was just whether he wanted to take the polygraph or not?

23 A That is correct.

24 Q Okay.

25 A There'd be no point in taking him out of the

- 1 Detention Center if he did not wish to participate.
- 2 Q And he didn't make any other statements.
- 3 A That's correct.
- 4 Q Of anything else. Okay. So, obviously, at that
- 5 point, he was arrested.
- 6 A Correct.
- 7 Q So, he was not free to leave?
- 8 A That's correct.
- 9 Q Similarly, with the post-polygraph interview -- and
- 10 I didn't write that down. Where did you say that was?
- 11 Was that at the jail as well?
- 12 A The post-polygraph?
- 13 Q Yes, ma'am.
- 14 A No, that was at the Sheriff's Office, in Lieutenant
- 15 Baird's polygraph room.
- 16 Q Okay. And did Lieutenant Baird tell you what had
- 17 been discussed during the polygraph interview at that
- 18 point?
- 19 A He told me that there were specific questions that
- 20 I indicated in my report, so I would have to refer to
- 21 the report. But indicated that there was deception as
- 22 far as a couple other questions that were asked.
- 23 Q Okay. He didn't tell you any specific statements
- 24 that Mr. Ontivero made?
- 25 A At that time, about the polygraph questions?

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BOLAND CROSS CAPPELMANN

1 Q Yes. Or the interview that he had with Mr.
2 Ontivero.

3 A No, he did indicate to me -- and this was after all
4 of it was done and met with Lieutenant Baird, and he did
5 indicate that there was deception on specific questions,
6 and that Mr. Ontivero had said that he had not been
7 truthful with us before.

8 Q Okay. So then, you had that interview at the
9 Sheriff's Office with Machado, what, within the hour of
10 that being over?

11 A Are you discussing the interview where we took him
12 to the investigations office, or?

13 Q Wherever you interviewed him after the polygraph.

14 A Okay. The interview that I conducted was after the
15 polygraph and the polygraph interview. We immediately,
16 upon that conclusion, took him to the investigations
17 office, which is across the street, into our office.
18 And that's when that interview was conducted.

19 Q Okay. So, what -- describe to me the setting of
20 where he was interviewed. Was it -- and you're familiar
21 with the interview rooms at the jail. Was it in a room
22 about that big or bigger?

23 A No. It is in -- the Northern Investigations
24 Section is in a small, essentially, a brick house. The
25 interview room is in the kitchen area, so it is maybe --

1 I'm no good with giving you dimensions, but it's a
2 typical kitchen area of a small house. We sat around
3 the table, and that's where we held the interview.

4 Q Was he handcuffed?

5 A Yes, he would have been handcuffed in front.

6 Q And did you or Corporal Machado have firearms with
7 you?

8 A Yes.

9 Q Were they visible?

10 A Yes. We were seated, but I'm sure that the --

11 Q Well, I mean, with a D.F. belt.

12 A Yes. Yes.

13 Q And he would not have been free to necessarily
14 leave that room, right?

15 A That is correct. At that --

16 Q He wouldn't have been able to stand up and walk
17 out.

18 A Correct. At that point, he was already under
19 arrest and in custody.

20 Q Did you tell him that he had to tell you what he
21 told Lieutenant Baird?

22 A Did I tell him he had to tell me?

23 Q Right. When, you know -- well, let me ask you
24 this. When you explained to him why you were
25 interviewing him again, what did you say?

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BOLAND CROSS CAPPELMANN

1 A Again, I used the translator to communicate,
2 because I do not speak or understand English -- or
3 Spanish, with the exception of about five words.

4 Q Okay. What did you ask the translator to say?
5 What did you ask Corporal Machado to tell him?

6 A Initially or?

7 Q Yes.

8 A Okay.

9 Q Well, when you started that what I'm calling the
10 third interview.

11 A Okay. During the third interview, we had -- and
12 again, I don't have my notes in front of me, but we had
13 the discussion about the polygraph, and the fact that he
14 had failed questions or indicated deception. And then,
15 he had stated that there had been -- he had not been
16 truthful. There had been two incidences involving --
17 from that point, we went on to discuss what those
18 instances were. Mr. Ontivero relayed a -- his point of
19 view, or his statement involving a shower incident,
20 where he got out of a shower, had a towel around his
21 waist, and was drying his hair. The six-year-old
22 reached up under the towel and grabbed hold of his
23 penis. He stated he told her to leave, and he had
24 indicated that he had never told anybody, her parents or
25 anybody in the family.

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BOLAND CROSS CAPPELMANN

1 We discussed the second incident that occurred. He
2 indicated that he was laying in his bedroom on the bed.
3 He was in boxer shorts. He was watching T.V. And
4 again, the six-year-old crawled up on the bed, and was
5 able to take his penis out of his boxers, and put his
6 penis into her mouth before he could stop her. He again
7 stated he never told -- he never told the family about
8 that. And when asked why, he said he was embarrassed.

9 Mr. Ontivero indicated that this occurred on
10 Windsor Avenue, in Beaufort County. And he denied any
11 interaction with the sister, the other little girl.

12 Q All right.

13 MS. CAPPELMANN: Beg the Court's indulgence.

14 THE COURT: Yes, ma'am.

15 BY MS. CAPPELMANN:

16 Q Do you know how long Mr. Ontivero had been
17 incarcerated as of the 11th?

18 A He was arrested on the 6th. So, it had been five
19 days.

20 Q Were you present at his bond hearing?

21 A You know, I don't -- I don't recall if I was or
22 not.

23 Q And it might be -- I guess, actually, it may be his
24 arraignment, when, presumably, Judge Fitzgibbons would
25 have told him that he was --

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BOLAND CROSS CAPPELMANN

1 INTERPRETER AYALA: Excuse me, your Honor. Can she
2 speak up?

3 MS. CAPPELMAN: I'm sorry.

4 THE COURT: Can you please speak up? Thank you.

5 MS. CAPPELMANN: I apologize.

6 BY MS. CAPPELMANN:

7 Q I guess, to use the technical term, were you
8 present at his arraignment?

9 A For his bond hearing the next -- the day after his
10 arrest?

11 Q Right.

12 A Again, I -- I -- I'm not a hundred percent. I
13 couldn't tell you.

14 Q But as far as you know, that arraignment did happen
15 on the 7th?

16 A As far as I'm aware. I could go back and find the
17 documentation, but I don't know a hundred percent.

18 MS. CAPPELMAN: Thank you.

19 SOLICITOR KEENEY: No further questions for this
20 witness.

21 THE COURT: Okay. Anything further?

22 MS. CAPPELMANN: No, ma'am.

23 THE COURT: You can step down.

24 THE COURT: Is she done? Are we okay?

25 SOLICITOR KEENEY: She's done for the day, yes.

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KELLEHER - DIRECT - KEENEY

1 THE COURT: Okay. You may step down. Thank you.

2 SOLICITOR KEENEY: State calls John Kelleher.

3 MADAM CLERK: Hello.

4 MR. KELLEHER: Hello.

5 MADAM CLERK: If you would just stand right here
6 for me. Raise your right hand. Place your left on the
7 Bible. Do you solemnly swear or affirm to truthfully
8 answer all questions asked of you by this court, so help
9 you God?

10 MR. KELLEHER: Yes, I do.

11 MADAM CLERK: Thank you. You can have a seat right
12 here. It's a little hard to move.

13 MR. KELLEHER: Yeah.

14 SOLICITOR KEENEY: May it please the Court?

15 JOHN KELLEHER

16 DIRECT EXAMINATION

17 BY SOLICITOR KEENEY:

18 Q Where do you currently work?

19 A Currently, I work at Hope Haven of the Lowcountry.

20 Q Where did you work back in 2013?

21 A With Beaufort County Sheriff's Office as an
22 investigator.

23 Q On February 6 of 2014, were you present during the
24 defendant's first interview?

25 A Yes.

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KELLEHER - DIRECT - KEENEY

1 Q Who else was present?

2 A It was, I believe -- well, it was Investigator
3 Boland and Lieutenant Ar -- Ar -- Arbelo. Whew.

4 Q Where did this interview take place?

5 A At the investigation office.

6 Q And what street is that on?

7 A It's on Duke Street, 1935 Duke Street.

8 Q And that's the room where you interviewed. That's
9 the kitchen, correct?

10 A It was known as the kitchen, yes. It was a
11 kitchen.

12 Q Was this interview audio and video recorded?

13 A Yes.

14 Q And the interview was in Spanish, correct?

15 A It was translated, yes.

16 Q And Arbelo was the translator.

17 A Correct.

18 Q When you were present in the room for that
19 interview, did you yourself or anyone else in the room
20 threaten the defendant in any way?

21 A No.

22 Q Did you or anyone else promise the defendant
23 anything?

24 A No.

25 Q Did you or anyone else coerce the defendant into

1 making a statement?

2 A No.

3 Q Did the defendant appear to be under the influence
4 of any influence of alcohol or drugs?

5 A Not to my knowledge, no.

6 Q Did the defendant appear to have any physical or
7 mental disabilities?

8 A Not to my knowledge, no.

9 Q If the defendant wanted to use the bathroom, would
10 he have been allowed to use the bathroom?

11 A Yes.

12 Q If he needed water, would he be given some water?

13 A Sure, yes.

14 Q If he needed to use the telephone, could he have
15 used the telephone?

16 A Sure.

17 Q The defendant was under arrest at this point,
18 correct?

19 A Correct.

20 Q After this interview took place, do you know where
21 the defendant went?

22 A After the interview, he was -- I believe he would
23 have been taken to the County Detention Center.

24 Q Okay. Moving along to February 11 of 2014, were
25 you present during what we're calling the third

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KELLEHER - DIRECT - KEENEY

1 interview, the post-polygraph interview?

2 A Yes, I was.

3 Q Okay. Where did that interview take place?

4 A At the same location as the first.

5 Q Okay. Same kitchen room?

6 A Yes.

7 Q Who was present during that interview?

8 A Myself, Investigator Boland, and it would have been
9 Deputy Machado.

10 Q And Machado's presence was there was to translate,
11 correct?

12 A Correct.

13 Q During this interview, did you or anyone else
14 threaten the defendant in any way?

15 A No.

16 Q Did you or anyone else coerce the defendant in any
17 way?

18 A No, ma'am.

19 Q Did you or anyone else make the defendant any
20 promises?

21 A No.

22 Q Did the defendant appear to be under the influence
23 of any alcohol or drugs?

24 A Not to my knowledge.

25 Q Did he appear to have any physical or mental

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KELLEHER - CROSS - CAPPELMANN

1 disabilities?

2 A Not that I -- not to my knowledge, no.

3 Q If he needed to go to the bathroom, would you have
4 allowed that?

5 A Yes, ma'am.

6 Q If he needed water, would he have been given water?

7 A Yes, he would.

8 Q If he had needed to use the telephone, would he
9 have been able to use the telephone?

10 A Yes.

11 SOLICITOR KEENEY: No further questions for you.

12 THE COURT: Okay.

13 JOHN KELLEHER

14 CROSS-EXAMINATION

15 BY MS. CAPPELMANN:

16 Q Okay. Just because it kind of struck me, you
17 said he would have been able to use the telephone?

18 A Yes.

19 Q Do you have a secure recorded telephone, similar to
20 what they do at the jail, at the Detention Center?

21 A No, ma'am.

22 Q So, he could have made an unrecorded telephone call
23 to anyone, anybody. Is that right?

24 A If he did, yes.

25 Q Well, I'm saying, you would have allowed him to.

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KELLEHER - CROSS - CAPPELMANN

1 A If -- supervisor permission, yes, for a telephone
2 call, but he would have been allowed, if the
3 circumstances were ideal, if you will.

4 Q What do you mean by that? What do you mean by
5 that? *if the circumstances were ideal.*

6 A We don't normally let someone who's been arrested
7 start making phone calls.

8 Q Right. That's what I mean. So, would he have been
9 able to make a phone call?

10 A It depends on the circumstances of that day if --
11 why.

12 Q As part of your investigation techniques, do you
13 ever kind of raise your voice a little bit and get loud?

14 A Probably.

15 Q And obviously, since I don't have the video, who
16 was doing most of the questioning? And I understand
17 that Corporal Machado was there doing the translating,
18 but was it mainly you asking questions, or Investigator
19 Boland, or both of you?

20 A You mean on the third interview?

21 Q Yes, sir.

22 A To my knowledge, it was mostly Investigator Boland
23 asking most of the questions, but I remember a few that
24 I asked.

25 Q Okay. And what did you ask him?

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KELLEHER - RE-DIRECT - KEENEY

1 A Probably more of an investigative line of if he,
2 you know, wants to tell us what happened, what did
3 happen, stuff like that.

4 Q All right. So, as part of that investigative line,
5 did you ever say things like, you know, I can talk to
6 the judge, or anything like that?

7 A No.

8 Q Did you tell him that it would help him down the
9 line if he were to tell you more of what happened?

10 A I'm not sure what you mean by *help him*?

11 Q I mean not just in the interview, but say, listen,
12 it's going to help you much more down the line if you go
13 ahead and tell me what your -- what happened.

14 A I might have said he might feel better if he was
15 honest.

16 MS. CAPPELMANN: Beg the Court's indulgence.

17 I have no further questions.

18 THE COURT: Okay. Ms. Keeney.

19 JOHN KELLEHER

20 RE-DIRECT EXAMINATION

21 BY SOLICITOR KEENEY:

22 Q Just one follow-up. Investigator Kelleher, I
23 realize that you don't speak Spanish, but to your
24 knowledge, was the defendant denied access to the
25 telephone?

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KELLEHER - RE-DIRECT - KEENEY

1 A No, ma'am.

2 MS. KEENEY: Thank you.

3 THE COURT: You may step down, sir.

4 JOHN KELLEHER: Thank you.

5 SOLICITOR KEENEY: State calls Officer Sergeant
6 Angel Machado.

7 And can Investigator Kelleher be excused?

8 THE COURT: Any objection?

9 MS. CAPPELMANN: No, I don't have any objection.

10 THE COURT: You're excused. You're excused, sir.

11 SOLICITOR KEENEY: And quickly, your Honor, would
12 you also like us to play this polygraph video? I also
13 submitted it last week. Do you need it played?

14 MS. CAPPELMANN: I wasn't planning on it.

15 THE COURT: But it's the hour-long one, roughly?

16 SOLICITOR KEENEY: This is, yeah, a little over an
17 hour.

18 THE COURT: A little over.

19 SOLICITOR KEENEY: It's in three different clips.

20 MS. CAPPELMANN: I think it's more like two hours.

21 SOLICITOR KEENEY: It's three different clips.

22 THE COURT: No. I'm fine. Okay.

23 MADAM CLERK: Stand right here for me. If you
24 would, left hand on the Bible, raise your right hand.

25 Do you solemnly swear or affirm to truthfully answer all

1 questions asked of you by this court, so help you God?

2 INVESTIGATOR ANGEL MACHADO: Yes, ma'am, I do.

3 MADAM CLERK: Thank you. Have a seat right here.

4 The chair won't move.

5 SOLICITOR KEENEY: May it please the Court?

6 THE COURT: Yes.

7 INVESTIGATOR ANGEL MACHADO

8 DIRECT EXAMINATION

9 BY SOLICITOR KEENEY:

10 Q Officer Machado, where do you work?

11 A I work for the Beaufort County Sheriff's Office.

12 Q What's your position?

13 A I'm currently an investigator. I work alcohol
14 enforcement for the County.

15 Q What was your position in January or February of
16 2014?

17 A I was still working investigations, considered an
18 investigator.

19 Q On February 11th, February 11th of 2014, did you
20 participate in a polygraph involving the defendant?

21 A Yes, ma'am.

22 Q Where did that polygraph take place?

23 A At the LEC, the Law Enforcement Center in Beaufort.

24 Q And who was present during this polygraph?

25 A It was myself, the defendant, and Lieutenant Brian

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MACHADO - DIRECT - KEENEY

1 Baird.

2 COURT REPORTER: Lieutenant who? Brian Baird?

3 THE COURT: Brian Baird.

4 A Brian Baird, yes, ma'am.

5 Q Before -- how did the defendant get to the
6 polygraph?

7 A He was picked up from the Detention Center.

8 Q By who?

9 A By myself and the investigator, Sergeant Boland.

10 Q Did you ask him any questions before, like, about
11 the polygraph, or do you want to do a polygraph? Do you
12 remember that?

13 A No.

14 Q You don't remember. Okay.

15 A No, ma'am.

16 Q You speak Spanish, correct?

17 A Yes, ma'am.

18 Q And your purpose at this polygraph was basically to
19 translate, correct?

20 A Yes, ma'am.

21 Q You don't really know much about the case.

22 A No, ma'am.

23 SOLICITOR KEENEY: May I approach the witness?

24 THE COURT: You may.

25 BY SOLICITOR KEENEY:

1 Q I'm showing you what's been marked as Court's
2 Exhibit 5. Do you recognize this?

3 A Yes, ma'am. This is a *Miranda* form that was given
4 to the defendant prior to a polygraph.

5 Q Okay. What's the date on the bottom of it?

6 A It's 2/11/2014, or February 11, 2014.

7 Q What's the time?

8 A 9:39.

9 Q In the morning?

10 A Yes, ma'am.

11 Q And this form is in Spanish, correct?

12 A Yes, ma'am.

13 Q And the purpose of that is because the defendant
14 speaks Spanish, correct?

15 A Yes, ma'am.

16 Q And he can read it?

17 A Yes.

18 Q Okay. And you went through each and every one of
19 these things with the defendant?

20 A Yes, ma'am.

21 Q And at the end of it, did the defendant agree to
22 speak with you without an attorney?

23 A Yes, ma'am, he did.

24 Q Okay.

25 SOLICITOR KEENEY: Would your Honor like to see

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MACHADO - DIRECT - KEENEY

1 this?

2 THE COURT: Thank you.

3 BY SOLICITOR KEENEY:

4 Q I'm showing you what State's Exhibit 6. What is
5 this?

6 A This form is a consent for polygraph. So, prior to
7 a polygraph, they're read the *Miranda* warnings under
8 oath. So, read the warnings for the polygraph.

9 Q And did the defendant, in fact, agree to do the
10 polygraph?

11 A Yes, ma'am.

12 Q Did the defendant ask you for an attorney?

13 A No, ma'am.

14 Q Did he ever indicate to you that he wished to stop
15 talking during this polygraph?

16 A No, ma'am.

17 Q Okay.

18 SOLICITOR KEENEY: May I approach the witness?

19 THE COURT: You may.

20 BY SOLICITOR KEENEY:

21 Q I'm showing you what's been -- sorry -- marked as
22 Court's Exhibit 4. Do you recognize this?

23 A Yes, ma'am.

24 Q And what is that?

25 A This is a copy of the video recording from the

1 polygraph that was administered to the defendant.

2 Q And it has your initials on it that you've reviewed
3 it?

4 A Yes, ma'am.

5 Q Is that a fair and accurate copy of the polygraph?

6 A Yes, ma'am.

7 Q Thank you.

8 SOLICITOR KEENEY: And your Honor, I'm going to
9 move it as a Court's exhibit, but you already have it,
10 so I'm not going to publish it.

11 THE COURT: Yes.

12 ITEM IDENTIFIED AS COPY OF VIDEO
13 RECORDING OF POLYGRAPH
14 MARKED STATE'S EXHIBIT NUMBER 4
15 ADMITTED AS EVIDENCE.

16 BY SOLICITOR KEENEY:

17 Q During this polygraph examination, Brian Baird's
18 conducting the polygraph, correct?

19 A Yes, ma'am.

20 Q And you're just there to translate --

21 A Yes.

22 Q -- for Lieutenant Baird?

23 A Correct.

24 Q And after the defendant gets unhooked with the
25 machines, you all kind of do like a post-polygraph

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MACHADO - DIRECT - KEENEY

1 examination to go over the results. Is that correct?

2 A Correct. Yes.

3 Q Okay. During this whole polygraph time, did you or
4 anyone else threaten the defendant in any way?

5 A No, ma'am.

6 Q Did you promise him or did anyone else promise him
7 anything in exchange for his statement?

8 A No, ma'am.

9 Q Did you all coerce him in any way?

10 A No, ma'am.

11 Q If he needed to use the bathroom, would he have
12 been allowed to?

13 A Yes, ma'am.

14 Q If he needed some water, would he have been given
15 water?

16 A Yes, ma'am.

17 Q And there were breaks in the interview, correct?

18 A Yes, ma'am. That's correct.

19 Q It wasn't just continuous, right?

20 A No, ma'am. There was breaks.

21 Q Did the defendant appear to be under the influence
22 of any alcohol or drugs?

23 A No, ma'am.

24 Q Did he appear to have any mental or physical
25 disabilities?

1 A No, ma'am.

2 Q Did he appear to understand the questions that you
3 were asking him?

4 A Yes, ma'am.

5 Q And just briefly, after the polygraph machine comes
6 off of him, and it was indicated that he was deceptive,
7 did he make any incriminating statements?

8 A He -- he made a statement, yes, ma'am.

9 SOLICITOR KEENEY: And would your Honor want him to
10 go into that statement or just watch the video? I
11 didn't know if we wanted to go into detail.

12 THE COURT: I'm sorry. This is after he was
13 unplugged, but it was the end of the polygraph, not the
14 third one?

15 SOLICITOR KEENEY: Correct.

16 THE COURT: Okay. You can go ahead and testify.

17 SOLICITOR KEENEY: Okay.

18 BY SOLICITOR KEENEY:

19 Q What did he say during this -- when it's still on
20 video, the second -- we'll call it the second interview?

21 A What the defendant relayed to us was the fact that
22 he was being deceptive because he was nervous, and we
23 would explain to him there was nothing to do with
24 nervousness with the polygraph. And he mentioned to us
25 something did happen with these young ladies, and that

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MACHADO - DIRECT - KEENEY

1 it was one situation he could remember. In fact, he
2 said, I can remember two things that happened, but I
3 didn't do anything. And he went to explain to us that
4 there was the time when he was coming out of the shower,
5 and that he had a towel wrapped around his waist and one
6 around his head. And the young lady approached him, and
7 grab his penis from under the towel before he was able
8 to grab her; and he grabbed her and pushed her away and
9 took her outside his room.

10 Q And he actually mention two incidents, but he did
11 go into detail with the second incident at that time?

12 A Correct, he only -- yes, ma'am.

13 Q What happened? Where did the defendant go next?
14 Was he transported somewhere?

15 A Once we -- we were finished, yes, we transported
16 him to the Investigations Section.

17 Q And that's just across the street, correct?

18 A Yes, ma'am.

19 Q And who was present during that third -- we'll call
20 it the third interview?

21 A It was myself and the case -- case officer,
22 Sergeant Boland and Kelleher.

23 Q And this interview took place in the kitchen area
24 of the Investigations Office?

25 A Yes, ma'am.

1 Q Okay. During that -- and I've already shown this
2 exhibit -- it's a second *Miranda* form -- to Ms.
3 Cappelmann. I'm showing you what's been marked as
4 Court's Exhibit 7. Do you recognize this?

5 A Yes, ma'am. This is another Spanish form, a
6 *Miranda* form, that was given to the defendant prior to
7 that interview that took place at the Investigations
8 Section.

9 Q So, once again, on the same day, you re-read him
10 and re-advised him of his *Miranda* rights, correct?

11 A Yes, ma'am.

12 Q And he acknowledged those rights.

13 A Yes, ma'am.

14 Q And he agreed to waive them, correct?

15 A Yes, ma'am.

16 Q Okay. Thank you. And you can just set it up
17 there. And once again, you're there to translate in
18 Spanish? Translate, correct?

19 A Yes, ma'am.

20 Q Did the defendant ask for an attorney?

21 A No, ma'am.

22 Q Did he ask in any way that he wanted the interview
23 to stop; that he didn't want to go on anymore?

24 A No, ma'am.

25 Q Okay. During this interview, did you or anyone

1 else threaten the defendant?

2 A No, ma'am.

3 Q Did you or anyone else coerce the defendant into
4 make a statement?

5 A No, ma'am.

6 Q Did you or anyone else promise the defendant
7 anything in exchange for a statement?

8 A No, ma'am.

9 Q If he needed water, would he have been given water?

10 A Yes, ma'am.

11 Q If he needed to go to the bathroom, would he have
12 been able to go to the bathroom?

13 A Yes, ma'am.

14 Q Did he ever ask to use the telephone to call
15 anybody?

16 A No, ma'am.

17 Q Did he appear to be under the influence of any
18 drugs or alcohol?

19 A No, ma'am.

20 Q Did he appear to understand what you were saying,
21 and the questions that he was being asked?

22 A Yes, he did, ma'am.

23 Q Did he appear to have any physical or mental
24 disabilities?

25 A No, ma'am.

1 Q During this third interview, would you say the
2 defendant went into more detail about the incident?

3 A Well, this time, he -- he mentioned what he -- had
4 already said on the polygraph from that one incident,
5 but he went on to -- to talk about the second incident
6 that had taken place with the young lady.

7 Q So, he talked about the first incident with the
8 bathroom, correct?

9 A Yes, ma'am.

10 Q And then, please tell the Court what he said
11 regarding the second incident.

12 A Well, he first mentioned that first incident I
13 already spoke about, and you know, it was the same as
14 what he had said at the polygraph room. On the second
15 one, he was recalling being in his room, maybe watching
16 T.V., laying in his bed, and the -- young lady coming
17 into the room.

18 Q The same young lady?

19 A Yes. Come into his room and reaching -- he was
20 half asleep. He was falling asleep while he was
21 watching T.V., and she reached through the seam on his
22 boxers, and grab his penis and put it in her mouth.
23 That's what the defendant stated.

24 Q Okay. That's just briefly summarizing what he
25 said, correct?

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MACHADO - CROSS - CAPPELMANN

1 A Yes, ma'am.

2 Q Did he mention why he didn't tell anyone about this
3 incident?

4 A I can't -- I can't remember.

5 SOLICITOR KEENEY: No further questions for this
6 witness.

7 THE COURT: Ms. Cappelmann?

8 MS. CAPPELMANN: Your Honor, may it please the
9 Court?

10 SERGEANT ANGEL MACHADO

11 CROSS-EXAMINATION

12 BY MS. CAPPELMANN:

13 Q Okay. So, you just said you were there for purely
14 just to translate. Is that right?

15 A Yes, ma'am.

16 Q Okay. So, by that, do you mean you were there just
17 to say what -- let's go with Brian Baird's interview
18 with the polygraph. You were just there to relay to Mr.
19 Ontivero what Brian Baird said and vice-versa. Is that
20 right?

21 A When it comes to the polygraph, the questions are
22 specific. So, yes, when we're administering a
23 polygraph, I'm just there to translate the questions. I
24 already get the questions beforehand, and I translate
25 them myself. And then, they're explained to the

1 defendant before he takes the polygraph.

2 Q And that actually was going to be one of my
3 questions. So, as far as just the polygraph tests go,
4 and all of those rounds of questioning, those are just
5 verbatim what Brian Baird said or wrote down as his
6 questions?

7 A Yes, ma'am.

8 Q And to be clear, are you licensed to be a polygraph
9 --

10 A No, I'm not, no, ma'am.

11 Q Okay. So, you don't know anything about how the
12 test was done or how the results come about, right?

13 A No, ma'am. He -- he determines all that.

14 Q Okay. And you don't know anything about how the
15 apparatus is set up or any of that. You just say what
16 he told you.

17 A Yes. Well, before the test, we do explain to him
18 what are we putting on his body and what does it do for
19 the test. But no, I'm not an expert. I'm not an
20 examiner, so I just say what jj

21 COURT REPORTER: I'm sorry, *I'm not an expert; I'm*
22 *not?*

23 A An examiner. So, I just translate what Mr. Baird
24 is saying.

25 Q Okay. So, just out of curiosity, what is your

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MACHADO - CROSS - CAPPELMANN

1 nationality of decent?

2 A I -- I was born in Puerto Rico.

3 Q Okay.

4 A I'm Latino.

5 Q Okay. All right, as far as when I went to ask
6 about the acknowledgment and waiver of rights for the
7 polygraph, I noticed that that was not in Spanish. And
8 I wish I had paid more attention to the video, but how
9 did you convey that information to him?

10 A His *Miranda* rights or the polygraph?

11 Q The polygraph interview that wasn't in English.

12 A The -- yes, the right form for the polygraph, his
13 rights, I do have to translate it as I'm reading that
14 piece of paper. Yes, ma'am.

15 Q There wasn't a Spanish paper given to him, was
16 there?

17 A No, ma'am.

18 Q Okay. And I'm going to want to talk more about
19 what was at the end of the polygraph interview when
20 Brian Baird was interviewing Mr. Ontivero about the
21 results of the polygraph. Do you recall -- well, I
22 don't know the best way to ask this, because, really,
23 Brian Baird asking the question, but you're the one
24 actually saying it. Do you recall telling Mr. Ontivero
25 that it makes a difference whether he's a good guy or a

1 bad guy? And I'm paraphrasing.

2 A Yeah, we probably mentioned something like that.

3 Yes, ma'am.

4 Q Okay. And do you recall what you told him about
5 trustworthiness or coming clean, so to speak?

6 A Recall word-by-word, I do not. You know, a lot of
7 times, we just try to make sure that, if there's
8 deception, that we can kind of see if the defendant will
9 share with us why would there be deception during the
10 polygraph.

11 Q Okay.

12 A So, of course, you know, the polygraph is about
13 being honest, so we ask for honesty.

14 Q Right. But do you recall telling Mr. Ontivero that
15 his honesty would help him with what -- I mean, Mr.
16 Baird, or Lieutenant Baird's words, I believe he says
17 something along the lines of, would I tell them, that's
18 ambiguous to them. Do you remember him being that --

19 A Yes. What he actually had asked was, he was trying
20 to figure out what type of person he was. And then, I
21 think that was his words that he was saying, and that's
22 why he asked me to translate, that it -- it would help
23 if he could make us determine that, so that, when we're
24 relaying information to the investigator, we can give
25 them something solid.

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MACHADO - CROSS - CAPPELMANN

1 Q Okay. And did you elaborate more on what that help
2 would be?

3 A Um --

4 Q For instance, you know, leniency or --

5 A No, no, no, no.

6 SOLICITOR KEENEY: Objection. I think that calls
7 for speculation. I mean, you just said generally help.

8 MS. CAPPELMANN: Well, that's what I'm asking, if
9 he specifically said what that help might be, is what
10 I'm asking.

11 THE COURT: You can follow up.

12 BY MS. CAPPELMANN:

13 A Yeah. No, I mean. We don't know the defendant; we
14 don't know much about the case. So, we're trying to
15 figure out what kind of per -- that's what the
16 lieutenant was, I'm assuming, you know, as translating,
17 what he was asking.

18 Q Right.

19 A I was just translating what he was asked; that he's
20 just trying to figure out what type of person he is.
21 Um, I'm assuming he's trying to say that, uh, when he
22 asked what type of person are you, so I can be able to
23 relay to them. I don't think he's -- he's promising
24 anything. He's just trying to make it clear to where
25 there's no doubt about it. And I don't know if I'm

1 answering your question. I don't know if --

2 Q Right. And I understand what you're saying. All
3 right. Do you recall at the very end, when you and
4 Lieutenant Baird were wrapping up the interview, do you
5 recall Lieutenant Baird saying, he has to -- or I guess,
6 I think he's -- Baird says, *you have to tell the*
7 *investigators what you just told me, otherwise, I'll*
8 *know.*

9 COURT REPORTER: *Otherwise, I'll know?*

10 Q Right. Whether he's telling the truth -- or
11 telling the investigators the truth or not.

12 A Are you saying, otherwise, I'll know, or?

13 Q Right. Lieutenant Baird, basically, do you recall
14 him saying that Elidoro had to tell Boland and Kelleher
15 what he just said, otherwise, Baird will know?

16 A What they was -- he wasn't being honest with us,
17 and his -- his stories were changing. He never
18 mentioned anything. And then, during the process he
19 mentioned that one incident with the young lady. So, of
20 course, we -- we gave an opportunity to be truthful with
21 the investigator. And that's why we say he might want
22 to talk to investigators. That's why we refer him back
23 to the investigators for that third interview that we
24 keep referring to. I don't know what he meant by -- I
25 don't know, because I don't know what he meant by that.

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1 But the reason why he was given an opportunity was to
2 come clear, since he never shared that in the past.

3 Q Right.

4 MS. CAPPELMANN: And it might be helpful if we just
5 maybe watch that portion. It's just like, two -- two or
6 three minutes.

7 THE COURT: That's fine.

8 MS. CAPPELMANN: The polygraph interview.

9 COURT REPORTER: Is it 4?

10 MS. CAPPELMANN: I believe so.

11 COURT REPORTER: Is it 4?

12 SOLICITOR KEENEY: It's 4.

13 MS. CAPPELMANN: Yes.

14 BY MS. CAPPELMANN:

15 Q Okay. So, obviously, I have no clue what you just
16 said. So, how do you convey that to Mr. Ontivero?

17 A Again, he -- he told us something he had never said
18 before.

19 Q Right.

20 A So, we afforded him the opportunity to talk to talk
21 to the investigators and clarify. That's what I was
22 telling him there towards the end. I said, if you're
23 deciding to say some things, some of the things match to
24 what we know, and some don't; but this is going to be
25 your time to be honest and clarify; because you're

1 saying one thing, and then, you're leaving some things
2 out. So, this is to give you an opportunity one more
3 time to be re-interviewed, so that you can, you know,
4 clear it up, figure out what's true and what's not true,
5 or what you really want to say, and what you don't want
6 to say, or why did you not say it, and why you want to
7 say it now.

8 MS. CAPPELMANN: Okay.

9 CONTINUE PLAYING ITEM IDENTIFIED

10 AS FEBRUARY 11, 2014, VIDEO

11 RECORDING OF POLYGRAPH

12 COURT'S EXHIBIT NUMBER 4.

13 END PLAYING ITEM IDENTIFIED

14 AS FEBRUARY 11, 2014, VIDEO

15 RECORDING OF POLYGRAPH

16 COURT'S EXHIBIT NUMBER 4.

17 BY MS. CAPPELMANN:

18 Q Okay. So, what was that exchange that you guys
19 just had?

20 A Well, again, he -- he's just making -- he made the
21 statement or something he's not -- and what the
22 defendant's saying, I didn't do it.

23 Q Right.

24 A And he's saying, you know, I'm not going to fess up
25 to something I didn't do, which he kept saying that. He

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MACHADO - CROSS - CAPPELMANN

1 made a statement that the girls did -- there was some
2 contact. All right? So, we're trying to clarify how
3 was there contact. And that's why Lieutenant Baird
4 said, we need to -- I'm -- I'm losing track here. Hold
5 on. That's when he said that some of the things it
6 looks like, you know, he's saying they happened, but
7 he's telling the story the way he wants to tell it, is
8 pretty much what -- what we're doing.

9 At first, he -- he didn't say anything. Now, he
10 wants to say it the way he wants to say, and we're
11 picking up on that. The polygraph would verifying that
12 he's telling what he wants to tell. There's deception.
13 He's saying it the way he wants the story to be told.
14 It doesn't have, you know, compared to what the -- the
15 victims say, it's -- it's different.

16 It's all the same to one -- to one point, where
17 he's saying, I didn't do it, you know, they came on to
18 me. So again, we're just giving him the opportunity for
19 him to come up and do another interview. And what the
20 Lieutenant is saying is, we'll take those notes from the
21 interview; if you give us any further information, I'll
22 compare them; I'll go back over your answers to the
23 polygraph and compare to see if that help you anything
24 when it comes to, I'm assuming, the math that he uses it
25 to verify.

1 Q Okay.

2 A Again, I'm not an examiner. So, I don't know how
3 he --

4 Q So, but you did tell Mr. Ontivero that Lieutenant
5 Baird was going to go back and compare what had been
6 told in the --

7 A That's what you just asked me. That's what he just
8 said, yes. He just said that.

9 COURT REPORTER: I'm sorry, I'm sorry. (Attorney
10 and witness talking over each other.)

11 MS. CAPPELMANN: I'm sorry.

12 COURT REPORTER: I didn't get your last answer.

13 BY MS. CAPPELMANN:

14 A I said she just asked me that, and yes, that's why
15 he just said on this -- on this portion of the video.

16 Q Okay. So, he had been told that his statements
17 were going to be compared.

18 A Yes, that's what the lieutenant just told him, yes,
19 ma'am.

20 Q Okay. I think that might be -- just to make sure.

21 CONTINUE PLAYING ITEM IDENTIFIED AS
22 COPY OF VIDEO RECORDING OF POLYGRAPH
23 COURT'S EXHIBIT NUMBER 4.
24 END PLAYING ITEM IDENTIFIED AS
25 COURT'S EXHIBIT NUMBER 4.

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MACHADO - CROSS - CAPPELMANN

1 BY MS. CAPPELMANN:

2 Q So, during the -- not the polygraph testing
3 portion, but during the follow-up interview portion, did
4 you ask, sort of, your own investigatory questions?

5 A The polygraph is the polygraph. Once we take the
6 equipment off and we explain the results of it, we do go
7 into an investigation. That's where I'm able to -- if I
8 pick up on something that he's saying, I can ask my own
9 questions to ver -- to clarify.

10 Q Okay. All right. Now, do you recall telling him
11 -- and I apologize as I go through this -- *cual fue la*
12 *oracion que ter escuchaste?* Do you remember -- do you
13 know what that means? Did I say it correctly at all?
14 How about that?

15 A I think you're saying this has nothing to do with
16 -- with the other, or something don't have to do with
17 the other.

18 Q Right. Basically, the English translation would
19 be, this does not have anything to do, nothing with
20 nothing.

21 A Okay.

22 Q Do you recall telling Mr. Ontivero that?

23 A I -- no, I do not. There was portions that we
24 just played on the polygraph just now that he's just
25 clarifying that I'm nervous. We had already explained

1 to him that nervousness has nothing to do with the
2 polygraph. That might be, you know, the portion you're
3 talking about.

4 Q Well, and actually, this portion was -- I don't
5 know if you were you in here when we were playing the
6 video before. That was actually one of the things that
7 was said when the video was playing before. I just
8 didn't know if you happened to catch that or not.

9 A Yeah. No, unless I go back and see what we were
10 talking about, I would be unable to see why -- why that
11 phrase came out the way it came out.

12 Q Okay.

13 MS. CAPPELMANN: Beg the Court's indulgence.

14 BY MS. CAPPELMANN:

15 Q All right. Regardless of whether you recall, or
16 whether you said it or not, does that phrase have a
17 certain connotation to you, meaning, does it mean, sort
18 of, the same thing as off the record, or you won't have
19 any repercussions?

20 A No, ma'am.

21 Q Are you aware that, in certain parts of Mexico,
22 basically saying something like that, culturally and
23 colloquially, would mean you're free to speak without
24 repercussion?

25 A No, ma'am. You know, when we conduct --

1 everybody's dialogue is different, and it's -- if you
2 watch the video, the questions were asked numerous
3 times. We want to make sure he understood what I was
4 saying. And there was no indications of he didn't know
5 what I was talking about or I was misleading him. We
6 were clear when we were asking the questions, because
7 beforehand, we would go over the questions, so, if they
8 needed to be changed for him to understand them, they
9 can be changed beforehand.

10 Q As to the polygraph.

11 A Yes.

12 Q Just the polygraph exam.

13 A Yes. And it's the same thing, if I'm trying to
14 communicate with him, I'm not from Mexico, there are
15 some things that mean different to me. But I -- I know
16 all the words that I can explain myself and make sense
17 to him, to where he'll be able to comprehend what I'm
18 trying to say to him.

19 Q And just to be clear, this was actually not spoken
20 during the actual polygraph exam; it was at the
21 beginning of the follow-up investigative interview with
22 you and Lieutenant Baird.

23 A Right after the polygraph.

24 Q Right.

25 A Okay.

1 Q Okay. And lastly, you aren't like, court-certified
2 to translate in court, or anything like that, are you?

3 A No, ma'am.

4 Q Okay.

5 MS. CAPPELMANN: Begging the Court's indulgence.

6 BY MS. CAPPELMANN:

7 Q Have you received any certification at all to be a
8 translator through any organization or program?

9 A Certifications? No. I mean, when we are hired
10 with the department, we do take a test that, you know,
11 it shows the level of, you know, language that we know
12 and we can comprehend, so that, when we deal with the
13 public, we know that we're giving them information that
14 they need to know, and we're understanding each other
15 back and forth. But a certification through a court or
16 a college or anything, no, ma'am.

17 Q Okay. And then, I guess the Sheriff's Department
18 doesn't certify you to be a translator. They just
19 internally know that you speak Spanish?

20 A Well, you know, if you don't pass that test, you
21 can't translate.

22 Q Right.

23 A There is no -- you know. So, I guess you could say
24 that's a -- a certification. But if you're asking me
25 like, a court certification or a school certification,

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BY THE COURT

1 no, I do not have one.

2 Q Okay. And --

3 A They know the level of, you know, how good my
4 Spanish is. They do know that, based on the results of
5 that testing.

6 Q Okay. So, as far as your experience with
7 translating and knowledge of the Spanish language, is
8 that just from your personal experience from growing up?

9 A Yes. I was raised in Puerto Rico, so, yes, ma'am.
10 I've spoken Spanish my whole life.

11 Q All right. I got you. All right.

12 MS. CAPPELMANN: I have no further questions.

13 BY THE COURT:

14 THE COURT: Anything further?

15 SOLICITOR KEENEY: Nothing from this witness.

16 THE COURT: You may step down, Sergeant.

17 MR. Machado: Thank you, ma'am.

18 THE COURT: Okay.

19 SOLICITOR KEENEY: Your Honor, the only other
20 witness we have left for the *Denno* hearing is Lieutenant
21 Baird. As your Honor is aware, he will be here
22 tomorrow. He is out of the state today.

23 THE COURT: Okay. Okay. I don't know exactly what
24 time I'm going to be here tomorrow, but is everyone
25 going to be around, short of -- Mr. Ayala, what time are

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BY THE COURT

1 you going to come over? Are you from here in Beaufort?

2 INTERPRETER AYALA: Yes. I live three blocks away.

3 THE COURT: And the reason why I ask is this, I
4 have no idea whether -- I mean, I can be back here at
5 noon tomorrow, or sooner than that. I mean, I could be
6 here very early.

7 INTERPRETER AYALA: I have a morning job, but I
8 could --

9 THE COURT: What time are you done in the morning?

10 INTERPRETER AYALA: I start at 7:00 in the morning.

11 THE COURT: And when do you finish? When do you
12 finish?

13 INTERPRETER AYALA: When I finish? Whenever I want
14 to. I work for myself.

15 THE COURT: Sounds like a good job to have. Okay.
16 Well, I just want to make sure that what would happen is
17 this, when I'm leaving Columbia to come back here, I am
18 roughly two hours away, a little less than that,
19 correct, Mike?

20 DEPUTY MIKE WINSTON: A little more.

21 THE COURT: A little more. Sorry. Okay. Wow.
22 So, a little more. I'm going to make a phone call to my
23 office, and I will tell them where I am and what time I
24 expect to be back. I don't want you all sitting in the
25 courtroom waiting on me. Then again, I would like to be

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BY THE COURT

1 here so we can get these pretrial motions taken care of,
2 because I very much want to be done and ready to go at
3 2:00 o'clock when the jury comes. So, my suggestion to
4 you all is, grab an early lunch, if you can, like 11:30
5 or 12:00, so we can get back in here. And if I'm back
6 here as early as 12:00, we'll start again at 12:00. If
7 it's 12:30 -- and I apologize, I just can't tell you
8 exactly what time it's going to be, but as soon as I get
9 on the road and I know how long it's going to take me to
10 drive here, as long as you have numbers for Mr. Ayala
11 and can get a hold of him, Paige is just going to go
12 ahead and she'll let you know, Ms. Cappelmann, and you
13 know, Ms. Keeney, and we'll be ready to go. And you
14 can, I hope, push on the information to Sergeant Boland
15 and keep everyone here. I would suggest maybe having
16 your client here, you know, potentially somewhere, you
17 know, and ready to go by noon-ish. Okay? All right.
18 So, that's the game plan for tomorrow.

19 Other than a ruling on the other issue we had
20 talked about as far as the missing video and this
21 playing of the second video, other than finishing the
22 *Jackson v. Denno*, I saw that there was one other issue
23 that someone had talked about as far as referencing a
24 victim.

25 SOLICITOR KEENEY: That's Ms. Cappelmann's issue.

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BY THE COURT

1 THE COURT: Okay.

2 SOLICITOR KEENEY: She -- I'll let her argue. I
3 did a response to it.

4 THE COURT: Okay. Is there any other motions other
5 than that? I mean, we've already sequestered the
6 witnesses.

7 SOLICITOR KEENEY: I submitted a written motion
8 regarding the expert testimony of Ashley Bratcher.

9 THE COURT: Okay.

10 SOLICITOR KEENEY: She's not here today. She'll be
11 here on Wednesday. So, maybe we could proffer her
12 testimony on Wednesday. I could get her tomorrow,
13 maybe, but she has interviews.

14 THE COURT: That's okay. I think we could proffer
15 then. My understanding all she's going to testify to is
16 delayed disclosure, correct?

17 SOLICITOR KEENEY: Right.

18 THE COURT: And she's had no contact in this case
19 with either one of the --

20 SOLICITOR KEENEY: Correct. And she's going --
21 she's going to testify aloud to the effects of trauma on
22 memory. She can explain it way better than I can, but
23 basically, if someone doesn't remember something, that
24 the trauma has on the memory.

25 THE COURT: Okay. Obviously, she can't -- we all

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BY THE COURT

1 know the rules. She can't vouch for their credibility.
2 She can't, you know, speak as to this individual case,
3 and she can, you know.

4 SOLICITOR KEENEY: She never even watched the
5 interviews. She just made a quick check, but she didn't
6 review anything, and she has not. So, she says it's
7 truly -- it'll be blind. It'll be blind testimony that
8 I do the way the Supreme Court said in *Anderson*.

9 THE COURT: Okay. As long as she stays limited to
10 that, I think we should be fine, but we'll do a proffer
11 if we need to. Okay?

12 MS. CAPPELMANN: Thank you.

13 THE COURT: So, anything other than use the word
14 *victim*?

15 MS. CAPPELMANN: Your Honor, this has just been
16 brought up. Mr. Ontivero has been dutifully coming to
17 court for the past two years now. I mean, I've only
18 been his attorney for almost a year now. He's been on
19 electronic monitoring this whole time.

20 THE COURT: Um-hmm.

21 MS. CAPPELMANN: He had asked if there would be any
22 way that that could come off. I mean, we're here at
23 trial.

24 THE COURT: No.

25 MS. CAPPELMANN: He's going to be here.

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BY THE COURT

1 THE COURT: I can tell you, no. When the case is
2 over, of course, it will come off.

3 MS. CAPPELMANN: Okay.

4 THE COURT: At this time, no. We're just going to
5 keep it as it is right now. Okay. Anything else?

6 SOLICITOR KEENEY: Nothing from the State.

7 THE COURT: Okay. We can take up the issue of
8 victim and the terminology of victim. I can tell you
9 that I personally, as the Court and from the Bench, do
10 not use the word *victim*, personally. I don't ever read
11 it in the indictment. I don't ever read it in my
12 initial charges to the jury, nor in my jury charges at
13 the end.

14 SOLICITOR KEENEY: And just briefly.

15 THE COURT: Yes.

16 SOLICITOR KEENEY: My position is, I will try my
17 best to avoid it, but if it slipped out, I didn't want
18 it to be a ground for a mistrial. I can try, but we're
19 so used to saying it.

20 THE COURT: I think the case law is replete. It
21 basically says that the word is proper, as long as it's
22 not used repeatedly, over and over again, and the jury
23 isn't beat over the head with it. And I would agree
24 with that. It's not the same thing, but closely akin to
25 every wreck case you see. A civil lawyer call; is a

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BY THE COURT

1 wreck or an accident. It's just the verbiage that
2 you're repeatedly putting in front of the jury. And
3 again, I appreciate the articles you provided for me.
4 Again, I don't think it's a basis in any way for a
5 mistrial, unless you're screaming from the mountaintops,
6 you know, *the victim*. And I think the Court does it and
7 everyone else does it, so. So, to that extent, I can
8 say that, you know, hopefully I won't slip. But I can
9 tell you this, if I did say it, it won't happen more
10 than once, and I don't recall ever repeatedly referring
11 to a victim. It's just not how I refer to someone.
12 They're just another witness, as far as I'm concerned,
13 so. Of course, they have a special status, but, and
14 there is a victims' bill of rights. But again, when I
15 refer to that person to the jury, they are a witness.
16 So, anyway. So, I think that kind of gives you some
17 guidance for what you all can do. Let's just try to be
18 careful. Okay?

19 SOLICITOR KEENEY: Thank you, your Honor.

20 THE COURT: Okay. Thank you. We'll see you all
21 tomorrow.

22 **END DAY ONE, MONDAY,**

23 **NOVEMBER 14, 2016, 4:52 P.M.**

24 **BEGIN DAY TWO, TUESDAY,**

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BAIRD - DIRECT - KEENEY

1 **NOVEMBER 15, 2016, 1:43 P.M.**

2 BAILIFF: All rise. Please come to order. Court
3 is now back in session.

4 THE COURT: Thank you. Please be seated. All
5 right. My understanding is Lieutenant Baird is here to
6 testify. Is that correct?

7 SOLICITOR KEENEY: Yes, your Honor.

8 THE COURT: Okay. Do you want to go ahead and call
9 him?

10 SOLICITOR KEENEY: State calls Lieutenant Brian
11 Baird.

12 MADAM CLERK: Do you solemnly swear or affirm to
13 truthfully answer all questions asked of you by this
14 court?

15 LIEUTENANT BAIRD: So help me God, I do.

16 MADAM CLERK: Thank you.

17 SOLICITOR KEENEY: May it please the Court?

18 THE COURT: Yes, ma'am.

19 LIEUTENANT BRIAN BAIRD

20 DIRECT EXAMINATION

21 BY SOLICITOR KEENEY:

22 Q Lieutenant Baird, where do you work?

23 A Beaufort County Sheriff's Office.

24 Q What's your position.

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BAIRD - DIRECT - KEENEY

1 A I'm a lieutenant, investigator. Special
2 investigator for the Sheriff.

3 Q What are some of your duties?

4 A I conduct interviews and do other scientific
5 process.

6 Q It's okay for you to say polygraph during this
7 hearing.

8 A I administer polygraphs.

9 Q How long have you been at the Sheriff's Office?

10 A Since December of 2001.

11 Q Okay. On February 11 of 2014, did you have an
12 interaction with the defendant in this case?

13 A Yes, I did.

14 Q What was the purpose of that interaction?

15 A I administered a polygraph examination on him.

16 Q And it was your understanding that he wanted to do
17 a polygraph?

18 A It was a voluntary process. He signed the form
19 indicating that he understood he didn't have to do it.

20 Q Okay. How old was the defendant at the time of
21 this polygraph?

22 A Well, he was right about -- well, he was 45
23 exactly, as a matter of fact.

24 Q Okay. During this interview, --

25 THE COURT: Louder.

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BAIRD - DIRECT - KEENEY

1 SOLICITOR KEENEY: Okay.

2 THE COURT: Okay. His microphone is on. If you'll
3 just try to speak a little bit louder, Lieutenant Baird.
4 Thank you, sir.

5 BY SOLICITOR KEENEY:

6 Q So, you just said that he was 45 at the time,
7 correct?

8 A That's correct.

9 Q During this interaction with the defendant, did you
10 threaten the defendant in any way?

11 A No, I did not.

12 Q Now, let me rewind. You do not speak Spanish,
13 correct?

14 A No, I do not.

15 Q Who was present during this interview?

16 A Another investigator by the name of Machado.

17 Q And does Machado speak Spanish?

18 A Yes, he does.

19 Q Does Machado, does he interpret for you in the
20 Sheriff's Office on lots of cases?

21 A Yes, he does.

22 Q Okay. Did you or anyone else in the room threaten
23 the defendant in any way?

24 A No. Neither one of us did, and there was only the
25 two of us and the defendant in the room.

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BAIRD - DIRECT - KEENEY

1 Q Did you coerce the defendant in any way?

2 A No, I did not.

3 Q Did you or anyone else promise the defendant
4 anything in exchange for a statement?

5 A No, we did not.

6 Q Did the defendant appear to be under the influence
7 of alcohol or drugs?

8 A No. He did not appear to be under the influence of
9 anything.

10 Q Did he appear to have any mental disabilities?

11 A None.

12 Q If he had needed a drink of water, would he have
13 been given water?

14 A Yes. If he would have asked for water or to use
15 the restroom, he was more than welcome to do that.

16 Q Did he ask for any of those things?

17 A No, he did not.

18 Q What was the general demeanor of the interview?
19 Was this a hostile interview? Was it calm? Can you
20 describe what the interview was like.

21 A It's an extremely calm process. We try not to get
22 people excited during the polygraph. We like them to
23 remain calm. So, I speak to them in a very calm
24 demeanor; advise Machado beforehand, to, you know, use
25 the same demeanor I was using, to talk the same way I

1 was talking.

2 Q And do you continue that demeanor throughout the
3 process of the interview, because, after he gets off the
4 polygraph machine?

5 A Yes. I've been doing this about 34 years now, and
6 in my experience, it's much better to speak to somebody
7 the way you'd like to be spoken to.

8 Q Okay.

9 SOLICITOR KEENEY: No further questions for this
10 witness.

11 THE COURT: Ms. Cappelmann.

12 MS. CAPPELMANN: Thank you, your Honor. May it
13 please the Court?

14 LIEUTENANT BRIAN BAIRD

15 CROSS-EXAMINATION

16 MS. CAPPELMANN:

17 Q All right, Lieutenant Baird. So, you said that you
18 have been with the Sheriff's Office since December of
19 2001.

20 A That's correct.

21 Q But when were you licensed to be a polygrapher?

22 A 2009.

23 Q 2009?

24 A When I went to school, and I went through the
25 apprenticeship program. South Carolina has the most

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BAIRD - CROSS - CAPPELMANN

1 extensive apprenticeship licensing program that I know
2 of in the nation. Went through that process. I was
3 eventually fully licensed.

4 Q Okay. Now, I'm showing that you got your degree
5 back in March of 2009, and it looks like you got your
6 actual license in August of 2010. Is that correct?

7 A Sounds about right.

8 Q Okay. And then, I see where you've had some other
9 training since then. It looked to me like what I would
10 consider, like, continuing legal education.

11 A That's correct.

12 Q Is that the continuing polygrapher education, I
13 guess?

14 A That's a requirement in South Carolina.

15 Q Gotcha. And is there any kind of requirement on
16 how many of these polygraph tests you have to do before
17 licensing?

18 A You must administer a minimum of a 150 tests that
19 have to go through, then, a review process with the
20 State Law Enforcement Division. They are the governing
21 body for licensing in South Carolina. All of those
22 tests have to be witnessed by what they call a master
23 examiner, somebody who has in excess of 500 exams.

24 Q Okay.

25 A And then, when you take the tests up to them, they

1 review each and every packet, go through them all. And
2 then, they take -- they review it with you, ask you
3 questions about certain tests that they may have
4 questions about, or not. And then, you take a written
5 test after all that.

6 Q Okay. So, you've done all of that?

7 A That's correct.

8 Q Okay. So, how many tests do you think you've done?
9 Or I'm sorry. How many tests do you think you did
10 between, well, I guess as of February 11, 2014?

11 A I would say at that point probably between 3 to 400
12 tests.

13 Q Okay. So, the type of polygraph test you do -- and
14 I'm going to refer to my notes, because I don't quite
15 know the lingo. Controlled question test; is that what
16 you normally do?

17 A There are controlled questions used in the tests,
18 yes.

19 Q Okay. My understanding was that there are two
20 types of tests, and one of them is like the CQT test.

21 Am I wrong about that?

22 A No, that's a -- a type.

23 Q Okay.

24 A You could say a type of test.

25 Q Okay.

1 A There's probable lies and directed lies, is really
2 what you're talking about.

3 Q All right. So, which do you use?

4 A This was a zone comparison test, actually. And it
5 used what is called probable lies as your control
6 questions.

7 Q Okay. I'm glad you brought up controlled questions
8 because I also wanted to ask you about the controlled
9 questions and what are called the relevant questions.

10 A Correct.

11 Q All right. So, the reason a relevant question is
12 relevant is because it's actually asking something
13 pertinent to the investigation, right?

14 A It is what the person's actually there for. The
15 actual --

16 Q Exactly. So, it's sort of like the real question
17 that's -- that we want to find out the answer to.

18 A It's the question that the -- I would actually tell
19 the examiners. It's the questions that the -- that the
20 investigator wants to know the answers to.

21 Q Okay. Right. So then, you have the controlled
22 questions that are kind of sandwiched around the
23 relevant questions, right?

24 A Interesting choice of words, but yes, they're --

25 Q I mean, they'll do a controlled, and then, a

1 relevant, and then, a controlled.

2 A They bracket the controlled question.

3 Q And then, the controlled questions are really used
4 to -- well, first of all, they've got to be similar in
5 nature, right?

6 A No.

7 Q You don't think they have to be -- the control
8 questions have to be similar in nature to be relevant
9 questions?

10 A You -- you could have like we had here. You could
11 have a --

12 COURT REPORTER: I'm sorry. If you'd speak up just
13 a little.

14 A You could have a relevant question, which here,
15 would be pertinent to the sexual act. And the control
16 question could be about a probable lie, whether they're
17 a truthful person, whether they're not a truthful
18 person. Could be about a -- could be about a sexual
19 act. There's a lot of different type control questions.

20 Q Okay. Well, let me maybe put it this way. The
21 reason that you want a control question is because, if
22 there's someone who is telling the truth, that control
23 question is supposed to trigger in them a physiological
24 response, because their thinking about truthfulness.
25 That's what the control question is for. Is that right?

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BAIRD - CROSS - CAPPELMANN

1 A Well, a layman's quick explanation of polygraph is
2 you will react to the question you fear the most. So,
3 if you're -- if you committed the act, you're likely to
4 react to the relevant issue questions, because that's
5 what you're going to have the biggest threat to you.

6 Q Right. That's not what I'm asking.

7 A The control question, then, if you didn't do it,
8 then, you're probably going to fear the control question
9 more, and you're going to react more to the control
10 question, which would cause you to pass the test if you
11 reacted more to the control question than the relevant
12 question.

13 Q Right. So, what I was trying to break down,
14 though, is that, you've got the control question that,
15 in a truthful person, they're more fearing of the
16 control, because that questions their truthfulness, and
17 that's what they're concerned about, because they want
18 to be truthful. And then, they won't get much of a
19 reaction on the relevant question.

20 A Yes.

21 Q And then, vice-versa for someone who's maybe lying.
22 Or at least the reaction to the control question might
23 be the same, but if they were lying, it would get a much
24 bigger reaction for the relevant question.

25 A That's correct.

1 Q Okay. So, the juxtaposition of the relevant and
2 the control questions kind of matters, right?

3 A We always evaluate what the person's there for, and
4 then, decide what control questions we will use, based
5 on what the allegation against them is.

6 Q Okay. Well, now, let me ask you this. Have you --
7 were you trained on what's called a time-barred control
8 question?

9 SOLICITOR KEENEY: Your Honor, I'm going to object
10 on relevancy grounds. This seems to be going more to
11 the validity of the polygraph, as opposed to the
12 voluntariness of the statement.

13 THE COURT: Ms. Cappelmann, you do need to reign
14 this in. I agree that these are all issues to be put
15 before a jury, but I know what a polygraph test does.
16 And again, we need to know whether or not it's the
17 truthfulness of the statements. Again, polygraph isn't
18 coming in, but I need to know the truthfulness of the
19 statements.

20 MS. CAPPELMANN: I understand. What I'm trying to
21 get out is the quality of the polygraph that was given
22 and how it relates to the coercion and voluntary nature
23 of the investigation.

24 THE COURT: Okay. Well, you need to get to the
25 point, then. It's about three minutes 'til 2:00

1 o'clock.

2 BY MS. CAPPELMANN:

3 Q All right. So, when you do these polygraph exams,
4 part of what you're trying to get to is that interview
5 after the polygraph. Is that fair to say?

6 A I would say the entire polygraph is to set up, if
7 the person fails, is to set up the post-test interview.

8 Q Okay. How long does it take to set up all of the
9 -- I don't know what all the parts are called, but the
10 bands that go around the chest, how long does it take to
11 set all of that up?

12 A To attach the components to the components?

13 Q Yes.

14 A Five, ten minutes, maybe.

15 Q Okay. Do you explain to the test subject what the
16 different parts do?

17 A And I explain that before I attach them.

18 Q All right. What all do you tell them about what is
19 going to be monitored?

20 A Well, basically, we tell them that the -- not in
21 exact terms -- two tubes you see hanging down in front
22 of you, those are the pneumograph tubes. They're going
23 to wrap around your upper abdomen and your upper chest,
24 and they're going to measure the -- the expansion and
25 movement in your upper body. The cardio cuff is going

1 to wrap around your arm; I'm not a doctor or nurse; I'm
2 not going to measure your blood pressure; I'm going to
3 just measure the flow of blood going in and out of the
4 arm.

5 The two silver plates they see hanging down with
6 the black wires, they're going to attach to your
7 fingertips. They're going to measure the electrodermal
8 activity coming through your sweat glands. Little
9 pulsometer cuff is going to attach to your fingertip.
10 It's going to measure your pulse rate. What we're going
11 to be doing is, we're going to be measuring the flow of
12 the blood in and out of the arm. We're going to measure
13 your -- we're going to watch for changes in certain
14 aspects, and then, we'll compare those.

15 Q So, those were a lot of big words that I don't
16 quite understand. I'm not going to ask the definition
17 of them, but is it fair to say that this sounds like a
18 pretty scientific contraption?

19 A The instrument is a scientific device, yes.

20 Q Okay. I was going to go into what you said before
21 about the whole point of the polygraph is to get to that
22 post-polygraph interview.

23 A If they fail the test.

24 Q Okay. Do you try to design a test in a way in
25 which they will pass? As in, do you try to make it the

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1 best possible conditions, so that --

2 A My -- my sole job is to give them the best
3 polygraph they can receive that day. It doesn't benefit
4 me one way or the other if they pass or fail it. It --
5 actually, my job is easier if they pass it.

6 Q Okay. So, the relevant question, then, is it fair
7 to say that those need to be as specific as possible?

8 A To some extent. Especially with the sexual
9 allegation. You don't want the relevant question to be
10 so sensitive that it invokes an emotion response by,
11 say, actual response.

12 Q Let me give a hypothetical. Say there's a father
13 alleged to have inappropriately touched his daughter,
14 and then, the relevant question is, have you ever
15 touched your daughter's vagina. Regardless of what that
16 answer is, yes or no, that's a bad question, isn't it?

17 A That would be a horrible question.

18 Q Right. Because presumably, he's probably given his
19 daughter a bath before.

20 A I would hope so.

21 Q And so, he's going to think about that, and
22 regardless of whether the answer is yes or no, he's
23 going to have a big reaction to that question.

24 A Well, I can't think of any licensed polygraph
25 examiner that would use a question like that. At least

1 I would hope that they wouldn't use a question like
2 that, because that would be an inappropriate question to
3 use.

4 Q So, similarly, in this case here, I notice that
5 your relevant questions involve both girls. And it
6 doesn't even use their names.

7 A Correct. Often, using a name will create a
8 emotion-invoking response.

9 Q It doesn't ask about the location, and it doesn't
10 ask about when it happened.

11 A All of that would have been covered during the pre-
12 testing.

13 Q What do you mean by that? Do you mean the pre-
14 testing in which there were the ten questions, and then,
15 there was one that he wrote -- or that you wrote, the
16 number 4 to, and he was supposed to say whether he --

17 A That -- that's just a simulation test.

18 Q Okay.

19 A The pre-test interview occurs prior to the
20 polygraph examination. And that's where we sit down,
21 and we speak with our examinee. I advise him -- tell
22 him what -- you tell me what you're here for. They tell
23 me. I tell them what -- what I'm going to be doing.
24 And then, I go over the actual scenario and of what is
25 alleged. I get them to tell me 100 percent if, you

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1 know, like when you were asking like, a father, for
2 instance, have you ever touched her vagina. Well, what
3 we're going to actually be asking him prior to the test
4 is, have you ever touched your daughter in a
5 inappropriate sexual manner? Have you ever inserted
6 your finger inside her vagina? We're going to make sure
7 that the questions -- and we go over all the questions.
8 We tell them all the questions before the test is ever
9 started, and we make sure they understand the question,
10 and we make sure that they agree that it's an okay
11 question to even use.

12 Q All right.. But for purposes of interpreting
13 polygraph results, a layperson is not going to know
14 what's a good question and what's not a good question.

15 A Much like you agreed that that wouldn't be a good
16 question, *just ask your daughter*, they may understand
17 that, but I'm not sure what you're getting at.

18 Q What I'm getting at is, is a person that you're
19 administering a test to is not in a position to
20 determine whether those are good questions or not.

21 A They absolutely agree that it's a good question and
22 that it's a fair question to use. They actually have to
23 agree to that, and they have to agree that they
24 understand the question; there's no confusion about it.
25 Exactly what we're speaking about. We go over each and

1 every individual question.

2 Q Sure. But understanding the question and knowing
3 what the result of that question might be when you get
4 the results, that's two different things. Understanding
5 that question, I mean, Mr. Ontivero has no training, to
6 your knowledge, about a polygraph, right?

7 A Not that I'm aware of.

8 Q So, aside from the point that he's not an expert,
9 and he has no -- he has no understanding of what the
10 polygraph is supposed to do --

11 A Okay.

12 Q -- if he had happened to think of girls from when
13 he was sixteen, and it was other sixteen-year-old girls,
14 in a completely non-criminal thing, that could have
15 given rise to a reaction, right?

16 A It's possible. But I can assure you that, when I
17 was talking with him, he said he understood exactly what
18 we were discussing, what the question meant; that it was
19 only about the girls in this particular investigation.
20 And that's the only thing I cared about. He told me he
21 understood that.

22 Q Right. But can we, as human beings, control the
23 thoughts that pop into our head?

24 A I -- I can -- all I can say is, I'm not a
25 psychologist or a psychiatrist, or anything like that --

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1 Q Right.

2 A -- all I can say is, you know, he appeared to be
3 focused with me, and I believe he understood what we
4 were talking about.

5 Q Right, but we can't control the thoughts that pop
6 into our mind, because that's part of what is read
7 through this test, right?

8 SOLICITOR KEENEY: Objection. Asked and answered.

9 THE COURT: Okay. I think we're getting way afar
10 of what the purpose is, and it's a *Jackson v. Denno*
11 hearing, and whether or not these statements were given
12 freely and voluntarily. Again, I think we need to get
13 back to where we're at. I mean, I think these are
14 certainly issues for -- well, I mean, we're not
15 testifying for the polygraph, so it doesn't matter,
16 again. Let me ask you, are you still planning on using
17 the second interview?

18 SOLICITOR KEENEY: No, I'm just going to have
19 Machado testify to what the defendant said. He's going
20 to make it clear that there was three interviews.

21 THE COURT: Okay.

22 SOLICITOR KEENEY: But he will just testify that he
23 admitted to one incident. Or there's two incidents. He
24 when into detail about one incident during this
25 interview; transported him to the other location; and

1 then, admitted to the two incidents and went into detail
2 on those.

3 THE COURT: Okay.

4 SOLICITOR KEENEY: So, no playing of the polygraph
5 video.

6 THE COURT: Okay.

7 SOLICITOR KEENEY: The only interview that we will
8 play will be the first one, that I don't think Ms.
9 Cappelmann has an issue with, because he denied
10 everything in it.

11 THE COURT: Okay.

12 SOLICITOR KEENEY: So, I wanted to make it simple
13 for everyone, for the Court and for the jury.

14 THE COURT: Do you intend or want to play that
15 second interview, post-polygraph?

16 MS. CAPPELMANN: No, but I do believe that, as part
17 of an interrogation technique, the way this polygraph
18 was administered properly -- or what I'm trying to get
19 at is improperly, creating a accurate report to then
20 show Mr. Ontivero, further goes to the coercive nature
21 of this interview.

22 SOLICITOR KEENEY: They can lie to him and tell him
23 that he failed it, and it would still be okay under our
24 case law.

25 MS. CAPPELMANN: It's the totality of the -- it's

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1 the totality-of-the-circumstances issue, and --

2 THE COURT: I agree. From what I've seen here and
3 from what we hear, and I have the opportunity to see the
4 polygraph video, and I can tell you that, looking at the
5 totality of the circumstances, from what I see, he was
6 not coerced in any manner. So, that is a whole other
7 issue.

8 You're looking to -- you want to proffer his
9 testimony before Baird testifies as to something, that's
10 a completely different ball game. But on a *Jackson v.*
11 *Denno*, right here, as to whether or not the statement
12 was freely and voluntarily given, again, Machado can
13 testify to it. Everything that I've heard so far is
14 that it is freely and voluntarily given. Again, just as
15 she stated, they could have lied. They could have said
16 500 people said they saw it. They could have said you
17 failed it. I mean, they could have made up any many
18 numbers of lies, and it still doesn't amass to coercion
19 in this case. So, again, I'm not sure where more we
20 have to go with this, but I think we've adequately done
21 it.

22 MS. CAPPELMANN: All right.

23 BY MS. CAPPELMANN:

24 Q I guess, just to follow up with the post-polygraph
25 interview, you do not speak Spanish, and you do not

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1 understand any of the discussions between Detective
2 Machado and Mr. Ontivero?

3 A The actual conversation, I can understand every
4 once in awhile. Mr. Ontivero would say yes or si to
5 some of the questions, and say no to some. I could
6 understand the answer, that one-word answer.

7 Q Sure.

8 A But other than what I -- I believe Machado said,
9 what I asked him to say, but I don't know that for a
10 fact. I don't speak Spanish.

11 MS. CAPPELMANN: Okay.

12 BY THE COURT:

13 THE COURT: Okay.

14 SOLICITOR KEENEY: No further questions.

15 THE COURT: You may step down, Lieutenant Baird.

16 LIEUTENANT BAIRD: Thank you, ma'am.

17 THE COURT: All right.

18 SOLICITOR KEENEY: And there are no more witnesses
19 for the *Jackson v. Denno*.

20 RULING:

21 THE COURT: Okay. Again, ruling on the totality of
22 the circumstances, looking at everything, I don't see
23 where he was coerced. I see that statement was freely
24 and voluntarily made, based on my review of the video,
25 during, obviously, the polygraph, and then, immediately

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1 following interview. I do think it's better for the
2 State to just present, again, the testimony. If the
3 Defense wants to introduce the actual video, they can do
4 that, and of course, you know, I expect you to cross-
5 examine Machado.

6 MS. CAPPELMANN: I did actually have one witness,
7 your Honor.

8 THE COURT: Okay.

9 MS. CAPPELMANN: It's going to be a short witness,
10 but it's actually something that Mr. -- Mr. Ayala --
11 I'm so sorry, I always butcher your last name. That Mr.
12 Ayala happened to notice yesterday in court. So, I'd
13 like to call him just for the purposes of this hearing
14 and this hearing alone. He would not be testifying in
15 trial at all. To just something he heard regarding one
16 of the -- the video that Ms. Neiderhiser was here
17 testifying.

18 SOLICITOR KEENEY: I just think it's completely
19 inappropriate. He is here because the Clerk of Court's
20 Office asked him to be here to -- or to translate for
21 the defendant, not be a witness in this case. And Ms.
22 Cappelmann wanted to have an independent interpreter.
23 She got one. Her problem is, she just didn't get a
24 transcript of what the interview was. That would have
25 been the route to proceed, not have a person who's just

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1 supposed to be here to help the defendant understand the
2 proceedings and testify as a witness..

3 THE COURT: Okay. Let's proffer him. Mr. Ayala,
4 come on up. Let's swear you in. Come on up.

5 SOLICITOR KEENEY: Who's going to translate for the
6 defendant?

7 THE COURT: I assume he's going to speak in Spanish
8 first, and then, English.

9 SOLICITOR KEENEY: Okay.

10 MADAM CLERK: Okay? Raise your right hand. Left
11 hand on the *Bible*. Do you solemnly swear or affirm that
12 you shall interpret the testimony of this witness as he
13 speaks the answers to you, so help you God?

14 MR. AYALA, INTERPRETER: Yes and si.

15 MADAM CLERK: Thank you.

16 THE COURT: Thank you. This is simply a proffer
17 for the Court's edification. After I hear it, I don't
18 even know if I'll consider it. It's just for the
19 record.

20 FREDDIE AYALA, INTERPRETER, PROFFER

21 DIRECT EXAMINATION

22 BY MS. CAPPELMANN:

23 Q Mr. Ayala --

24 A Excuse me. Do you want me to interpret it as I
25 speak for --

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1 THE COURT: You're going to have to.

2 A Okay.

3 BY MS. CAPPELMANN:

4 Q Mr. Ayala, were you present in the courtroom
5 yesterday when we played a portion of the polygraph
6 video?

7 A Yes.

8 Q Did you notice something that Corporal Machado said
9 in that video?

10 A Yes.

11 Q What was that sentence that you heard?

12 A The sentence that I heard is that he said, *cual fue*
13 *la oración que ter escuchaste*, which means it doesn't
14 have to do anything with anything.

15 Q All right. As part of your training and
16 certification as a interpreter, do you know and
17 understand different Spanish dialects?

18 A Yes.

19 Q Is there a dialect in which this sentence would
20 mean something other than how we, as Americans, perceive
21 it?

22 A Yes.

23 Q And what is that meaning?

24 A And that means what the sentence meant is that you
25 don't have anything to do with anything. In different

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1 parts of the Spanish world, that word simply means,
2 don't worry about it, buddy; it's going to be okay.

3 But when you talk in the Spanish from Mexico, when
4 you say this doesn't have anything to do with anything,
5 that automatically puts a person at ease, and knows that
6 there will be no accountability will be held against for
7 whatever he says; because this doesn't have to worry
8 anything about anything he's saying.

9 Q So, essentially he could say whatever without
10 repercussion?

11 A Yes.

12 MS. CAPPELMANN: I have no further questions.

13 FREDDIE AYALA, INTERPRETER, PROFFER

14 CROSS-EXAMINATION

15 BY SOLICITOR KEEENEY:

16 Q You haven't listened to the entire interview from
17 start to finish, have you?

18 A No.

19 Q You listened to that portion while Ms. Cappelmann
20 played it for the other translator, correct?

21 A Yes, and I saw it on the screen.

22 Q And it was difficult to hear in the courtroom,
23 correct?

24 A No, not where I was sitting.

25 Q Not where you were sitting? But the interpreter

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AYALA PROFFER CROSS KEEENEY

1 who was testifying had to get headphones in, correct, to
2 hear it?

3 A That is correct.

4 Q What parts in the country were you saying that this
5 word means -- or these words mean something different in
6 different dialects? What part of the country does this
7 mean no repercussions?

8 A In -- Mr. Machado, understands he's from Puerto
9 Rico. And there's a -- in Honduras and Central America,
10 that's what that would mean. In Spain, because I have
11 lived two years on Spain. Puerto Rico, the Cubans use
12 it. But in the Spanish for Mexico, it's different in
13 certain aspect, just like the English -- England is
14 different from the United States English.

15 Q Got you.

16 SOLICITOR KEENEY: No further questions.

17 THE COURT: Anything further?

18 MS. CAPPELMANN: No.

19 THE COURT: Thank you. Anything further, Ms.
20 Cappelmann?

21 MS. CAPPELMANN: The only other witness I would
22 have would be Mr. John Hartley, with SLED, to testify as
23 to proper polygraph procedures.

24 THE COURT: Okay. Have you called him? Is he
25 here?

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1 MS. CAPPELMANN: He is here.

2 THE COURT: All right, go ahead and call him.

3 MS. CAPPELMANN: All right. The Defense calls John
4 Hartley.

5 THE COURT: Come on forward, sir, to be sworn.

6 MADAM CLERK: Hello. Please place your left hand
7 on the *Bible*, and raise your right hand. Do you
8 solemnly swear or affirm to truthfully answer all
9 questions asked of you by this court, so help you God?

10 JOHNNY WAYNE HARTLEY: I do.

11 MADAM CLERK: Thank you. Have a seat right here.
12 And you can adjust that how you need to. Okay?

13 JOHN HARTLEY: Okay.

14 JOHNNY WAYNE HARTLEY

15 DIRECT EXAMINATION

16 BY MS. CAPPELMANN:

17 Q Please state your name and occupation, for the
18 record.

19 A Johnny Wayne Hartley, polygraph examiner.

20 Q And who do you work for?

21 A I have my own business now. I'm retired from South
22 Carolina Law Enforcement Division.

23 Q Okay. How long were you with the South Carolina
24 Law Enforcement Division, or SLED?

25 A Twenty-seven-and-a-half years.

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1 Q And what did you do at SLED?

2 A I was the chief polygraph examiner for eighteen-
3 and-a-half years. But I actually ran the bloodhounds
4 for one year or two. And then, I started polygraphy in
5 1975.

6 Q Okay. So, were you one of the people who would
7 test others who were trying to get polygraph
8 certifications?

9 A Yes, ma'am. You're talking about tests to people
10 who were trying to get a polygraph license?

11 Q Yes.

12 A Yes. We gave them a state examination. And also,
13 we had an intern program for anyone trying to get a
14 license in South Carolina. We were one of, I think,
15 like, five or six states in the United States that had a
16 licensing program.

17 Q Okay. I want to talk about a type of test called
18 the CQT or the --

19 A Control question technique.

20 Q Yes, control question technique.

21 A Yes.

22 Q Tell me a little bit about how the relevant and --
23 and -- sorry if I'm losing --

24 A Control of comparison?

25 Q There you go, the relevant and control questions

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1 interact.

2 A Okay. Basically, in a control question technique,
3 you have, um -- the normal test is called either called
4 a bi or a zone of comparison. And by that I mean, you
5 -- in a bi-zone, you will have two relevant questions.
6 They're labeled R5 or R7. And sometimes, in the Navy,
7 there are R4 and R6. Then, you'll have three comparison
8 or control questions, and they're normally C4, C6, and
9 C9. So, what you try to do is -- basically, there's
10 nine or ten questions, depending on whether it's a zone
11 or a bi-zone. And when I say *bi-zone*, what you have is
12 you have two zones or two areas, and you will have a
13 relevant questions question, let's say R5; it is
14 bracketed with two control questions, C4 and C9. So,
15 what we're trying to do is, we want to compare reactions
16 between Question 5, the relevant question, and the two
17 control questions. That is one zone. And then, you use
18 the middle control question, which is normally C6. You
19 will use that, and you will bracket R7, relevant
20 question, R7, with Control Question 9. So, basically,
21 you have two zones in there.

22 With the control question technique, you should
23 test on a single issue, meaning both the questions, R5
24 and R7. The relevant questions, should both address the
25 same issue, and it should be a specific issue. Okay?

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1 And so, what we're looking for, we're looking for, as I
2 say, the -- the stronger reaction, whether it's in the
3 control questions, or whether or not it's in the
4 relevant questions. And we normally do this. The
5 questions are asked 25 -- between 20 and 25 seconds
6 apart. And each test in a bi-zone would take
7 approximately a little bit over four minutes. And you'd
8 normally run two, three, or four charts with the same
9 questions being asked on each chart.

10 Q Okay.

11 THE COURT: Sir, may I ask you, did you read -- or
12 did you review the video or audio of the polygraph that
13 was taken in this case?

14 A I did not review the video/audio.

15 THE COURT: Okay. And have you -- correct me if
16 I'm wrong. Is there sometimes a printout of the
17 results?

18 A I did see the chart that was sent to me, and I
19 reviewed the questions in this situation. I've been
20 doing this 41 years, and I've lectured to pretty much
21 all the federal agencies. I actually toured the CIA
22 when I went to talk to them about doing criminal
23 testing, and I also did research on computerized
24 polygraphs from John Hopkins University. And then,
25 that's eight for seven-and-a-half years, along with

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1 eleven other examiners.

2 The problem that I have with the questions that I
3 saw, the relevant question, we're dealing with the
4 question of something like did you touch the vagina or
5 anus of those girls. That is not specific. And so, in
6 -- in my line of work in stuff like that, my question
7 that I'm going to get from my examiners, what girls,
8 when, where, who. It would be like, did you date that
9 girl when you were in college or whatever. And you're
10 like, which one? And so, some examiners will say, hey,
11 we covered that in the pre-test. But you can cover that
12 in a pre-test, but you can't cover what pops in your
13 mind, because the whole polygraph, it works off,
14 basically, pictures that come in your mind. Depending
15 on what the picture that pops in your mind means to you
16 determines what signals the brains sends to what --
17 different parts of the body, telling them how to affect.
18 So, just a broad question like that is not a good
19 question, because you actually have -- in this
20 situation, you had opportunity to ask a time of, you
21 know, whether it's between 2006 and 2010, or whatever.
22 You had the occasion to ask a particular name, to
23 identify who I'm asking the question about. And since
24 you get two questions there, there are two alleged
25 victims there, you could have asked one question with

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1 one name on one question, and the other one on the
2 other. So, you could cover that. That's the problem
3 that I have with that.

4 Also, the control question technique is, whenever
5 you ask the control questions, and all the schools that
6 I know, all the polygraph schools teach you to do what
7 we call is time barred. So, when you ask a control
8 question, you want to go back, before the alleged crime
9 took place. Okay? Because I'm using that to compare.
10 So, you want to go back before the alleged crime took
11 place to ask a probable lie. For example, if I -- the
12 number one control question is, before you were such-
13 and-such years old, do you remember ever lying about
14 anything serious, or ever lying to authority, or someone
15 who trusted you? That's the number one control
16 question. Okay? So, everyone lies and everyone steals.
17 It just depends on when and where and how serious. So,
18 the theory is, if I ask you a question, let's say you're
19 accused of stealing something in April of this year, if
20 I go back and ask you, and you're thirty years old, and
21 I say, before you were twenty-seven, do you remember
22 ever lying to anyone about anything serious? Before you
23 were twenty-seven, do you remember ever stealing
24 anything serious. I'm going back before this. If I
25 don't go back before this, my control question becomes a

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1 relevant question. Because, if I say, this year, did
2 you steal anything, or this year, did you lie, well, I
3 might be thinking about what I'm accused of. So, it's a
4 relevant question.

5 THE COURT: Okay.

6 A So, it has to be time-barred. There was an attempt
7 to time-bar these questions, but the attempt was before
8 this year or prior to this year. You have a liar, you
9 know, like that, but this allegedly happened in 2006.
10 So, to have a proper control, you really need to go
11 back.

12 THE COURT: Okay.

13 MS. CAPPELMANN: That's everything that I wanted to
14 say.

15 A Sorry.

16 CAPPELMANN: No, you're -

17 BY THE COURT:

18 MS. CAPPELMANN: No, you're --

19 THE COURT: And I appreciate that. I just knew I
20 could cut to the chase. So, okay.

21 MS. CAPPELMANN: I have no further questions.

22 THE COURT: Okay.

23 SOLICITOR KEENEY: No questions.

24 THE COURT: Okay. You may step down, sir. Thank
25 you.

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ARGUMENT AND RULING

1 A Okay. Thank you, ma'am.

2 THE COURT: Okay. Anything else from you?

3 MS. CAPPELMANN: That's all I have.

4 ARGUMENT AND RULING:

5 THE COURT: All right. Any argument?

6 SOLICITOR KEENEY: Who would you like to go first?

7 THE COURT: Whoever. I need someone to point out
8 -- obviously, this is a *Jackson v. Denno* hearing. What
9 we need to know is whether or not, you know, he was --
10 gave his statement freely and voluntarily. And again,
11 based on what I've heard and seen, it appears that he
12 gave his statement freely and voluntarily, based on his
13 demeanor, based on the demeanor of the officers as they
14 were interviewing him. It's almost as if it doesn't
15 even matter what he said. It's whether or not there was
16 any type of coercive environment. I understand your
17 argument of the one question as a, it doesn't have
18 anything to do with in Spanish and how that can be
19 interpreted.

20 I haven't heard any testimony yet from anyone that
21 that is something that is -- law enforcement's telling
22 someone that they are protected in Spanish, and if that
23 would be the appropriate law in Mexico. Because we
24 could lie and say the same thing. I mean, a police
25 officer here could say, well, that's fine, you know.

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ARGUMENT AND RULING

1 And again, I'm just concerned, and I find these cases
2 are difficult. I mean, I'll be the first to tell you,
3 this whole issue of, you know, this is just not
4 interpretation, you know, this is translation. And so,
5 --

6 MS. CAPPELMANN: And if I may kind of expound upon
7 that?

8 THE COURT: Yes.

9 MS. CAPPELMANN: Our argument is what the coercive
10 nature of all of this is. He was under arrest. He was
11 outnumbered by officers. Sometimes, he would have two
12 other officers. Sometimes, he would have three other
13 officers testify -- or, interrogating him. He was taken
14 to different locations. He had already been arrested.
15 He had already gone through one interview that was, I
16 guess, about an hour-and-a-half long. And then, he was
17 arrested. And then, he was actually arraigned. I'm
18 going to come back to that in a second.

19 And then, after he had been in jail for four days
20 -- five days, rather, they went back and gave him a
21 polygraph, which, in our opinion, was pretty much just a
22 fabricated polygraph to tell him he had -- there was
23 deception, and he was strapped up to this machine. He
24 was given a very scientific explanation of all the body
25 functions that they were going to be monitoring. And to

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ARGUMENT AND RULING

1 be told that this scientific device found that you were
2 lying, and then, to also be told, listen, you can say --
3 the equivalent of you can say whatever you want without
4 repercussion. And then, at the conclusion of that
5 interview, to be told you've got to tell the
6 investigator the same thing, because I'm going to go
7 back and check. I mean, at that point, even though he
8 signed *Miranda*, there is no way he could possibly think
9 that he could not give another statement.

10 As far as the arraignment goes -- and I'm just now
11 bringing this up, because it's actually a novel issue in
12 South Carolina. There are several states that find
13 public defenders at a bond hearing, whether somebody
14 intends to hire an attorney or not, for purposes of the
15 record. That case is -- here it is. *Walter Rothgery*
16 *versus Gillespie County, Texas*. Basically, if he had
17 been appointed a public defender at the bond hearing,
18 which is something that South Carolina does not do, law
19 enforcement would not have been able to go up and give
20 him *Miranda*, and ask him questions about this. So, and
21 I know that -- I guess it's maybe there's a circuit
22 split as to the constitutionality, but I would pose it
23 that the unconstitutional way that South Carolina
24 handles the arraignments, not assigning a public
25 defender, not allowing him to have counsel, who would

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ARGUMENT AND RULING

1 have surely advised him not to take a polygraph, to not
2 give any further statements, it created a coercive
3 system, so to speak, in that he's -- even if he had
4 asked for a public defender at the bond setting, we see,
5 in our everyday work, that sometimes we don't get those
6 cases for a month. That's not exactly the case here. I
7 think the clerk's tried to do -- to assign a public
8 defender after ten days, but even that doesn't happen
9 all the time. So, so, there's that issue, along with
10 the fact that, again, he had been arrested. He was
11 handcuffed, outnumbered, without -- right -- without an
12 impartial translator, who has shown that there were full
13 conversations that were not translated back that we
14 don't know what was said to him. It seems fundamentally
15 unfair to put someone who is not a native English
16 speaker, who is not a U.S. citizen, who is not familiar
17 at all with the criminal justice system, through hours'-
18 long interviews. And so, therefore, even though he did
19 sign *Miranda* waivers several times over, I think there
20 came a time when those waivers lost all meaning to him.

21 THE COURT: Did he sign three or four *Miranda*
22 waivers in this case?

23 SOLICITOR KEENEY: He signed one during the first
24 interview that's recorded. He signed one during the
25 polygraph, and one right after the polygraph. When they

1 transferred him, it was three.

2 THE COURT: Okay.

3 SOLICITOR KEENEY: I will address her last point
4 first. I think what she was trying to argue is a *Sixth*
5 *Amendment* violation, where the right to counsel
6 attaches. That is actually not a novel issue. Our
7 United States Supreme Court has addressed it in *Monsanto*
8 *versus Louisiana*, and our South Carolina Supreme Court
9 has addressed it in *State versus Reed*. I can pass those
10 cases.

11 THE COURT: I'm familiar with it.

12 SOLICITOR KEENEY: I know I've passed it up to you
13 before in the last hearing. I'll give it to Ms.
14 Cappelmann.

15 And basically, those cases said, even if he did
16 have an attorney, that Ms. Cappelmann was assigned to
17 him on that day, law enforcement still can talk to him.
18 They can still go there, and as long as they read
19 *Miranda* and he waives, it is fair game for law
20 enforcement to do that. *Miranda* is the only thing that
21 matters. And I'll pass this -- can I pass it to your
22 law clerk? So, I think that's all I have for that
23 issue.

24 With respect to the voluntariness of all three
25 statements, I haven't heard any argument about the first

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1 statement. So, assuming Ms. Cappelmann is not
2 challenging that, I think the State has established
3 beyond a preponderance of the evidence that that was
4 voluntary.

5 With respect to the polygraph interview, when you
6 look at the totality of the circumstances, the standard
7 is whether is pulling everything out of that together,
8 his will was so overborne that he had to make this
9 statement. This was a laid-back environment. You've
10 heard Brian Baird's voice. He's like the calmest person
11 I've ever heard speak. And there's no threats, there's
12 no promises.

13 Now, the dialect issue, Machado testified he didn't
14 mean anything that way. He didn't -- I don't even think
15 he recalled even saying that. So, the fact that that
16 means something different, even if it was some type of
17 promise, even if we would concede that, which I do not,
18 that it wasn't so strong that it overbore his will.
19 Because I remember Machado saying, I'm not going to
20 confess, and the defendant saying, I'm not going to
21 confess to something that I didn't do. So, obviously
22 his will was not overborne. And still, when he made his
23 admission, he didn't fully confess to the crime. He
24 only admitted to something with one girl, and he put the
25 blame on that girl. So, he was very much in control of

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ARGUMENT AND RULING

1 what he was doing. I think, with everything, taking his
2 age, taking the fact there's no threats or promises, and
3 the totality and the circumstances that all three
4 statements, the first statement is recorded, the
5 polygraph statement, with the post-polygraph statement,
6 and then, the third statement he was transferred to
7 investigations, that those were voluntary under the
8 totality of the circumstances. Thank you.

9 THE COURT: Okay. Well, respectfully, I've heard
10 your argument. I do think, under the totality of the
11 circumstances, I think the defendant understood and
12 received his *Miranda* rights. I think he waived them. I
13 think he chose to talk. I think they were voluntary,
14 based on preponderance of the evidence. Certainly, you
15 are going to cross-examine Machado as far as what he
16 did, and when he translated and asked, which, of course,
17 you're free to do. But at this point, I think they come
18 in, and I think they're appropriate.

19 What else do we have before we bring the jury in?

20 SOLICITOR KEENEY: There was one last issue that I
21 wanted to take up. I'm not sure of Ms. Cappelmann's
22 position, and that's my mistake. I didn't ask her
23 before. His brother was actually charged with these
24 same crimes. The girls alleged that both of them did
25 this to him -- to them. I'm sorry. And he pled guilty,

1 and is serving a twenty-year sentence in prison for
2 that. I don't know -- I don't want it to come in that
3 his brother did this, unless we're getting, oh, yeah, he
4 pled guilty, too, because I don't want it to seem like
5 these girls are just accusing everybody of the crime, if
6 that makes sense. So, I don't know what degree she was
7 planning on going into that, but I wasn't planning to
8 get into that at all. That was my intent.

9 THE COURT: Ms. Cappelmann?

10 MS. CAPPELMANN: I believe we're entitled to argue
11 third-party guilt, especially in this situation where we
12 know who the third party is. There's a lot of
13 similarities between the two of them, and he did already
14 plead guilty to the allegations, that are the same
15 allegations that are the same allegations that are --

16 SOLICITOR KEENEY: And as long as we can get in
17 that he pled guilty, that's fine with us.

18 THE COURT: Okay. I think it's fair game. I think
19 it's relevant, certainly, and I do think it's evidence
20 of third-party guilt, and specific as to a person. He
21 pled guilty to it. So, I think if you want to bring it
22 in, it's fair game and the door's open. Okay?

23 SOLICITOR KEENEY: Okay. Thanks.

24 THE COURT: All right. You all, we're going to
25 take five minutes, and I mean literally five minutes.

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ARGUMENT AND RULING

1 The time of that back clock is quarter 'til. Everyone
2 needs to be back in here. We're going to bring the jury
3 out. The jurors have sent me a note that they can work
4 until 5:15 today, so that's how long we'll go. So, as
5 many witnesses as you can put up, let's do it. Okay?

6 SOLICITOR KEENEY: Your Honor, Mary Jordan told me,
7 after speaking with Paige, that we're just going to do
8 opening. So, all my witnesses are planned for tomorrow
9 morning.

10 MS. CAPPELMANN: But our understanding was for
11 today.

12 THE COURT: Okay. So, I guess that's as far as
13 we're going.

14 SOLICITOR KEENEY: And my first witness is from
15 Walterboro. So, she's planning on coming, being here at
16 9:00 tomorrow morning. I apologize.

17 OFF-THE-RECORD DISCUSSION.

18 THE COURT: You don't have anyone you can put up?

19 SOLICITOR KEENEY: It just wouldn't -- it wouldn't
20 make sense.

21 THE COURT: Okay. Well, let's do this. Then, I'll
22 also find out when this jury is able to start in the
23 morning. And provided -- all right. So, we'll figure
24 out when they can start, and we'll go as long as we can
25 tomorrow. And I'll figure out, again, and once we know

1 that today, that should help you make sure you have all
2 your witnesses.

3 SOLICITOR KEENEY: They will all be here tomorrow.

4 THE COURT: Thank you. Okay. Sorry. That was a
5 miscommunication.

6 MS. CAPPELMANN: And very quickly, my co-counsel
7 just pointed out, I don't think there was actual ruling
8 on the issue of the translator as a language conduit.
9 And just for purposes of the record --

10 MS. SAXON: What we researched overnight.

11 SOLICITOR KEENEY: That didn't make any sense to
12 me, those cases, because there were confrontation issues
13 for the translator.

14 THE COURT: I can tell you there was not the
15 confrontation clause or problem. I mean, Machado's
16 going to testify. Again, what we're looking at is
17 whether or not, under a *Jackson v. Denno* argument,
18 whether or not it was voluntarily made. And it appears
19 it was voluntarily made. I think you can challenge
20 that. I think you can call your own interpreter at
21 trial to challenge that. But again, I think that's for
22 the jury to determine. I think, overall, they've shown
23 that it was a good and fair translation. And where
24 we're getting in the cross-hairs of all this is, again,
25 we understand that this is an officer. He is, of

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1 course, on behalf of the State. It's permitted that he
2 asks the questions and he translates. So, I'm not sure
3 where we're going with this, other than I think you have
4 an opportunity to ask.

5 MS. CAPPELMANN: Okay. And my understanding --

6 THE COURT: And again, I wish you had hired someone
7 to transcribe the audiotape, because that makes the
8 whole thing more understandable. I mean, right now what
9 you've got is an argument by someone saying that this
10 means something in a certain language. Again, I think
11 that's for the jury to determine.

12 MS. CAPPELMANN: And just for the record, those
13 cases that were provided earlier were *Joel* -- or, I'm
14 sorry -- *United States versus Joel Martinez Gaytan* and
15 *United States versus Nazemian*.

16 THE COURT: Thank you. Okay.

17 ITEM IDENTIFIED AS COPY OF FEBRUARY

18 6, 2014 VIDEO RECORDING OF DEFENDANT'S

19 FIRST INTERVIEW

20 MARKED COURT'S EXHIBIT 2.

21 ITEM IDENTIFIED AS COPY OF FEBRUARY

22 6, 2014 *MIRANDA* FORM

23 MARKED COURT'S EXHIBIT NUMBER 3.

24 ITEM IDENTIFIED AS FEBRUARY 11,

25 2014 VIDEO RECORDING OF POLYGRAPH

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BY THE COURT

1 MARKED COURT'S EXHIBIT NUMBER 4

2 ITEM IDENTIFIED AS COPY OF FEBRUARY
3 11, 2014 *MIRANDA* FORM

4 MARKED COURT'S EXHIBIT NUMBER 5.

5 ITEM IDENTIFIED AS COPY OF BEAUFORT
6 COUNTY SHERIFF'S OFFICE CONSENT FOR
7 POLYGRAPH EXAMINATION

8 MARKED COURT'S EXHIBIT NUMBER 6.

9 ITEM IDENTIFIED AS FEBRUARY 11,
10 2013 *MIRANDA* FORM

11 MARKED COURT'S EXHIBIT NUMBER 7.

12 ITEM IDENTIFIED AS COPY OF STATE'S
13 MOTION REGARDING LAST INTERVIEW

14 MARKED COURT'S EXHIBIT NUMBER 8.

15 ITEM IDENTIFIED AS COPY OF MOTION
16 TO ALLOW THE TERM *VICTIM* AT TRIAL

17 MARKED COURT'S EXHIBIT NUMBER 9.

18 ITEM IDENTIFIED AS COPY OF STATE'S
19 MOTION REGARDING EXPERT TESTIMONY

20 MARKED COURT'S EXHIBIT NUMBER 10.

21 OFF THE RECORD 2:39 P.M.

22 BACK ON THE RECORD 2:47 P.M.

23 BY THE COURT:

24 BAILIFF: All rise. Please come back to order.

25 THE COURT: Please be seated. Are you all ready to

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BY THE COURT

1 go? State's ready?

2 SOLICITOR KEENEY: State's ready.

3 THE COURT: Defense ready?

4 MS. CAPPELMANN: Yes, ma'am.

5 THE COURT: All right. Let's bring the jury in.

6 BAILIFF: Yes, ma'am.

7 OFF-THE-RECORD DISCUSSION.

8 BAILIFF: The jury is entering the courtroom, your
9 Honor.

10 THE COURT: Thank you.

11 JURORS ENTER COURTROOM 2:49 P.M.

12 BAILIFF: The jury is seated, your Honor.

13 THE COURT: Thank you. Good afternoon, ladies and
14 gentlemen.

15 RESPONSES FROM JURORS.

16 THE COURT: It's a pleasure to see you all. What
17 we're going to do at this time is, I'm going to have the
18 clerk swear you in as the jury in the trial of this
19 case. I'm going to make a few brief comments, and then,
20 you are going to hear the opening statements from the
21 attorneys in this case. All right?

22 So, if you all would please rise and raise your
23 right hand to accept the juror's oath.

24 JURORS SWORN:

25 MADAM CLERK: Good afternoon. So you solemnly

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GENERAL CHARGE

1 swear or affirm that you shall well and truly try, and
2 true deliverance make, between the State of South
3 Carolina and the accused, and a true verdict give,
4 according to the evidence and the law, so help you God?

5 RESPONSES FROM JURORS.

6 GENERAL CHARGE:

7 THE COURT: Please be seated, ladies and gentlemen.
8 What I will now say to you is intended to serve as an
9 introduction to the trial of this case. These remarks
10 are not a charge on the law. I'm going to charge you on
11 the law that's applicable to this case at the end of the
12 trial. This is simply an explanation of the procedure
13 that we're going to follow, so you can better understand
14 what's happening.

15 Ladies and gentlemen, the defendant in this case,
16 Mr. Ontivero, has been charged by an indictment that's
17 filed in this court with two counts of the offense
18 criminal sexual conduct with a minor, first degree.
19 Now, the elements of which I'll explain to you when I
20 charge you on the law at the end of this case.

21 Now, an indictment is simply the charge that's
22 brought in a case, and it's not, in any essence,
23 evidence of any of the allegations that it contains.
24 Now, the defendant in this case, Mr. Ontivero, has pled
25 not guilty to these indictments. Therefore, the State

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GENERAL CHARGE

1 has the burden of proving each of the elements of the
2 indictments beyond a reasonable doubt, and it's your
3 duty, ladies and gentlemen of the jury, to decide
4 whether the State has met that burden.

5 Now, your purpose as jurors is to find and
6 determine the facts. You, the jury, are the sole judge
7 of all facts in this case. If, at any time, I make any
8 comment regarding the facts of this case, you must
9 disregard it. And you are only to determine the facts
10 from the testimony of the witnesses that you're going to
11 hear from the witness stand, as well as any other
12 evidence that's been introduced into the Court. And
13 it's up to you to determine the inferences which you
14 feel may properly be drawn from the evidence.

15 Now, please understand that it is especially
16 important that you perform your duty of determining the
17 facts of the case diligently and conscientiously,
18 because, ordinarily, there is no way to correct an
19 erroneous determination of the facts by a jury.

20 On the other hand, and with equal emphasis, the
21 same law that makes you, the jury, the judge of the
22 facts, makes me the judge of the law. The law as given
23 by the Court. It's the only law that you may consider.
24 You must accept and follow it, even though you may
25 disagree with it. I cannot tell you what the facts of.

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GENERAL CHARGE

1 this case are, and you cannot disagree with me about
2 what the law is or what you think the law ought to be.
3 Your job is to take the law as I give it to you and
4 apply it to the facts as you find them, and from there,
5 render a true and just verdict under the oath you just
6 took.

7 Now, until I advise you to begin your
8 deliberations, you must not discuss this case with
9 anyone, and that includes your fellow jurors, family
10 members, friends, or colleagues. And after the case is
11 submitted to you, you may only discuss it in the jury
12 room.

13 I remind you that the attorneys, the parties, and
14 the witnesses in this case have been instructed not to
15 speak to you in coming and going over the next few days
16 in the courthouse. I remind you, again, if you happen
17 to pass you and they don't even smile, they're not being
18 unfriendly. They're following my orders.

19 Additionally, ladies and gentlemen, you are not to
20 read, listen to, or watch any news reports about this
21 case, and that includes anything that might be in the
22 newspapers or on the Internet, or on the television or
23 the radio. Please understand, you must not consider
24 anything you may have read or heard about this case
25 outside this courtroom.

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1 I remind you, it is important that you keep an open
2 mind, and not decide any issue in this case until all
3 the evidence has been presented, the parties have made
4 their closing arguments, and I have charged you on the
5 law that's applicable to this case.

6 Please understand it is your solemn duty to
7 determine the guilt or innocence of the defendant, and
8 your verdict must be based solely on the evidence
9 presented in this courtroom.

10 Now, in just a moment, the Solicitor is going to
11 make what's called an opening statement, in which she's
12 going to tell you or explain to you what she believes
13 the issues are in this case. And then, the attorney for
14 the defendant is also going to make an opening
15 statement. What I want you to understand is, these
16 opening statements are not evidence in this case.
17 Again, they are only the contention of what each of the
18 parties believe the issues are. I remind you, the
19 evidence in this case comes from the witness stand, and
20 again, any other evidence that's introduced.

21 Now, from time to time during the trial of the
22 case, you may hear one of the lawyers say something
23 like, your Honor, I believe there's a question of law we
24 need to take up; or I may send you back to your jury
25 room; or I may motion them up and have a conference with

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GENERAL CHARGE

1 them over on the side. I want you to understand
2 something. We're not hiding anything from you. Often,
3 when I have to rule as a matter of law whether or not
4 certain testimony is admitted, I may make a comment on
5 the facts of this case. And because I would never want
6 anything I say to affect you, the jury, in your
7 determination of the facts, out of an abundance of
8 caution, I just try to do it outside of your presence.

9 Now, in determining what the true facts are in this
10 case, you must decide whether or not the testimony of
11 the witness is believable. It's my responsibility to
12 rule as a matter of law as to whether certain testimony
13 is admitted, but once it's admitted, whether or not you
14 believe it is for you to determine. In deciding whether
15 to believe a witness, you have a right to consider the
16 interest of any witness, the bias of any witness, the
17 prejudice of any witness. You can look at the
18 opportunity for the witness to have seen the of the
19 matters and things about which they are testifying, and
20 you can watch and look at the way the witness acts on
21 the witness stand.

22 Ladies and gentlemen, you have the right to
23 consider anything that is in the record that will help
24 you evaluate the testimony of the witnesses. That means
25 that it's your duty to pay close attention to the

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OPENING - STATE

1 witnesses, to observe them, to listen to them, so at the
2 end of the case, ladies and gentlemen, you can
3 accurately remember the testimony given.

4 Now, because this is going to be a relatively short
5 trial, ladies and gentlemen, I am not going to permit
6 you to take notes. If I believe, for some reason, that
7 would aid you or you need them, we will give you pads
8 and pencils. But at this time, ladies and gentlemen, I
9 simply ask that you sit back and give your attention to
10 the attorneys during their opening statement.

11 Now, in order to preserve everyone's rights, I am
12 going to give the parties an opportunity to object to
13 anything I've said. Anything from the State before we
14 begin the trial?

15 SOLICITOR KEENEY: No, your Honor.

16 THE COURT: Anything from the Defense?

17 MS. CAPPELMANN: No, your Honor.

18 THE COURT: Thank you. Ladies and gentlemen, we
19 are now going to begin the trial of this case.

20 SOLICITOR KEENEY: May it please the Court?

21 THE COURT: Yes, ma'am.

22 OPENING STATEMENT ON BEHALF OF

23 THE STATE, BY SOLICITOR KEENEY:

24 SOLICITOR KEENEY: Back in 2006, the defendant,
25 Elidoro Ontivero, rented a room to a woman named Rose

1 Villalobos. Living in this house was the defendant, the
2 defendant's girlfriend, Rosa, and her three children.
3 Now, her three children are ^{Younger}_{Sister}, who was six years old
4 at the time; ^{Older Sister} who was seven years old at the
5 time; and S.V. who was just a toddler.

6 In 2006, while living in this house, the defendant
7 sexually abused ^{Younger}_{Sister} and ^{Older Sister} who were only six and
8 seven years old at the time. While in the house, the
9 defendant forced ^{Older Sister} to perform oral sex on him, and
10 he performed oral sex on ^{Younger Sister}. After the defendant --
11 after the victims, ^{Younger Sister} and ^{Older Sister} moved out of the
12 house, they moved in with the defendant's brother, whose
13 name is Julio Cesar Ontivero. Julio dated Rosa, the
14 mom, and in this house, Julio sexually assaulted ^{Younger}_{Sister}
15 and ^{Older Sister}.

16 You're not here to determine Julio's guilt. This
17 is the defendant's day in court. Julio has already pled
18 guilty, and is serving a twenty-year sentence in prison.
19 We're not here about Julio, we're here about the
20 defendant.

21 Now, this came to light in 2014. And how this came
22 to light was because ^{Younger}_{Sister} was in therapy. She was
23 getting counseling at Coastal Empire Mental Health. And
24 during her therapy session, she disclosed the sexual
25 abuse inflicted upon her by the defendant. At that

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OPENING - STATE

1 point in time, the therapist, Amber Allen, notified law
2 enforcement because she had to. She's a mandatory
3 reporter.

4 Law enforcement gets involved. They do interviews.
5 They talk to the girls. They get the girls scheduled
6 for interviews, and at that point, the investigation
7 begins.

8 You're going to hear from law enforcement. You're
9 going to hear about statements that the defendant made,
10 and you're going to hear about what their investigation
11 revealed.

12 You're also going to hear from ^{Younger} a and ^{Sister} Older Sister
13 They're going to talk to you about what, exactly, the
14 defendant did to them back in 2006.

15 Now, I have to prove to you beyond a reasonable
16 doubt that the defendant committed two acts of criminal
17 sexual conduct with a minor, first degree. So, you're
18 going to wonder, what does that mean. That means that
19 the defendant engaged in a sexual battery with a victim
20 under the age of eleven. Here, we've got two victims
21 who are six and seven years old at the time.

22 And a sexual battery is defined by our legislature
23 in many ways. There's many ways a sexual battery can be
24 committed. There could be some type of penetration, but
25 what we're talking about here is oral sex. Oral sex is

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OPENING - STATE

1 what is involved here. That is what the defendant did
2 to these two little girls.

3 Now, you're going to hear the term *beyond a*
4 *reasonable doubt*. And what that means -- your Honor is
5 going to tell you what it means. But what it means --
6 it doesn't mean every single doubt one might have.
7 There are very few things in life that we know without a
8 single doubt. But if you are firmly convinced that the
9 defendant is guilty, then, you must find him guilty.

10 Now, I know that this is a difficult case, and it's
11 difficult for many reasons. One of the reasons is, it's
12 a tough subject matter. Nobody wants to come to court
13 and talk about raping children or molesting children.
14 These little girls are not going to want to talk about
15 the defendant's penis or what they did to him, what he
16 did to them, but we're still going to have to listen
17 carefully.

18 The other reason this case is difficult is because
19 part of it's in Spanish. I don't speak Spanish. Many
20 of you probably don't speak Spanish, so it's difficult.
21 But despite these difficulties, I ask that you listen
22 carefully to the evidence, you deliberate carefully, and
23 you return a verdict of guilty for what the defendant
24 did to ^{Older Sister} and ^{Younger} when they were six and seven
25 years old. Thank you.

11-15-16 STATE V ONTIVEROOPENING - DEFENDANT

1 MS. CAPPELMANN: Thank you, your Honor. May it
2 please the Court?

3 THE COURT: Yes.

4 OPENING STATEMENT ON BEHALF OF
5 DEFENDANT, BY MS. CAPPELMANN:

6 MS. CAPPELMANN: I'm not going to stand up here and
7 tell you that these girls were not abused. And at the
8 end of this trial, you're not going to have to make the
9 decision to decide for yourself whether they were abused
10 or not, because they most certainly were. But not by
11 Elidoro. By his brother, Julio.

12 Like the State said, the girls lived with their
13 family, and they lived with Elidoro awhile. They also
14 lived with Julio for a lot longer. And you're going to
15 hear that Julio did the things that they're probably
16 going to testify to. But it wasn't Elidoro.

17 Now, I believe there's going to be some testimony
18 presented to you about maybe memories, how trauma
19 affects or brings repetitive behaviors. But at the end
20 of this trial, I believe you'll understand why Elidoro
21 is here today, and why he is not guilty.

22 Now, you heard that these allegations were brought
23 about in 2014. That's how long Elidoro has been waiting
24 for you. Because make no mistake about it, you are
25 Elidoro's jury. Yesterday, we picked you. You are the

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BY THE COURT

1 ones who will determine what happens. So, I ask you to
2 come at this trial with an open mind, a sceptic eye,
3 because the State gets to bring their case first. They
4 get to interview. They get to have people testify
5 first. They get to ask questions first. And then,
6 we're the followup.

7 So, it's your duty, though, to make sure you
8 consider everything. This is the last time I'm going to
9 get to talk to you before all of this is over. But just
10 keep in mind, we chose you.

11 I'm going to do my best to explain everything that
12 the State's going to put up, and at the end, you'll see
13 that Elidoro is not guilty.

14 BY THE COURT:

15 THE COURT: Thank you. Ladies and gentlemen,
16 you've now heard the opening arguments in this case. At
17 this time, we are going to go ahead and break for the
18 evening. It's my understanding, ladies and gentlemen,
19 that you would like to come in at 10:00 a.m. tomorrow
20 morning. Is that correct? Yes? Is that fine?

21 I need you all to do one other thing for me. When
22 we go ahead and break for the evening, when you go back
23 to your jury room, I need you to elect a foreperson. A
24 foreperson doesn't have any more say than anyone else.
25 They're simply the person who communicates with me

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BY THE COURT

1 regarding scheduling, and it's also the person, when I
2 send the case to you for your deliberations, they make
3 sure everyone on the jury is contributing.

4 I apologize that today is so short. I understand
5 some of you came from some distance to be here. I can
6 assure you that, tomorrow, we will run from 10:00 until
7 you permit me to tomorrow afternoon, and we will do it
8 as quickly as we possibly can. But that's what you can
9 expect for the morning.

10 Ladies and gentlemen, I have to tell you this, and
11 I'm going to tell you every time when we part. Do not
12 discuss this case with anyone. Do not do any
13 independent research. And if you open the newspaper
14 tomorrow morning, and it happens to state anything about
15 this case, you are to close it, disregard it. The same
16 thing about the news. I don't expect there to be
17 anything, but out of an abundance of caution, I am
18 required to tell you that. Again, don't do any
19 independent research.

20 Ladies and gentlemen, tomorrow is going to be a
21 long day, so I'm going to tell you to please come back
22 refreshed. Have a good breakfast. And again, I look
23 forward to seeing you all at 10:00 a.m. And again, if
24 you are able and everyone is fine, I expect to run until
25 5:00 tomorrow. All right? Thank you, ladies and

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BY THE COURT

1 gentlemen.

2 JURORS LEAVE COURTROOM 3:06 P.M.

3 BAILIFF: Jury is clear, your Honor.

4 THE COURT: Okay. Ms. Keeney, do you expect to
5 have all your witnesses here tomorrow?

6 SOLICITOR KEENEY: They'll be here at 9:00 a.m.

7 THE COURT: Okay. Ms. Cappelmann, additionally, if
8 you have any witnesses, I would, for sure, make sure
9 they're going to be here in the afternoon. Obviously,
10 we are going to run as late as this jury will run. And
11 I'm assuming -- what time did they tell us tomorrow?
12 Did they, Jody?

13 BAILIFF: What time is that?

14 THE COURT: Till they would be able to run till
15 tomorrow with the jury? 5:15-ish? Probably about the
16 same?

17 BAILIFF: Yes. That's --

18 THE COURT: Okay.

19 SOLICITOR KEENEY: And your Honor, this is so the
20 Court's aware. I don't think this will be an issue.

21 Older Sister she has a very important -- one of the victims
22 -- and I'm sorry for saying victim in my opening. My
23 face, when I did it, was pretty horrible. But she has
24 an ROTC-like-band-off thing that she's having, and
25 she'll be done at 1:00. So, she'll be here at 2:00.

11-16-16 STATE V ONTIVERO

BY THE COURT

1 Shouldn't be an issue. We should still be going, but I
2 just wanted the Court to know.

3 THE COURT: Okay. Yes, Mr. Ayala.

4 INTERPRETER AYALA: Yes. Whenever the attorneys
5 are facing the jury, will you please speak up? I know
6 you tend to soften your voice a little bit. You're
7 females. But be manly about it. Speak up.

8 THE COURT: Okay. All right. Everyone's been duly
9 warned. Okay. Anything else before we break for the
10 day?

11 SOLICITOR KEENEY: Nothing from the State.

12 MS. CAPPELMANN: Nothing from the Defense.

13 THE COURT: All right. I look forward to seeing
14 everyone. Thank you.

15 **END DAY TWO, TUESDAY, NOVEMBER**

16 **15, 2016, 3:08 P.M.**

17 **BEGIN DAY THREE, WEDNESDAY,**

18 **NOVEMBER 16, 2016, 10:04 A.M.**

19 BY THE COURT:

20 BAILIFF: All rise. The Honorable Carmen Mullen
21 presiding.

22 THE COURT: Thank you. Please be seated. Good
23 morning. Paige was just reminding me, I just want to
24 talk about scheduling. We're going to go 'til roughly
25 5:00 o'clock today. Do you think you will get through

11-16-16 STATE V ONTIVERO

BY THE COURT

1 your entire case today?

2 SOLICITOR KEENEY: Yes.

3 THE COURT: Okay. And I don't know if you
4 obviously intend or not intend to call witnesses, but
5 again, depending on where we break, there is a
6 possibility, even if they finish early, we're going to
7 go to closing arguments. I just want to make sure
8 everyone is prepared, if that's where we're at. Okay?

9 SOLICITOR KEENEY: The State would just ask --

10 THE COURT: Yes.

11 SOLICITOR KEENEY: Before Lieutenant Arbelo
12 testifies, when we play the first interview that's on
13 video, not the second polygraph interview, we need a
14 break. Ms. Cappelmann had some redactions that she
15 wanted to add.

16 THE COURT: Okay.

17 SOLICITOR KEENEY: So, I wanted to make sure I have
18 them, so there's no mistrial motions.

19 THE COURT: Thank you.

20 SOLICITOR KEENEY: And one other thing is, Ms.
21 Cappelmann subpoenaed some DSS records about the victims
22 in this case. Judge Nettles reviewed them in camera,
23 and turned them over to both of us.

24 THE COURT: Okay.

25 SOLICITOR KEENEY: They involve the -- and I will

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BY THE COURT

1 pass it up, my copy to you.

2 THE COURT: Okay.

3 SOLICITOR KEENEY: They involve an incident in 2003
4 with the victims' biological father of some physical
5 abuse.

6 THE COURT: Okay.

7 SOLICITOR KEENEY: There's no allegation of sexual
8 abuse. And so, the State would ask that that evidence
9 be excluded, as it's not relevant under 401, 402. And
10 even if it had any relevancy, 403, it's more prejudicial
11 than probative. I don't see how they were physically
12 abused can relate to a mistake of identity of being
13 sexually abused.

14 THE COURT: Okay. Ms. Cappelmann?

15 MS. CAPPELMANN: I believe that it is relevant for
16 impeachment purposes, especially since some of the
17 things that the witnesses will testify to are that they
18 were too afraid to do anything. But that would show
19 that they actually have had experience with getting help
20 from CODA and law enforcement, and I think that makes it
21 relevant.

22 SOLICITOR KEENEY: The girls would have been three
23 and four years old. That would have been completely --
24 I don't know how you're going to impeach someone that
25 was three and four at the time about something their

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BY THE COURT

1 father did to them, and the mother getting help from
2 CODA, when the mother wasn't even aware of these
3 allegations in 2014.

4 MS. CAPPELMANN: I'm speaking to impeaching the
5 mother.

6 THE COURT: Oh. Okay. Okay. Okay.

7 SOLICITOR KEENEY: I mean, she didn't know about it
8 until 2014, and when she did know about it, they did get
9 help. They went in --

10 THE COURT: Well, let me go through, let me read
11 it, and let me just see if I think it's relevant, and
12 we'll let you know. We don't have to make this decision
13 now. We can go ahead and call our first witness. Okay?
14 All right.

15 SOLICITOR KEENEY: Okay.

16 THE COURT: All right. Let's bring the jury in.

17 BAILIFF: Yes, your Honor.

18 SOLICITOR KEENEY: Oh -

19 THE COURT: Yes.

20 SOLICITOR KEENEY: I'm so sorry.

21 THE COURT: Hold on.

22 SOLICITOR KEENEY: There were some issues with the
23 other translator. Ms. Cappelmann and I have agreed that
24 Mr. Ayala can translate for the witness, if that's okay
25 with the Court.

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BY THE COURT

1 THE COURT: For the witness?

2 SOLICITOR KEENEY: For the witness.

3 THE COURT: Okay. So, when the mother presumably
4 comes up here. Is that correct?

5 SOLICITOR KEENEY: I would ask that she be down
6 here, because she's in a wheelchair.

7 THE COURT: Okay. And that's -- that's fine.
8 Okay.

9 MS. CAPPELMANN: We've talked about this. Mr.
10 Ayala is an impartial party to this. I think that Mr.
11 Ontivero would be able to understand what Ms. Villalobos
12 testifies to, because they both speak Spanish.

13 THE COURT: Okay.

14 MS. CAPPELMANN: And if he's just testifying for
15 purposes of the trial. I mean, assuming --

16 SOLICITOR KEENEY: It's just one witness.

17 THE COURT: He's already been sworn, so. Okay.

18 SOLICITOR KEENEY: It's just one quick witness.

19 THE COURT: Okay. All right. Let's bring the jury
20 in.

21 BAILIFF: The jury is entering the courtroom, your
22 Honor.

23 JURORS ENTER COURTROOM 10:09 A.M.

24 BAILIFF: The jury is seated, your Honor.

25 THE COURT: Thank you. Good morning, ladies and

1 gentlemen.

2 RESPONSES FROM JURORS.

3 THE COURT: Pleasure to see you all.

4 At this time, we're going to go ahead and begin the
5 testimony in this case. If the State will call their
6 first witness for the morning, please.

7 SOLICITOR KEENEY: The State calls Amber Allen.

8 MADAM CLERK: Right this way to be sworn in,
9 please.

10 BAILIFF: Come forward and be sworn, please, ma'am.

11 MADAM CLERK: Good morning. Your left hand on the
12 Bible, and raise your right hand. Do you solemnly swear
13 or affirm to truthfully answer all questions asked of
14 you by this court, so help you God?

15 AMBER ALLEN: I do.

16 SOLICITOR KEENEY: May it please the Court?

17 THE COURT: Yes.

18 AMBER ALLEN

19 DIRECT EXAMINATION

20 BY SOLICITOR KEENEY:

21 Q Ms. Allen, where do you work?

22 A I'm employed at Coastal Empire Community Health
23 Center in Walterboro, South Carolina.

24 Q What's your position there?

25 A I'm a therapist.

11-16-16 STATE V ONTIVEROAMBER ALLEN - DIRECT - KEENEY

1 Q How long have you been in that position?

2 A About four years.

3 Q What's your degree? What's your education?

4 A I have a master's degree in counseling, and I also
5 licensed through the State of South Carolina as an LPC.

6 Q What's a LPC?

7 A A Licensed Professional Counselor.

8 Q Thank you. In January of 2014, did you have any
9 interaction with Younger Sister ?

10 A Yes, I did.

11 Q How did you know her?

12 A I was her therapist while I was employed at Coastal
13 Empire Mental Health Center.

14 Q Why was she in therapy?

15 A She was starting therapy due to her mom bringing
16 her in, because she was having what we consider to be
17 some disruptive behavior, such as defiance, aggression,
18 disrespect towards her mom, and argumentativeness
19 towards her mom.

20 Q Do you remember how old she was at this time?

21 A I do not. She would have been, I'm guessing,
22 approximately thirteen or fourteen years old.

23 Q Okay. How long did you treat her for?

24 A I treated her from December 27, 2013 until April 3,
25 2015.

1 Q During a session with ^{Younger}_{Sister} on January 22, 2014,
2 did she disclose anything to you, limiting your
3 testimony to time and place.

4 A Yes, she did. On January the 22, 2014, ^{Younger}_{Sister}
5 reported to me that she was allegedly sexually abused.

6 MS. CAPPELMANN: Objection.

7 A And at --

8 THE COURT: Basis?

9 MS. CAPPELMANN: Hearsay.

10 SOLICITOR KEENEY: 801(d), time and place.

11 THE COURT: Thank you. You can go ahead and
12 continue. I've overruled.

13 BY SOLICITOR KEENEY:

14 A Okay. She reported to me that she was allegedly
15 sexually abused.

16 THE COURT: I apologize. We have an interpreter in
17 this case, and he is asking me to have you to speak up a
18 bit. So, I apologize. If you would.

19 A Okay. Okay.

20 THE COURT: Thank you.

21 BY SOLICITOR KEENEY:

22 A She reported to me that she was allegedly sexually
23 abused at an address on in Burton, South
24 Carolina in 2006.

25 Q Okay. As a result of what she said to you, what

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AMBER ALLEN - CROSS - CAPPELMANN

1 did you do?

2 A I reported it to law enforcement.

3 Q Why did you report it to law enforcement?

4 A I am a mandated reporter in the State of South
5 Carolina.

6 Q And so, that means you have to?

7 A Report any allegations of any sexual abuse,
8 physical abuse, or neglect.

9 Q When did you report it?

10 A I reported it on the same day that she reported it
11 to me, which was on January the 22nd, 2014.

12 SOLICITOR KEENEY: Thank you. No further questions
13 for this witness.

14 THE COURT: Ms. Cappelmann?

15 AMBER ALLEN

16 CROSS-EXAMINATION

17 BY MS. CAPPELMANN:

18 Q So, you testified that ^{Younger} was about thirteen
19 when she started seeing you? ^{Sister} Thirteen or fourteen?

20 A That is my guess.

21 Q And she initially started seeing you because of
22 some instruction in school, and she was fighting with
23 her mom.

24 A Yes.

25 Q Did you ever counsel ^{Older Sister} ?

1 A I did not.

2 MS. CAPPELMANN: Beg the Court's indulgence.

3 BY MS. CAPPELMANN:

4 Q And this behavior that ^{Younger}_{Sister} was exhibiting with
5 her mom, were some of them violent?

6 A Her parent reported aggression.

7 Q Was it violent aggression?

8 A Can you clarify what you mean by violent?

9 Q Was there -- there was an incident where she
10 actually hit her mother, wasn't there?

11 A What I was reported was that she pushed her mom.

12 MS. CAPPELMANN: No further questions.

13 THE COURT: Anything further?

14 SOLICITOR KEENEY: No, your Honor. May this
15 witness be excused?

16 THE COURT: Any objection, Ms. Cappelmann?

17 MS. CAPPELMANN: No, ma'am.

18 THE COURT: You are excused, ma'am. Thank you.

19 A Thank you.

20 SOLICITOR KEENEY: The State calls Rosa Villalobos.

21 THE COURT: We need to be able to have the court
22 reporter hear her; obviously, the interpreter hear her.
23 She just needs to be facing forward, if we could,
24 please.

25 MADAM CLERK: Do you solemnly swear or affirm to

11-16-16 STATE V ONTIVERO

ROSA VILLALOBOS - DIRECT - KEENEY

1 truthfully answer all questions asked of you by this
2 court, so help you God?

3 (ROSE VILLALOBOS VIA INTERPRETER)

4 MS. VILLALOBOS: Yes.

5 MADAM CLERK: Thank you.

6 THE COURT: And we do need to face her so she can
7 -- the jury can see her. So, she needs to be turned a
8 bit to the right, please. Thank you.

9 BAILIFF: I'm going to move her back this way to
10 the microphone -- is that okay, Judge? Because right
11 now, we can't.

12 THE COURT: I think we're okay for right now.

13 BAILIFF: Okay.

14 THE COURT: As long as Mr. Ayala can hear her, I
15 think we're all fine. Okay?

16 ROSA VILLALOBOS

17 DIRECT EXAMINATION

18 BY SOLICITOR KEENEY:

19 Q Ms. Villalobos, where do you live?

20 A The actual address?

21 Q Yes.

22 A , Walterboro.

23 Q How long have you lived in Walterboro?

24 A About twelve years?

25 Q How many children do you have?

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ROSA VILLALOBOS - DIRECT - KEENEY

1 A In total, seven.

2 Q Can you tell me, who is Older Sister ?

3 A That's one of the three female children that I
4 have.

5 Q What is her birthday?

6 A of October, '99.

7 Q How old is she today?

8 A Seventeen.

9 Q Who is Younger Sister ?

10 A She's the second child I have.

11 Q What's Younger Sister birthday?

12 A of August, 2000.

13 Q How old is Younger Sister today?

14 A Sixteen..

15 Q Back in 2006, where did you live?

16 A In the house of Elidoro Ontivero.

17 Q What town?

18 A Beaufort.

19 Q And what state?

20 A South Carolina.

21 Q Do you remember the street where you lived in the
22 house with Elidoro?

23 A

24 COURT REPORTER: I'm so sorry. Can you maybe
25 direct your voice toward them and myself?

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ROSA VILLALOBOS - DIRECT - KEENEY

1 A Okay.

2 Q Do you see Elidoro in the courtroom today?

3 A Yes.

4 Q Can you point him out?

5 A It is him.

6 Q Can you see what he's wearing?

7 A He has a long-sleeved shirt.

8 SOLICITOR KEENEY: Let the record reflect that
9 she's identified the defendant.

10 BY SOLICITOR KEENEY:

11 Q How did you know Elidoro?

12 A We worked in the same area, but with different
13 companies. He had -- he was with one company, I was
14 with another company, but it was in the same place.

15 Q How did you end up living with him?

16 A He dated his girlfriend, and his girlfriend would
17 babysit my children.

18 Q So, tell who all was living in this house?

19 INTERPRETER AYALA: Again?

20 Q Who all was living in this house on ?

21 A Elidoro; his girlfriend; me; and my three children,
22 Older Sister Younger Sister , and S.V.

23 Q Do you remember how old S.V. would have been back
24 in 2006?

25 A Two or three years.

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ROSA VILLALOBOS - DIRECT - KEENEY

- 1 Q How old would have ^{Younger}_{Sister} been?
- 2 A ^{Younger}_{Sister} was about five and six.
- 3 Q So, ^{Younger}_{Sister} was about five or six?
- 4 A Yes.
- 5 Q How old was ^{Older}_{Sister}
- 6 A About six years.
- 7 Q How many rooms were in this home?
- 8 A Three bedrooms.
- 9 Q Who lived in what room?
- 10 A They gave me a room for myself and a room for my
- 11 children.
- 12 Q Who lived in the other, the third room?
- 13 A Elidoro and his girlfriend.
- 14 Q Do you know who Julio Cesar Ontivero is?
- 15 A Yes, they are brothers.
- 16 Q Did you have a relationship with Julio?
- 17 A Yes, I did have a relationship, but I don't have
- 18 one now.
- 19 Q How long did you live in that house with the
- 20 defendant?
- 21 A We didn't live there very long, about six months.
- 22 Q You worked at that time, correct?
- 23 A Yes.
- 24 Q What would your children do while you were at work?
- 25 Who would watch them?

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ROSA VILLALOBOS - DIRECT - KEENEY

1 A At first, Elidoro's girlfriend would take care of
2 them, watch them. She left, and -- and he would pick
3 them up from school when I was on my way home from work.

4 Q Where did you move after you moved out with
5 Elidoro?

6 COURT REPORTER: I'm so sorry. I got?

7 A I got together with his brother, Julio Cesar.

8 Q So, did you live with Julio?

9 A Yes.

10 Q Who else lived in that house?

11 A We moved to a mobile home park by the hospital.

12 Q Do you remember the road?

13 A I can't remember very well.

14 Q And who all was living in the house? Were the
15 children?

16 A Julio, myself, and the three children.

17 Q How long did you live with Julio, the defendant's
18 brother?

19 A Not very long. About a year, more or less.

20 Q Why did you take ^{Younger}_{Sister} to Coastal Empire Mental
21 Health in 2014?

22 A They wanted to -- to talk, and talk to me, but they
23 didn't have enough courage to talk to me. Because they
24 had been threatened that --

25 Q Hold on. I'm going to stop you here. Was ^{Younger}_{Sister}.

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VILLALOBOS - CROSS - CAPPELMANN

1 having behavioral problems?

2 A Yes, behavioral problems, because she cannot say.

3 COURT REPORTER: She could not what?

4 A Say.

5 COURT REPORTER: Say.

6 Q Okay.

7 SOLICITOR KEENEY: No further questions.

8 THE COURT: Okay. Ms. Cappelmann.

9 MS. CAPPELMANN: Thank you, your Honor. May it
10 please the Court?

11 ROSA VILLALOBOS

12 CROSS-EXAMINATION

13 BY MS. CAPPELMANN:

14 Q Ms. Villalobos, I first want to ask you about, you
15 just testified that you lived with Elidoro at Windsor
16 Road?

17 A Yes, on

18 Q Okay. Do you recall telling law enforcement,
19 though, back in 2014, that you actually lived with
20 Elidoro on ?

21 A No.

22 Q Do you recall, when you spoke with law enforcement,
23 did they mention making a report?

24 A I do not remember.

25 Q Would it help if you saw that report?

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VILLALOBOS - CROSS - CAPPELMANN

1 A Yes.

2 Q Well, I guess that's maybe a silly question,
3 because it's in English.

4 MS. CAPPELMANN: May we approach briefly?

5 OFF-THE-RECORD BENCH CONFERENCE, OUT

6 OF HEARING OF JURORS. PRESENT: THE

7 COURT, SOLICITOR KEENEY, MS. CAPPELMANN.

8 END BENCH CONFERENCE.

9 BY MS. CAPPELMANN:

10 Q Do you recall speaking with Investigator Angie
11 Boland?

12 A Seems like it. The names are not clear to me.

13 Q Okay. Well, she's actually this lady in the
14 blazer. Do you remember talking to her?

15 A Yes, I believe so.

16 Q Okay. Did you talk to her on January 22, 2014?

17 A Yes, I think I did.

18 Q Did you speak to her at the Law Enforcement Center
19 here in Beaufort?

20 A Yes.

21 Q Did you also speak to her on February 6, 2014?

22 A Yes. Yes, I believe so. I don't remember the
23 dates very well.

24 Q Okay. That's fine. Was that also at the Law
25 Enforcement Center here in Beaufort?

1 A Yes.

2 Q Okay. Now, I want to ask you about the child you
3 have in common with Julio. Her name's R.O. right?

4 A R.O.

5 Q R.O. Okay. I'm sorry. When was R.O. born?

6 A 2007.

7 Q 2007? What month?

8 A of March.

9 Q Okay. And you just testified that you had lived
10 with Julio for about a year?

11 A Yes.

12 Q And you had lived with Elidoro about six months
13 before then. The girls, both ^{Younger}_{Sister} and ^{Older-Sister} were
14 enrolled in Colleton County schools.

15 A Yes.

16 Q In February of 2007, right?

17 A Yes.

18 Q So, you must have left Beaufort, do you remember if
19 it was during the Christmas holidays?

20 A Maybe. I don't remember the dates.

21 Q Okay. That's fine. They didn't miss any school?

22 A No.

23 Q So, that would mean, then, in 2006, you would have
24 left Julio?

25 A Yes.

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1 Q All right. Now, I'm going to want to talk to you
2 about Elizabeth and Elidoro.

3 A They were boyfriends. They were not married. They
4 were boyfriend and girlfriend.

5 Q Right.

6 A Yes.

7 Q There was a time when Elidoro went or Elidoro went
8 to Mexico to get Elizabeth.

9 A Yes.

10 Q And you actually helped Elizabeth get a job?

11 A Yes.

12 Q And she worked with you?

13 A Yes. But she stopped working.

14 Q When did she come to the United States?

15 A I don't remember the date.

16 Q Do you remember the year?

17 A No year. 2006, perhaps.

18 Q Okay.

19 A Not very much more than that.

20 Q Now, when you all worked together, did you all ride
21 to work together?

22 A Yes.

23 Q When Julio and Elidoro worked together, did they
24 drive together?

25 A No. They each had their own vehicle.

1 Q Do you recall if they worked the same hours?

2 A Actually, no.

3 Q When everyone was at work and the girls were in
4 school, there was a period of time when a bus actually
5 dropped the girls off from school.

6 A Yes.

7 Q At an apartment complex.

8 A Yes. But --

9 INTERPRETER AYALA: I'm instructing her not to
10 speak so long. Can you please repeat?

11 A At one time, Elidoro, he went to pick up the girls.
12 He would take them home as I was on my way home from
13 work.

14 Q Okay. But I'm talking about the period of time
15 when the girls rode the bus home, and they went to an
16 apartment complex where another lady watched them in the
17 afternoon.

18 A Yes.

19 Q Okay. When was that?

20 A 2005, I believe.

21 Q Okay. How long were you and Julio together?

22 A Exactly, I don't remember. It's about a year. It
23 wasn't very long.

24 Q And during that time period when the girls were
25 dropped off by a bus, did you live with either Julio or

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VILLALOBOS - CROSS - CAPPELMANN

1 Elidoro?

2 A When I lived on , Elidoro was there.
3 It was his house.

4 Q Okay. So, that was in 2005?

5 A '5, '6.

6 Q Okay. Do you recall how long you lived with Julio
7 before you got pregnant? I'm sorry, before you got
8 pregnant?

9 A About three months, I became pregnant.

10 Q And then, you were still pregnant when you moved
11 out?

12 A Yes.

13 MS. CAPPELMANN: Beg the Court's indulgence.

14 BY MS. CAPPELMANN:

15 Q After R.O. was born, you had traveled back and
16 forth to Beaufort, so that Julio could have visitation
17 with her.

18 A No. No, he would travel to Walterboro so he could
19 see the child.

20 Q Okay. How long did he have visitation with R.O.

21 A It wasn't very long, because he -- I noticed that
22 he would -- that he would drive drunk and he would have
23 street fights. I suspended the visits.

24 COURT REPORTER: I'm sorry. *I suspended the visits*
25 *at?*

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VILLALOBOS - CROSS - CAPPELMANN

1 A I suspended the visits, and I didn't let him see
2 him anymore.

3 Q And during that time of visitation, you never went
4 down to Beaufort to drop her off or pick her up?

5 A No.

6 Q And you never picked her up from Beaufort?

7 A No.

8 Q Before today, when was the last time you saw
9 Elidoro?

10 A When he had his -- when he had court and he was
11 here.

12 Q Okay. When was the last time you saw Julio?

13 A When he was here, also. Both of them were here.

14 Q How long ago was that?

15 A I don't remember. But I remember seeing Elidoro at
16 a party at a house, and I left. I left immediately,
17 because we were not allowed to be in the same place at
18 the same time.

19 MS. CAPPELMANN: Beg the Court's indulgence.

20 THE COURT: Yes.

21 BY MS. CAPPELMANN:

22 Q Just to clarify, are you saying that Elidoro and
23 Julio lived at the same house for a period of time?

24 A Yes. Both of them.

25 Q When was that?

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VILLALOBOS - CROSS - CAPPELMANN

1 A When he got together with me.

2 Q Okay. Had you already been living with Elidoro
3 then?

4 A Yes, in the house.

5 Q And how long did all of you together live in the
6 house?

7 A About three months. Not long.

8 Q Do you recall -- well, let me back up. What is
9 your status in this country?

10 INTERPRETER AYALA: Again.

11 Q What is your status in this country?

12 SOLICITOR KEENEY: Objection. Objection,
13 relevance.

14 MS. CAPPELMANN: I'm headed towards bias.

15 THE COURT: Okay. Do you want to come and talk to
16 me for a moment.

17 OFF-THE-RECORD BENCH CONFERENCE, OUT
18 OF HEARING OF JURORS. PRESENT: THE
19 COURT, SOLICITOR KEENEY, MS. CAPPELMANN:
20 END BENCH CONFERENCE.

21 THE COURT: I'll go ahead and allow it.

22 BY MS. CAPPELMANN:

23 Q Let me just ask this. Are you familiar with a
24 what's called a U Visa?

25 A Yes.

11-16-16 STATE V ONTIVERO ROSE VILLALOBOS - RE-DIRECT - KEENEY

1 Q Do you currently have a U Visa?

2 A Yes. It's in process.

3 Q Okay. And a U Visa is a way for you to stay here.

4 A Yes.

5 MS. CAPPELMANN: Beg the Court's indulgence.

6 BY MS. CAPPELMANN:

7 Q One last couple of questions. There were a couple
8 of times when Younger Sister Older Sister and S.V. were left alone.
9 Is that right?

10 A Where did we hear -- leave them along?

11 Q Well, I'm not sure which residence it was, but I
12 believe this . But there was a time when
13 all the children were left alone, and one of them set a
14 trash can on fire.

15 A That day they come home early from school, they
16 were inside the house by themselves, and I got scared.

17 Q All right, but there was no one watching them. Is
18 that right?

19 A No, because I was not even aware that they were
20 going to arrive early.

21 MS. CAPPELMANN: No further questions.

22 THE COURT: Re-direct?

23 SOLICITOR KEENEY: Briefly.

24 ROSA VILLALOBOS

25 RE-DIRECT EXAMINATION

11-16-16 STATE V ONTIVERO ROSE VILLALOBOS - RE-DIRECT - KEENEY

1 BY SOLICITOR KEENEY:

2 Q When you lived with Elidoro, what town was that in?

3 A Here in Beaufort.

4 Q When you lived with Julio, what town was that in?

5 A Also in Beaufort.

6 Q Who did you live with first?

7 A In the home of Elidoro.

8 Q Did you ever live with any other brothers of Julio?

9 A No. No.

10 SOLICITOR KEENEY: No further questions.

11 THE COURT: All right. Anything further?

12 MS. CAPPELMANN: I'm sorry. No, ma'am.

13 THE COURT: Okay.

14 SOLICITOR KEENEY: May this witness be excused?

15 THE COURT: Any objection, Ms. Cappelmann?

16 MS. CAPPELMANN: No, ma'am.

17 THE COURT: All right. She may be excused. Thank
18 you.

19 Come on forward.

20 MADAM CLERK: Good morning.

21 Older Sister : Good morning.

22 MADAM CLERK: If you would, put your left hand on
23 the Bible, and raise your right hand for me. Do you
24 solemnly swear or affirm that you will truthfully answer
25 all questions asked of you by this court, so help you

11-16-16 STATE V ONTIVERO

Older Sister

- DIRECT - KEENEY

1 God?

2 Older Sister : I solemnly swear.

3 MADAM CLERK: Thank you.

4 Older Sister : Okay.

5 Older Sister

6 DIRECT EXAMINATION

7 BY SOLICITOR KEENEY:

8 Q Older Sister will you spell your name, for the court
9 reporter?

10 A Okay. Older Sister

11 Q Older Sister how 'old are you?

12 A Seventeen.

13 Q When's your birthday?

14 A October the 1999.

15 Q Who are your parents?

16 A Rosa Villalobos and Angel Maradiaga.

17 COURT REPORTER: Would you spell it, please?

18 A Which part?

19 COURT REPORTER: Your father's name.

20 A Oh, my father's name. First name or last name?

21 COURT REPORTER: Both, please.

22 A Both, okay. His first name is A/n/g/e/l, I think
23 it is. Yes, e/l. I forgot. Sorry. And then,
24 Maradiaga is M/a/r/a/d/i/a/t/a.

25 Q What grade are you in?

11-16-16 STATE V ONTIVERO

Older Sister

- DIRECT - KEENEY

1 A I'm a junior.

2 Q So, you're in high school?

3 A Um-hmm.

4 Q What high school do you go to?

5 A Colleton County High School.

6 Q And what town is that located in?

7 A In Walterboro, South Carolina.

8 Q What is your favorite subject in school?

9 A Math.

10 Q Who is Younger Sister

11 A Younger Sister is my sister.

12 THE COURT: Can you speak up just a little bit?

13 A A little bit? Okay.

14 THE COURT: Thank you.

15 A Sorry.

16 THE COURT: I appreciate it. Or as loud as you
17 can.

18 A Okay.

19 BY SOLICITOR KEENEY:

20 Q How old is Younger Sister

21 A Younger Sister is sixteen. She's sixteen or so.

22 Q Is she in the same grade as you, or is she a grade
23 less than you?

24 A She's in the same grade.

25 Q Same school as you?

- 1 A Yes, ma'am.
- 2 Q Okay. Back in 2006, where did you live?
- 3 A I remember living in Beaufort.
- 4 Q And what state is that in?
- 5 A South Carolina.
- 6 Q Who did you live with in Beaufort?
- 7 A My mom, my sister ^{Younger Sister} S.V. and two other
- 8 people that my mom was renting with.
- 9 Q And who are those people?
- 10 A Cesar's brother and his wife.
- 11 Q Okay. Now, when you say *Cesar's brother*, who was
- 12 Cesar to you?
- 13 A My mom's ex-boyfriend and husband.
- 14 Q Do some people call him Julio Cesar?
- 15 A Yeah, they -- they do. I just know him by Cesar.
- 16 Q Okay. So, you lived with Cesar's brother?
- 17 A Um-hmm. At first.
- 18 Q Just say yes or no.
- 19 A Yes.
- 20 Q Just because the court reporter can't pick up um-
- 21 hmm.
- 22 A Sorry.
- 23 Q Okay. Okay. So, you lived with Cesar's brother in
- 24 2006, correct?
- 25 A Yes.

11-16-16 STATE V ONTIVERO

Older Sister

- DIRECT - KEENEY

1 Q Do you remember how many rooms were in the house?
2 If you don't, that's okay.

3 A I think there was three. That I remember.

4 Q Okay. And did you share a room with somebody?

5 A My siblings.

6 Q Okay. And who lived in the other rooms?

7 A My mom lived in one of them, and I was in one room
8 and -- with in with my siblings, and the other room was
9 his room with his wife.

10 Q And when you say *his*, is this Cesar's brother?

11 COURT REPORTER: I'm sorry. The interpreter can't
12 hear.

13 A So, you want it louder? Okay.

14 Q Louder.

15 Do you remember what time of year this might have
16 been around in 2006? Was it hot outside, cold outside?

17 A It was like, spring/summer.

18 Q Okay. Were you in school? Were you out of school?

19 A Yeah, I was out of school.

20 Q Who would you stay with during the day?

21 A During the day, my mom would go and work, and I
22 would stay with his wife and him, and they would babysit
23 us at home. Well, in the house that we were living in.

24 Q Can you tell me what happened in that home?

25 A I would stay -- we would -- at first, you know, eat

1 breakfast, watch T.V., and I would -- we would be in the
2 living room. And then, he would take us into his room.

3 Q Can I stop you? When you say *we would be in the*
4 *living room*, who are you talking about?

5 A Siblings, S.V. and Younger Sister

6 Q Okay. And you can keep going.

7 A Oh, okay. And then, he'd take me into his room and
8 do inappropriate stuff.

9 Q And when you say *he*, who are you talking about?

10 A Cesar's brother.

11 Q And when you said, *do inappropriate stuff*, I know
12 it's uncomfortable to talk about, but can you tell the
13 jury what this inappropriate stuff was that he did to
14 you?

15 A He would undress me, and he would undress himself.
16 And then, like, he would start touching me with his
17 hands in my private areas. I didn't -- you know,
18 because I was a little girl, I didn't really have a
19 chest, but I did -- you know, he did touch my rear, and
20 he did touch my vagina. As well as he made me touch
21 him, and shoved his penis in my mouth as well.

22 Q What happened when he shoved his penis in your
23 mouth?

24 A He would then have liquid come out, and -- after
25 awhile. And then, I would run into the restroom and

1 throw up.

2 Q Do you remember how old you would have been back in
3 2006, when you lived with Cesar's brother?

4 A I was, I think, around six or seven, because it was
5 around first grade, during the summer.

6 Q Okay. Did this happen one time, or did it happen
7 multiple times?

8 A Multiple times.

9 Q And when you talked about him putting his penis in
10 your mouth specifically, did that happen one time, or
11 did it happen multiple times? (

12 A Multiple times.

13 Q And where in his room would that have happened?

14 A On his bed mostly.

15 Q Would he say anything to you after he did this?

16 A He would mention not to, you know, not to say
17 anything, and would bribe me.

18 Q How would he bribe you?

19 A He would bribe me with candy to keep my mouth shut.

20 Q Did he say anything else to you?

21 A Yeah. Sometimes I feel like the words that he said
22 to me were, you know, threatening, to not tell my mom
23 anything at all. So, like, he would hurt her, or I
24 would get hurt. In the process, someone would get hurt
25 that I loved.

1 Q Do you remember approximately how long you lived
2 with Cesar's brother?

3 A No, not really.

4 Q Do you remember where you lived after you moved out
5 of that house with Cesar's brother?

6 A Yes. While we were living in that house, my mom
7 met his brother, I think. And then, after a short
8 while, we moved out, and we went to live with him.

9 Q Who's *him*?

10 A Cesar. Sorry.

11 Q That's all right. So, you lived with Cesar after
12 you lived with Cesar's brother?

13 A Yes.

14 Q Okay. Who lived in Cesar's house, or Julio Cesar's
15 house?

16 A Julio Cesar's? It was just him, my mom, me,

17 S.V. and Younger Sister

18 Q Okay. Did anything inappropriate happen in that
19 house?

20 A Yes.

21 Q And can you tell the jury what happened in that
22 house?

23 A The same thing would happen. My mom always worked,
24 and so she didn't, you know, have enough money or -- to
25 pay a babysitter. So, he would stay at home, and he

11-16-16 STATE V ONTIVERO

Older Sister

- DIRECT - KEENEY

1 would babysit us.

2 Q Can I ask you, when you say he, just to be --

3 A Oh. Cesar, yeah. Cesar. I'm sorry.

4 Q That's okay.

5 A Cesar would stay home, and he would babysit us.

6 So, it'd be the same thing, the same process. We are
7 always in the living room playing around. And then, all
8 of the sudden, I do remember going into -- him, Cesar,
9 dragging -- not dragging, but pulling me into a room
10 with him, and he'd lock the door. I would be undressed,
11 he would be undressed, and the same process all over
12 again. His hands were on my body. His hands -- his
13 hands were on my butt and vagina, and I do remember his
14 penis as well, in my mouth, and having -- as soon as he
15 was done, liquid would be in my mouth, and I would go in
16 the restroom and throwing up as well.

17 Q Taking you back to Cesar's brother's house, the
18 first house that you were living in, did you ever see
19 Cesar's brother do anything with any of your other
20 siblings?

21 A I remember take -- him taking my sister into a room
22 and locking the door. I wasn't able to get in. I tried
23 to peek under the door, and I wasn't really able to see
24 anything, but I do remember hearing her, like, being
25 uncomfortable, ^{Younger}_{Sister} being uncomfortable, so.

11-16-16 STATE V ONTIVERO

Older Sister

- CROSS - CAPPELMANN

1 Q Do you remember the defendant -- or I'm sorry,
2 Cesar's brother, do you remember if he had any facial
3 hair, or what his facial hair situation was?

4 A It -- it was like, he would shave his hair and let
5 it grow. Like, his beard or whatever, let it grow out a
6 little bit, and then, shave it again. That was like,
7 the process of his hair.

8 Q So, there were how many people -- okay. There was
9 two people that touched you inappropriately, correct?

10 A Yes.

11 Q Who was the first person that started to touch you
12 inappropriately?

13 A When we first lived there, his brother. Cesar's
14 brother.

15 Q Okay. And then, Cesar?

16 A And then, Cesar.

17 Q Okay. Where did you move after you moved out of
18 Cesar's house?

19 A I moved back to Waltherboro.

20 SOLICITOR KEENEY: Beg the Court's indulgence.

21 No further questions for this witness.

22 THE COURT: Ms. Cappelmann.

23 MS. CAPPELMANN: Thank you, your Honor.

24 Older Sister

25 CROSS-EXAMINATION

1 BY MS. CAPPELMANN:

2 Q Older Sister I know it's been a long time, but do you
3 remember what the layout of the house was when you lived
4 with Elidoro and his girlfriend?

5 A The layout of the house?

6 Q Yes.

7 A Okay. When you enter the front door, you, I think,
8 immediately go in the living room. The -- going forward
9 would be a kitchen, and to your right would be a bedroom
10 with a bathroom. On your left would be like, a little
11 hallway, and there would be the other two bedrooms,
12 across from each other.

13 Q Okay.

14 A And I think a little closet as well, on the end of
15 the hallway, I think.

16 Q Do you remember if this was an actual home, or was
17 it a trailer?

18 A It was an actual home.

19 Q After you moved to Walterboro - I'm sorry, you keep
20 calling him Julio -- or, I mean, Cesar.

21 A Yes, sorry.

22 Q Did he come to Walterboro to have visitation with

23 R.O.

24 A What do you mean by like, come to Walterboro, like?

25 Q Would he come to Walterboro to pick up R.O. and

1 bring her back to Beaufort, to have visitation with her
2 over the weekend?

3 A I don't remember it being Walterboro. I think
4 R.O. was brought to Beaufort, but I don't -- I'm not
5 sure about that.

6 Q Okay. Well, do you recall going to Beaufort to
7 drop off or pick up R.O.

8 A I would be in the back of a car, yes.

9 Q Okay. Do you remember how long, or how long that
10 went on after you moved to Walterboro?

11 A After I moved to Walterboro, maybe a few times.
12 Not many. I don't know exactly what number, but yes.

13 Q Now, back in 2006, when this originally happened,
14 did you let anyone know?

15 A About the situation?

16 Q Yes.

17 A Yes. I let my mom know, but during the time, you
18 know, I was always with that -- with him, either of the
19 two. And whenever I'd explained it to her or tell her,
20 I'd brush it off as a joke, because they were right
21 there.

22 Q Okay.

23 A Every time I mentioned it. So, it would be -- I'd
24 tell her; then, I'd make it some kind of joke; and then,
25 play it off and treat it as if it was nothing. So,

1 she'd be confused, and never really paid much attention
2 to it.

3 Q Do you recall a period of time when the school bus
4 would actually drop you off, and you would stay with
5 another lady?

6 A Yes. I remember, yeah, coming off the school bus,
7 and I would have her as a babysitter. But then, she
8 wasn't really there all the time to take care of me.

9 Q Okay. Did she take care of you at her apartment,
10 or at the trailer, or at the house?

11 A I think she'd come over to the trailer where I was
12 to take care of me every once in awhile. I mean, she'd
13 leave, but she --

14 A Okay.

15 COURT REPORTER: I'm sorry. *She was or wasn't*
16 *living there?*

17 A She wasn't -- okay, we lived in the trailer, and
18 whenever she'd go visit, she babysit us. She wasn't
19 living there to stay there. She just came to visit, to
20 check on us, not really be there with us. She didn't
21 live there.

22 Q Okay. Now, was that Elidoro's girlfriend or a
23 different person?

24 A Elidoro's girlfriend or wife, she was there, but
25 she leave the house often.

1 Q Okay. And I'm sorry, is that a trailer?

2 A No.

3 Q Okay.

4 A The house.

5 Q I'm sorry. I was just talking about at the
6 trailer.

7 A Oh, the trailer. That's the one where, like, the
8 lady would come and check on us, but not be with us.

9 Q Okay. Okay. Now, just a second ago, you said that
10 Elidoro and Elizabeth would take care of you when Julio
11 and your mom were at work. Is that right?

12 A Julio was met -- met my mom after awhile. Like,
13 she wasn't with him at that time. She was -- it was
14 just her.

15 Q Okay. So, the time that Elidoro and his wife -- or
16 I'm sorry, girlfriend -- would watch you, Julio didn't
17 live there?

18 A No.

19 Q Where was Elizabeth when this was happening?

20 A She was nowhere to be found in the house. I have
21 no idea where she went, where she was at. I do
22 remember, like, seeing her leave a few times, but she
23 wasn't there in the house whenever I was there and that
24 happened.

25 MS. CAPPELMANN: Beg the Court's indulgence.

1 BY MS. CAPPELMANN:

2 Q And just to clarify, you're saying that both of
3 them did the exact same things to you?

4 A Yes. I do remember as well, it was Julio Cesar
5 that, as well, you know, tried to put his penis in my
6 butt and vagina, but I don't remember Elidoro, you know,
7 doing that, so.

8 Q Okay. Do you remember there being a cousin coming
9 and staying with you guys for a little bit?

10 A A cousin?

11 Q Either Elidoro or Julio's cousin?

12 A Maybe once, but I wasn't really sure who that
13 person was.

14 Q Okay.

15 COURT REPORTER: I'm sorry. *I thought it was?*

16 A A visitor.

17 Q Now, are you aware of what a U Visa is?

18 A A U Visa? No.

19 Q So, I guess another way to put it, are you --
20 you're a U.S. citizen. Is that right?

21 A What -- what do you mean by U.S. citizen?

22 Q Were you born here?

23 A No.

24 Q Okay. But you're saying that no one has discussed
25 with you what a U Visa is?

11-16-16 STATE V ONTIVERO - Older Sister

- RE-DIRECT - KEENEY

1 A Oh, U Visa. Oh, I didn't really understand. Yes.
2 Not really into depth, but I kind of have, like, an idea
3 of what it is.

4 Q Do you know if you're currently applying for one,
5 or has your mom started that paperwork? Do you know?

6 A I think -- I think I did apply for one, but my mom
7 mostly knows more about it than I do.

8 Q That's all right.

9 MS. CAPPELMANN: No further questions.

10 THE COURT: Yes.

11 Older Sister

12 RE-DIRECT EXAMINATION

13 BY SOLICITOR KEENEY:

14 Q You just testified that you're kind of fuzzy on the
15 memory of whether Elidoro put his penis in your vagina
16 and butt, right?

17 A Yeah. But I'm not really sure who it was, but I do
18 remember, yeah.

19 Q But you remember Elidoro doing something
20 inappropriate to you.

21 A Yes.

22 Q And what exactly was that?

23 A Whenever we'd be on his bed, he would try to put me
24 on top of him. So, I don't remember exactly what would
25 happen, because I'd -- I'd run to the bathroom. But it

11-16 STATE V ONTIVERO - Younger Sister

- DIRECT - KEENEY

1 was really hazy. It's really hazy to me now. Like, I
2 don't remember much.

3 Q But you remember clearly about the oral sex?

4 A Yes.

5 SOLICITOR KEENEY: Thank you.

6 THE COURT: Anything further, Ms. Cappelmann?

7 MS. CAPPELMANN: Nothing further.

8 THE COURT: You may step down.

9 SOLICITOR KEENEY: May this witness be excused?

10 THE COURT: You may be excused.

11 SOLICITOR KEENEY: The State calls Younger
Sister

12 Younger Sister

13 BAILIFF: Come forward to be sworn, please, ma'am.

14 MADAM CLERK: If you would, place your left hand on
15 the *Bible*. Raise your right hand. Do you solemnly
16 swear or affirm to truthfully answer all questions asked
17 of you by this court, so help you God?

18 Younger Sister : Yes, I do.

19 THE COURT: Thank you. Speak up just a little.

20 THE COURT: All right. Come on around. And you're
21 going to have to speak up, okay. As loud as you can.
22 And if you can bring -- bring that microphone close to
23 you. Thank you.

24 Younger Sister

25 DIRECT EXAMINATION

1 BY SOLICITOR KEENEY:

2 Q So, you're going to have to talk super loud. Okay?

3 A Alrighty.

4 Q How old are you?

5 A I'm sixteen.

6 Q What's your birthday?

7 A August 2000.

8 Q Okay. And you're going to have to speak a little
9 bit louder. I'm sorry.

10 A That's fine.

11 Q What grade are you in?

12 A I'm in eleventh grade.

13 Q What high school do you go to?

14 A Colleton County High School.

15 Q What town is that located in?

16 A In Walterboro, South Carolina.

17 Q What is your favorite subject in school?

18 A Science.

19 Q Who are you parents?

20 A Angel and Rosa.

21 Q Who is Older Sister

22 A My -- my older sister.

23 Q Are you all in the same grade?

24 A Yes, ma'am.

25 Q Back in 2006, where did you live?

11-16-16 STATE V ONTIVERO - Younger Sister

- DIRECT - KEENEY

1 A I lived in Beaufort.

2 Q What state's that in?

3 A South Carolina.

4 Q Who did you live with in 2006?

5 A I lived with my mother and Elio.

6 Q You call him Elio?

7 A Elio, yes.

8 Q Do you see Elio in the courtroom today?

9 A Yes, I do.

10 Q Can you point him out for the jury?

11 A He's right over there.

12 SOLICITOR KEENEY: Let the record reflect that
13 she's identified the defendant.

14 BY SOLICITOR KEENEY:

15 Q Okay. Who else lived in this house with you and
16 the defendant?

17 A Excuse me?

18 Q Who else lived in the house?

19 A Just me and my siblings.

20 Q And what siblings was that?

21 A Older Sister and S.V.

22 Q How old is S.V. now?

23 A S.V. is fifteen.

24 Q So, he's a few years younger than you.

25 A Yes.

1 Q Do you remember approximately how old you were when
2 you were living with the defendant?

3 A No, not really.

4 Q Do you remember what grade you might have been in?

5 A I was -- I think I was beginning school, around
6 there.

7 Q So, it would have been early school. Would that be
8 K-5, first grade, somewhere in there?

9 A Probably in first grade.

10 Q Okay. So, you were young?

11 A Yes.

12 Q You were under the age of eleven?

13 A Yes.

14 Q Okay. When you lived in this house with Elio, the
15 defendant in this case, can you tell us what happened in
16 that house?

17 A I was young. I played around. And then, one day,
18 when my mom left to go to work, she left his wife or his
19 girlfriend in town to take care of me. And he would --
20 used to tell me to go into his room, and he'd give me
21 candy if I let him do what he wanted to do.

22 Q And what did he do to you?

23 A He would remove my clothes.

24 Q And I know it's uncomfortable to talk about, but
25 can you go into more detail as to what he did after he

11-16-16 STATE V ONTIVERO - Younger Sister

- DIRECT - KEENEY

1 removed your clothes?

2 A He would place his mouth on my vagina.

3 Q And what would happen?

4 A It would hurt sometimes, and because he had like,
5 was growing facial hair. And --

6 Q And when his -- I know it's -- do you need a
7 tissue?

8 A (Shook head.)

9 Q When his mouth was on your vagina, can you go into
10 more detail about that?

11 A He would -- he would move his tongue around. I
12 didn't know what was happening, but when he would move
13 around, and I was uncomfortable, and I told him that it
14 hurt.

15 Q What did he do after you told him it would hurt?

16 A He would go shave.

17 Q Shave what?

18 A His facial hair. And he would go back and do what
19 he was doing.

20 Q And he would do it all over again?

21 A Yes.

22 Q Did this happen one time or multiple times?

23 A Multiple.

24 Q After he did that to you, did he say anything to
25 you?

11-16-16 STATE V ONTIVERO - Younger Sister

- DIRECT - KEENEY

- 1 A No. He would just look at me.
- 2 Q And you said he gave you stuff?
- 3 A Yes, he gave me candy in return.
- 4 Q And what was the last thing you said? I'm sorry, I
- 5 couldn't hear you.
- 6 A He'd give me candy in return.
- 7 Q Returned?
- 8 A Yeah.
- 9 Q To where?
- 10 A He just gave it to me as if I wanted it.
- 11 COURT REPORTER: I'm sorry. *He just gave it to me*
- 12 *as a?*
- 13 A As I wanted -- as if I wanted it, but I didn't.
- 14 Q Are you talking about candy, or are you talking
- 15 about --
- 16 A He just gave me candy.
- 17 Q Okay. Did he touch you anywhere else, other than
- 18 with his mouth on your vagina?
- 19 A He would move around and touch my behind.
- 20 Q Your behind?
- 21 A Yes.
- 22 Q When you moved out of the house, Elidoro's house,
- 23 where did you move to next?
- 24 A In another house in Beaufort, with Mom.
- 25 Q With your mom?

11-16-16 STATE V ONTIVERO - Younger Sister

- DIRECT - KEENEY

- 1 A Um-hmm.
- 2 Q Who else was in that house?
- 3 A His brother.
- 4 Q Elio's brother?
- 5 A Yes, Elio's brother.
- 6 Q Do you remember Elio's brother's name, or what you
7 called him?
- 8 A Cesar.
- 9 Q Cesar?
- 10 A Yes.
- 11 Q Does Julio Cesar sound familiar?
- 12 A Yes.
- 13 Q Okay. Why did you live with Julio Cesar?
- 14 A Because my mom didn't know what his brother did, so
15 she was with him.
- 16 Q She was dating Julio Cesar?
- 17 A Yes.
- 18 Q Okay. So, when you were living with Julio Cesar,
19 did anything happen in that house?
- 20 A Yes.
- 21 Q What happened in that house?
- 22 A He would -- when my mom would leave, he would -- he
23 would make me put my mouth on his penis.
- 24 Q Did anything happen?
- 25 A He would pee in my mouth and make me swallow it.

11-16-16 STATE V ONTIVERO - Younger Sister

- DIRECT - KEENEY

1 Q After you lived with Julio Cesar -- I'm sorry, I
2 know it's uncomfortable. Where did you go after you
3 moved out of that house?

4 A I went to Walterboro.

5 Q Do you remember when you lived with the defendant,
6 Elio or Elidoro, if it was -- what time of year? Was it
7 hot outside, cold outside?

8 A It was hot.

9 Q It was hot outside. Okay. Do you remember if you
10 were in school?

11 A Yes. By the time I moved to Walterboro, I came
12 into school.

13 COURT REPORTER: *I came into?*

14 A The school, Northside.

15 Q Northside?

16 A Yeah.

17 Q Okay.

18 SOLICITOR KEENEY: Beg the Court's indulgence.

19 BY SOLICITOR KEENEY:

20 Q You went to Coastal Empire Mental Health in
21 Walterboro, right?

22 A Yes, ma'am.

23 Q Why did you go there?

24 A To speak about this.

25 Q Okay. What took you so long to tell anybody about

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CROSS CAPPELMANN

1 this?

2 A Because I was scared.

3 Q Okay. Did the defendant do anything to make you
4 scared?

5 A He would threaten my mom.

6 Q Do you remember what kind of threats he made?

7 A He would just say he would kill everybody if I go
8 tell her anything about that.

9 Q Okay.

10 SOLICITOR KEENEY: No further questions.

11 THE COURT: Ms. Cappelmann?

12 Younger Sister

13 CROSS-EXAMINATION

14 BY MS. CAPPELMANN:

15 Q All right, Younger Sister I want to first ask you about --
16 I want to first ask you about where you lived originally
17 with Elidoro, when your mom rented a room. Do you
18 recall when it was that Julio Cesar came to live with
19 you?

20 A Do -- can you ask me again?

21 Q Do you recall how long you lived with Elidoro
22 before Julio moved in?

23 A Not really.

24 Q Do you remember Julio Cesar living with you?

25 A Yes.

1 Q And you said this was around the time that you
2 first started school. Did you go to kindergarten?

3 A I don't know.

4 COURT REPORTER: Did you say *I don't know*?

5 A Yes.

6 COURT REPORTER: Thank you.

7 Q Do you remember what school you went to?

8 A I don't remember the name; I just remember seeing
9 the school.

10 Q Okay. Now, as far as that first house goes, do you
11 remember if that was a trailer or if that was an actual
12 house?

13 A I think it was an actual house.

14 Q And then, you moved into a trailer?

15 A Yes.

16 Q Do you recall a cousin --

17 A Yes.

18 Q -- staying with you, or staying with --

19 A Not my cousin.

20 Q I'm sorry. Let me rephrase. Elidoro and Julio's
21 cousin?

22 A Yes. I'm guessing. I didn't know much about him.

23 Q But you did tell your counselor about him?

24 A Yes.

25 Q Do you know when this cousin visited? Do you

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CROSS CAPPELMANN

1 remember?

2 A I think it was like -- I'm guessing the middle --

3 Q Do you remember when this -

4 A -- before like, between the time I was in there at
5 the house, but like I think like before me and my mom
6 moved.

7 Q So, was he -- did he visit at the house or the
8 trailer?

9 A I think he was just staying for a little bit.

10 Q Okay. And you can't remember which house?

11 THE COURT: That's just a no, for the record? You
12 shook your head.

13 A Yeah.

14 BY MS. CAPPELMANN:

15 Q Okay. All right. Now, you remember -- or, well,
16 you said that he, the cousin --

17 A Um-hmm.

18 Q -- would do similar things. Is that right?

19 A Yes. Um-hmm.

20 Q Okay. And how often did that happen?

21 A It only happened once.

22 Q And what did that entail?

23 A Huh? Excuse me. I'm sorry.

24 Q Was it similar things like what Julio did, or
25 similar things like what Elidoro did?

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CROSS CAPPELMANN

1 A Yeah, similar things.

2 Q To both of them?

3 A Yeah.

4 Q Do you remember a time when you were dropped off at
5 school -- or, I'm sorry -- a bus dropped you off from
6 school, and you stayed at an apartment with a lady?

7 A Yeah. I think so.

8 Q She took care of you?

9 A Yeah, I think so.

10 Q Do you remember, in conjunction with where you
11 lived, either in the house or the trailer, do you know
12 -- do you remember when that was that you were dropped
13 off at the apartment to be taken care of by the other
14 lady?

15 A (No answer.)

16 Q I believe you testified a little while ago that
17 Elizabeth and Elidoro stayed home to watch you and your
18 siblings?

19 A Yeah.

20 Q Where was Elizabeth when this happened?

21 A I think she stepped out. She had something to do,
22 so she wasn't really there.

23 COURT REPORTER: *She was in?*

24 A She wasn't really there.

25 Q Do you remember if she lived with you -- or with

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CROSS CAPPELMANN

1 Elidoro the whole time?

2 A Yeah, she did.

3 Q Do you recall seeing Julio after you moved to
4 Walterboro?

5 A No.

6 Q Do you recall that he would come up to Walterboro
7 to get R.O. to spend weekend visitation with her?

8 A No.

9 Q Do you remember ever driving back down to Beaufort?

10 A No.

11 COURT REPORTER: Was that yes or no?

12 A No.

13 MS. CAPPELMANN: Beg the Court's indulgence.

14 BY MS. CAPPELMANN:

15 Q Do you remember the last time that you saw Elidoro?

16 A No.

17 Q Was it around -- was it -- was the last time you
18 saw him when you moved in with Julio at the trailer?

19 A Yeah, I think so. I think.

20 Q Okay. And when was the last time you saw Julio?
21 When you --

22 A Yeah, some --

23 COURT REPORTER: I'm sorry. I did not hear that.

24 THE COURT: I'm sorry, I didn't even hear you, Ms.
25 Cappelmann.

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RE-DIRECT KEENEY

1 MS. CAPPELMANN: I'm sorry.

2 BY MS. CAPPELMANN:

3 Q When you left and moved to Walterboro.

4 COURT REPORTER: No. *When was the last time you*
5 *saw Julio.*

6 A Since --

7 COURT REPORTER: Speak out loud. Speak out.

8 A Since whenever I moved to Walterboro, I seen him.

9 MS. CAPPELMANN: No further questions.

10 Younger Sister

11 RE-DIRECT EXAMINATION

12 BY SOLICITOR KEENEY:

13 Q Younger Sister who was the first person to touch you
14 inappropriately?

15 A Elio.

16 Q The defendant?

17 A Yes.

18 Q Who was the second person to touch you
19 inappropriately?

20 A His brother.

21 Q Cesar?

22 A Yeah.

23 Q And who was the third person to touch you
24 inappropriately?

25 A I'm sorry. It was his cousin, and then, it was --

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BY THE COURT

1 I mean, his brother, Cesar.

2 Q So, Elio first?

3 A Um-hmm.

4 Q Cousin second?

5 A Yes.

6 Q And Cesar third?

7 A Yeah.

8 Q The defendant's cousin, correct?

9 A I'm guessing, yes.

10 SOLICITOR KEENEY: Thank you.

11 THE COURT: Ms. Cappelmann, anything further?

12 MS. CAPPELMANN: No, ma'am. Nothing further.

13 SOLICITOR KEENEY: May this witness be excused?

14 THE COURT: You may be excused.

15 A Okay.

16 SOLICITOR KEENEY: The State calls Kendra Twitty.

17 BY THE COURT:

18 THE COURT: Come on up for just a moment. I think
19 now would be a good time for a break. And please, you
20 can go ahead and go.

21 Ladies and gentlemen of the jury, I'm going to take
22 a brief recess to allow you to refresh yourself, get a
23 cup of coffee, a Coke.

24 Again, ladies and gentlemen, do not discuss this
25 case. It wouldn't be appropriate to do so.

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BY THE COURT

1 I can tell you that I expect to run for about
2 another hour or a little more than that before we break
3 for lunch, just to let you know. So, roughly around
4 12:30-ish, we will go ahead and break. While you are on
5 lunch, you will be free to go grab a bite to eat and
6 come back. But again, I'm going to send you back to
7 your jury room. Do not discuss this case with each
8 other, because you have not heard all of the evidence,
9 nor the arguments from the lawyers, nor my charge on the
10 law. Thank you.

11 JURORS LEAVE COURTROOM 11:26 A.M.

12 BAILIFF: Jury is clear, your Honor.

13 THE COURT: Thank you. All right. I know, Ms.
14 Winston, you weren't here earlier. Both the attorneys
15 agreed that they weren't going to stand for the jury.
16 So, we're all staying seated. All right? I know you
17 weren't here for the benefit of that.

18 Let's go ahead and take a ten-minute recess. If
19 there's anything we need to take up, we'll do that when
20 we get back. Is there anything you anticipate?

21 SOLICITOR KEENEY: Your Honor, the only thing is I
22 have an issue with, I have two more witnesses before I
23 want to call Arbelo, who has the first interview.

24 THE COURT: Okay.

25 SOLICITOR KEENEY: And we need, preferably, the

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BY THE COURT

1 lunch break to work out these redactions, because I
2 don't want to cause a mistrial.

3 THE COURT: Okay.

4 SOLICITOR KEENEY: And we've gotten this far. So,
5 if it's okay with the Court, two witnesses, lunch break,
6 and then.

7 THE COURT: How long are they going to be? I have
8 to swear in the new public defender at 12:30.

9 SOLICITOR KEENEY: Okay.

10 THE COURT: So, that's why I was telling them
11 roughly 12:30. How long do you anticipate these next
12 two witnesses?

13 SOLICITOR KEENEY: I think we can finish it at
14 12:00, so.

15 THE COURT: Well, it sounds, then, I think we
16 should be able to do that. All right. Well, let's get
17 as far as we can, and we'll just go from there.

18 SOLICITOR KEENEY: And there won't be many more
19 witnesses. I think there's only -- your Honor, I think
20 there's Machado. So, after that, we should be resting.

21 THE COURT: Okay. Thank you. Let's go ahead and
22 take ten minutes, and then, come back. Okay?

23 OFF THE RECORD 11:28 A.M.

24 BACK ON THE RECORD 11:43 A.M.

25 BY THE COURT:

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BY THE COURT

1 BAILIFF: All rise. Court is back in session.

2 THE COURT: Thank you. Please be seated.

3 Is the State ready?

4 SOLICITOR KEENEY: The State is ready.

5 THE COURT: Is the Defense ready?

6 MS. CAPPELMANN: Yes, ma'am.

7 THE COURT: All right. Let's go ahead and bring
8 the jury back in.

9 BAILIFF: The jury is entering the courtroom, your
10 Honor.

11 THE COURT: Thank you.

12 JURORS ENTER COURTROOM 11:45 A.M.

13 BAILIFF: The jury is seated, your Honor.

14 THE COURT: Thank you. Welcome back, ladies and
15 gentlemen. I trust you all have refreshed yourselves.
16 If the State would call their next witness, please.

17 SOLICITOR KEENEY: The State would call Kendra
18 Twitty.

19 THE COURT: Come on forward, please.

20 MADAM CLERK: Good morning.

21 KENDRA TWITTY: Good morning.

22 MADAM CLERK: If you would, put your left hand on
23 the Bible, and raise your right hand. Do you solemnly
24 swear or affirm to truthfully answer all questions asked
25 of you by this court, so help you God?

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KENDRA TWITTY DIRECT KEENEY

1 KENDRA TWITTY: I do.

2 MADAM CLERK: Thank you.

3 SOLICITOR KEENEY: May it please the Court?

4 THE COURT: Yes.

5 KENDRA TWITTY

6 DIRECT EXAMINATION

7 BY SOLICITOR KEENEY:

8 Q Ms. Twitty, where do you work?

9 A I work at Hope Haven of the Lowcountry.

10 Q What is your position at Hope Haven?

11 A So, I am a forensic interviewer and therapist.

12 Q And what are some of your duties?

13 A So, as a forensic interviewer, we see children to
14 do neutral fact-finding interviews that are requested by
15 law enforcement and DSS. And as a therapist, I see
16 children that have been dealing with trauma and abuse.

17 Q How many interviews have you conducted,
18 approximately?

19 A I've been doing this work since 2001, so
20 approximately about 2,400 interviews.

21 Q On January 22nd of 2014, did you meet Older Sister
22 Older Sister and Younger Sister ?

23 A I did.

24 Q With respect to Younger Sister limiting your testimony to
25 time and place, did she make a disclosure to you?

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KENDRA TWITTY DIRECT KEENEY

1 A She did. When I met with Younger Sister she had stated
2 that, when she was about six or seven years old, she
3 would be taken into the bedroom of Cesar's friend or
4 brother, I believe, and he would take her into his
5 bedroom.

6 Q And did she say the location? You said bedroom.
7 Did she say what town it was in?

8 A Give me one second. She was living in the first
9 house in Beaufort when she would --

10 Q When this would happen?

11 A When this would happen.

12 Q Okay. Now, moving on to the interview of Older Sister
13 Older Sister , limiting your testimony to time and place --

14 A Um-hmm.

15 Q -- did she make a disclosure to you?

16 A She did. Older Sister stated that, when she was five,
17 six, or seven years old, that the same person would take
18 her into his bedroom, while they were also living in the
19 house, first house in Beaufort.

20 Q And did she tell you anything else about time, like
21 what time of year?

22 A She stated that it was around springtime, and that
23 she was -- she was home a lot.

24 Q Okay. Perfect.

25 SOLICITOR KEENEY: No further questions for this

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1 witness.

2 THE COURT: Ms. Cappelmann?

3 MS. CAPPELMANN: I have no questions for this
4 witness.

5 THE COURT: All right. Any objection to Ms. Twitty
6 being excused from anyone?

7 SOLICITOR KEENEY: No, your Honor.

8 THE COURT: You're excused. Thank you.

9 A Okay. Thank you.

10 SOLICITOR KEENEY: The State calls Sergeant Angela
11 Boland Crumpton.

12 MADAM CLERK: Do you solemnly swear or affirm to
13 truthfully answer all questions asked of you by this
14 court, so help you God?

15 SERGEANT BOLAND CRUMPTON: I do.

16 MADAM CLERK: Thank you.

17 SOLICITOR KEENEY: Beg the Court's indulgence.

18 SERGEANT ANGELA BOLAND CRUMPTON

19 DIRECT EXAMINATION

20 BY SOLICITOR KEENEY:

21 Q Sergeant Boland Crumpton, where do you work?

22 A I work for the Beaufort County Sheriff's Office.

23 Q Can I call you Sergeant Boland, because that's how
24 I know you. Were you recently married?

25 A Yes, I was recently married, and most people, after

2 Q How long have you worked at the Beaufort County
3 Sheriff's Office?

6 Q What is your current position?

9 Q Back in 2014, January 2014, what was your position?

13 | 0 How did you first become involved in this case?

14 A I was contacted through my supervisor that we had a
15 case involving a delayed disclosure for criminal sexual
16 conduct; that they were over at the primary law
17 enforcement center. That's not where my office is
18 located, so I responded to that location and met with
19 the deputies there.

20 Q Was anyone else there?

21 A Yes. There was two young ladies and their mother,
22 which is Ms. Rosa, and then, Older Sister and Younger Sister

23 Q What were their last names?

24 A I apologize. I'm going to
25 mess up the names.

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1 Q As a result of meeting with them, what did you do
2 next?

3 A Per procedure, when you're dealing with that kind
4 of situation, any time sexual assault with a child,
5 generally speaking, I don't do the interviews. I allow
6 Hope Haven to do the interviews, because they're trained
7 specifically for those type of situations. So, I made
8 contact with Hope Haven, and we were able to get them in
9 immediately. So, I met there, and very brief
10 conversation with Ms. Rosa, the mother, through
11 translation. And then, escorted them over to Hope
12 Haven.

13 Q And you don't speak Spanish, correct?

14 A No.

15 Q So, you did have to have a translator in order to
16 speak with Rosa?

17 A That's correct. I know about five words.

18 Q So, you went to Hope Haven, and the lady that just
19 testified, Ms. Twitty, she works there, correct?

20 A That is correct.

21 Q And who conducted the interviews of Older Sister and
22 Younger Sister

23 A Ms. Twitty.

24 Q Okay. During the course of your investigation, did
25 you determine where the allegations of the sexual

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BOLAND CRUMPTON DIRECT KEENEY

1 assaults occurred?

2 A Yes. During the investigation, it was learned that
3 this was an ongoing. It wasn't a simple one-time
4 incident, and it was an ongoing incident that evolved
5 within Beaufort County, involved which is
6 -- some call it Burton, but it's Beaufort County, off of
7 Parris Island Gateway. And then, also at a trailer park
8 off of , which is right off of Ribaut. And it is
9 now currently the parking lot for the new office
10 building for the parking lot for the hospital.

11 Q The house on , is that near the
12 hospital?

13 A It is. It's across the street.

14 Q And both of those streets, and
15 , what county are they in?

16 A They're both in Beaufort County, within South
17 Carolina.

18 Q Thank you. Did you get a search warrant for these
19 homes?

20 A No. One home, the home on , no longer
21 exists. It's gone. It's now a parking lot. And the --
22 due to the delayed disclosure, this had occurred many
23 years prior, there was no reason to do a search warrant
24 at that point.

25 Q There was no evidence to be collected.

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1 A No.

2 Q As a result of Older Sister and Younger Sister interviews at
3 Hope Haven, what did you do next? Did you obtain
4 anything?

5 A I did. I spoke with the Solicitor's Office. We
6 obtained arrest warrants. And after discussion, it was
7 initially that we -- we obtain --

8 Q I'm going to stop you. Sorry. Who did you get
9 arrest warrants for?

10 A I apologize. It was learned that it was -- the
11 defendant, Elidoro, and Julio Cesar, we obtained arrest
12 warrants on both of those individuals for criminal
13 sexual conduct.

14 Q And do you know their relation? Julio.

15 A They're brothers.

16 Q Okay. Were you involved with an interview with the
17 defendant on February 6th of 2014, the first interview?

18 A Yes.

19 Q Who was present during that first interview?

20 A The first interview with the defendant, Mr.
21 Elidoro; myself; an investigator, Kelleher, stood by
22 with me. And then, the translator would have been, at
23 that time, Master Sergeant Arbelo. I believe he's
24 Lieutenant now.

25 Q And so, Investigator Kelleher, does he still work

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1 in the Sheriff's Office?

2 A No. He's retired, and he actually works at Hope
3 Haven now.

4 Q Okay. And now, Lieutenant Arbelo, does he still
5 work at the Sheriff's Office?

6 A He does.

7 Q Okay. Why was Arbelo there?

8 A Lieutenant Arbelo was there to translate.

9 Q Do you know what language Lieutenant Arbelo speaks?

10 A I apologize. He was translating for Spanish. He
11 is one of our Spanish-translating officers. Mr. Elidoro
12 spoke Spanish, as far as I'm aware. Only Spanish. And
13 since I don't --

14 Q You needed help?

15 A Yes.

16 Q Where did this first interview take place?

17 A At the Northern Investigations Sections Office in
18 our building. It's a small building directly across the
19 street from the primary sheriff's office.

20 Q And the interview, was it audio/video recorded?

21 A It was.

22 Q And you don't really know what the defendant said,
23 correct? because you don't speak Spanish.

24 A That's correct.

25 Q So, you relied on Arbelo's translation.

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1 A That is correct.

2 Q Did you see Arbelo present what they call a *Miranda*
3 *Form* to the defendant?

4 A Yes.

5 Q Okay. And to the best of your knowledge, the
6 defendant wanted to speak to law enforcement?

7 A That is correct.

8 Q Okay. During this interview, did you or anyone
9 else there threaten the defendant in any way to make a
10 statement?

11 A No.

12 Q Did you or anyone else coerce the defendant into
13 making a statement?

14 A No.

15 Q Did you or anyone else make the defendant any
16 promises to make a statement?

17 A No.

18 Q Did the defendant appear to be under the influence
19 of alcohol or drugs?

20 A No.

21 Q Did he appear to have any mental or physical
22 disabilities?

23 A No.

24 Q Did he appear to understand what was going on? to
25 the best of your knowledge, since you don't speak

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1 Spanish.

2 A He appeared to, yes.

3 Q If he needed to go to the bathroom, would you have
4 allow it?

5 A Yes.

6 Q Did he ever ask to use the telephone?

7 A No.

8 Q If he needed water, would you have given it to him?

9 A Yes.

10 Q If he needed a break, would you have given it to
11 him?

12 A Yes.

13 Q Were you involved -- there was a second interview
14 with the defendant. Were you involved with the second
15 interview?

16 A My only involvement with the second interview was
17 with the investigators that conducted it.

18 Q Who were those investigators?

19 A That was Lieutenant Baird and now-Sergeant Machado,
20 Angel Machado. They indicated to me that there had been
21 --

22 Q I'm sorry.

23 A That's fine.

24 Q Let me stop you there. Did Machado -- why was
25 Machado there? Do you know?

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1 A As translation.

2 Q Okay.

3 A And assistance.

4 Q Does Machado speak Spanish?

5 A That is correct. He is one of our Spanish-speaking
6 officers.

7 Q You weren't there during the interview. You don't
8 really know what the defendant said, because you didn't
9 hear it yourself.

10 A That's correct.

11 Q Okay. Third interview, same day, correct?

12 A The same day as the second interview, yes.

13 Q Okay. So, later that day, he's interviewed. Are
14 you a part of that interview?

15 A Yes.

16 Q Okay. And the defendant wanted to speak with you,
17 correct?

18 A Correct.

19 Q Where did that third interview take place?

20 A The third interview took place the same as the
21 first, at the Northern Investigations Office. We have
22 a, for lack of a better term, a kitchen area of that
23 office where we conduct our interviews. And it was done
24 there.

25 Q And that was the same place the first one took

1 place, right?

2 A Correct.

3 Q So, you are in the little kitchen area.

4 A Correct.

5 Q Okay. Who was present during that third interview?

6 A It was myself and Investigator Kelleher; and then,
7 now-Sergeant Machado as translation; and the defendant,
8 Mr. Elidoro.

9 Q So, Kelleher, who works at Hope Haven now, is
10 retired from the Sheriff's Office; and then, Machado,
11 who is there to translate, correct?

12 A Correct.

13 Q The interview was in Spanish, once again, correct?

14 A Correct.

15 Q Okay. Was this interview audio and video recorded?

16 A It was.

17 Q What happened to it?

18 A What happened is, I made a mistake. Our videos,
19 our interviews are recorded on audio and video, and
20 they're sent to the server. We request them, and then,
21 we receive a copy, and we submit them into evidence.
22 The procedures were different in January of 2014 than
23 they are now. When I did that, I failed to follow
24 through and assure that that one was burnt to DVD and
25 submitted. And by the time it was realized that that

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1 had not been submitted into evidence, it was already
2 written over on the server, and we were unable to
3 retrieve the audio/video on the third one.

4 Q So, it's gone?

5 A It is.

6 Q And you made a mistake.

7 A I did.

8 Q To the best of your knowledge, did you see Sergeant
9 Machado present the defendant with what they call
10 *Miranda* form?

11 A Yes.

12 Q And can you explain what the *Miranda* rights are? I
13 mean, I'm sure everyone has heard it on T.V., but
14 briefly, what they are.

15 A The *Miranda* rights consist of -- you advise a
16 individual being interviewed or interrogated that they
17 have the right to remain silent; that they have a
18 present -- attorney -- or an attorney present before any
19 questioning, if they wish. You have the right -- if
20 they cannot afford an attorney, one will be appointed to
21 them. And having all -- you ask if they understand all
22 their rights. And if they do -- and then, if they do
23 understand those rights, do they wish to speak to you at
24 that time without having an attorney present.

25 Q And to the best of your knowledge, the defendant

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1 wanted to speak at that time?

2 A Yes. Their all written on a department form that
3 we use, and there's a Spanish version and an English
4 version.

5 Q During this third interview, did you or anyone else
6 threaten the defendant in any way to make a statement?

7 A No.

8 Q Did you or anyone else coerce him into making a
9 statement?

10 A No.

11 Q Did you or anyone else make any promises to the
12 defendant?

13 A No.

14 Q Did the defendant appear to be under the influence
15 of alcohol or drugs?

16 A No.

17 Q Did he appear to have any physical or mental
18 disabilities?

19 A No.

20 Q If he had wanted to go to the bathroom, would he
21 have been allowed to go to the bathroom?

22 A Yes.

23 Q Did he ask to use the telephone?

24 A No.

25 Q If he needed water, would you have given him a cup

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1 of water?

2 A Yes.

3 Q If he needed a break, would you have given him a
4 break?

5 A Yes.

6 Q Do you know who -- you're aware of who Julio Cesar-
7 Ontivero is, correct?

8 A Correct.

9 Q You have already testified that you obtained
10 warrants for him as well, for criminal sexual conduct
11 with a minor?

12 A Yes, I did.

13 Q Do you know the outcome of that case?

14 A Yes. He pled guilty in, I believe, it was July of
15 2015, and he was sentenced to twenty years.

16 Q So, he's in prison.

17 A Yes.

18 Q Okay. Now, you've been in the courtroom, and
19 you've been a part of the investigation. You heard the
20 girls talk about this third person, this cousin of the
21 defendant, correct?

22 A Correct.

23 Q Okay. Did you ever go get a warrant for this
24 cousin?

25 A No. We were unable to positively identify who the

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1 cousin was. We learned through investigation that he
2 did not live here; that he was visiting. And to the
3 best of what the girls could tell us, it was a one-time
4 incident. And because we could not identify who he was
5 positively, I was unable to obtain any warrants.

6 Q Okay. Do you see Elidoro Ontivero in the courtroom
7 today?

8 A I do.

9 Q Can you point him out for the jury?

10 A He's the gentleman at the end of the table, in a
11 blue, button-down shirt.

12 Q Thank you.

13 SOLICITOR KEENEY: Let the record reflect that
14 she's identified the defendant. Beg the Court's
15 indulgence.

16 THE COURT: Yes.

17 SOLICITOR KEENEY: No further questions for this
18 witness.

19 THE COURT: Okay. Ms. Cappelmann?

20 SERGEANT ANGELA BOLAND-CRUMPTON

21 CROSS-EXAMINATION

22 BY MS. CAPPELMANN:

23 Q Sergeant Boland, who was the officer who translated
24 for the interview that you had with Rosa Villalobos?

25 A I did -- I did not conduct a -- an interview, per

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1 se, with Rosa. The initial reporting officer did a --
2 the initial communication with her with Master -- or
3 excuse me -- Lieutenant Arbelo doing translation. When
4 I arrived at the Law Enforcement Center, my interaction,
5 mostly because of the language barrier, was to introduce
6 myself, and then, explain the process of what we were
7 going to do regarding Hope Haven. And the translation
8 for that interaction was done by Lieutenant Arbelo.

9 Q Okay. To your knowledge, did he conduct the
10 interview with the initial reporting officer?

11 A Yes. Based upon the incident report and the fact
12 he was present upon my arrival, yes.

13 Q And I want to talk about the third interview. How
14 long do you think that interview lasted?

15 A I don't want to say something that's wrong, so I
16 don't have a precise time. Maybe thirty minutes to an
17 hour.

18 Q And as far as the cousin goes, you actually did
19 have information that that person was Juan Pedro
20 Barrado.

21 A No, I did not have a positive identification on the
22 cousin.

23 Q Is your testimony today that you were never told by
24 anyone?

25 A We discussed with Mr. Elidoro, as well as Julio

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1 Cesar, but as far as a positive identification, I was
2 provided a name, but no further identifiers or locations
3 that I could positively identify the cousin. So, for
4 example, just because he gave me a name, he could give
5 me anybody's name. I'd need to corroborate that
6 information. So, I had some information, but not enough
7 to obtain an arrest warrant on.

8 Q And so, by that, do you mean ^{Younger} ~~Sister~~ and ^{Older Sister}
9 didn't remember his name?

10 A They couldn't tell me the name. The information
11 that I received was through my interviews with the
12 defendant and the -- Julio Cesar. And then, what
13 information we were able to --

14 Q So, I just want to be clear, though, that you had
15 information that there was a third person. And then,
16 both Julio and Elidoro gave you the name of their
17 cousin.

18 A I don't know that they did. If you'll give me a
19 moment, and I'll look through.

20 Q Okay.

21 A No, I do not have that both of those individuals
22 gave me that name.

23 Q So, you didn't write that in your report, that
24 there was a name given of a possible third party.

25 A Again, because I was unable to completely identify

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BY THE COURT

1 that individual. I wouldn't want to --

2 Q Because the girls couldn't remember their name.

3 A No.

4 MS. CAPPELMANN: Beg the Court's indulgence?

5 BY MS. CAPPELMANN:

6 Q And there are absolutely no forensic evidence that
7 was taken into evidence or anything like that? No
8 fingerprints, no DNA? There's no forensic evidence.

9 A There was a medical examination done on the girls,
10 but due to the delayed disclosure, the evidence of any
11 kind of fingerprint or DNA would not be present.

12 Q Right.

13 A Because it's several years later, so that's
14 correct.

15 MS. CAPPELMANN: I have no further questions.

16 SOLICITOR KEENEY: No questions for this witness.

17 THE COURT: All right. You may step down.

18 SERGEANT BOLAND-CRUMPTON: Thank you.

19 SOLICITOR KEENEY: Your Honor, may I approach?

20 THE COURT: You may.

21 OFF-THE-RECORD BENCH CONFERENCE, OUT
22 OF HEARING OF JURORS. PRESENT: THE
23 COURT, SOLICITOR KEENEY, MS. CAPPELMANN.
24 END BENCH CONFERENCE.

25 BY THE COURT:

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BY THE COURT

1 THE COURT: Ladies and gentlemen, I think now is a
2 good breaking point for lunch. By the clock in the back
3 of the courtroom, it's 12:15. I'm asking you to return
4 or be back in your jury room at 1:30, where we're going
5 to go ahead and continue with the trial of this case.

6 Ladies and gentlemen, I need to instruct you, over
7 the lunch hour you are not to speak to anyone regarding
8 this case, including each other. You are not to do any
9 independent research. Ladies and gentlemen, go have a
10 nice lunch, and I look forward to you being back in your
11 jury room at 1:30, where we will start promptly. Thank
12 you.

13 JURORS LEAVE COURTROOM 12:15 P.M.

14 BAILIFF: Jury is clear, and the door is closed,
15 your Honor.

16 THE COURT: All right. We'll be at ease until
17 1:30. Is there anything you want to put on the record?
18 I understand you all have some editing to do over the
19 lunch hour together, but other than that is there
20 anything?

21 SOLICITOR KEENEY: No, your Honor.

22 MS. CAPPELMANN: I guess, just for scheduling
23 purposes, do you know how many you have left, total? I
24 have someone who would be coming from Columbia. And so,
25 I just need to make sure.

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BY THE COURT

1 SOLICITOR KEENEY: I have two witnesses left.

2 THE COURT: Okay. Do you have any idea, other than
3 that witness, if you're going to call anyone? I know,
4 you may not, and you don't have to tell me who, but.

5 MS. CAPPELMANN: Potentially, three.

6 THE COURT: Let me tell you. I would suggest you
7 bring them.

8 MS. CAPPELMANN: No, I -- and I understand. I gave
9 her the heads-up that she needed to be here this
10 afternoon. I just didn't know what time, so.

11 THE COURT: Okay. Okay. Good. Okay. Anything
12 further?

13 SOLICITOR KEENEY: No, ma'am, nothing further.

14 THE COURT: Thank you. All right. We'll be at
15 ease.

16 OFF THE RECORD 12:13 P.M.

17 BACK ON THE RECORD 1:44 P.M.

18 BY THE COURT:

19 BAILIFF: All rise.

20 THE COURT: Thank you. Please be seated. All
21 right. The State ready?

22 SOLICITOR KEENEY: The State is ready.

23 THE COURT: Is the Defense ready?

24 MS. CAPPELMANN: I guess, we need to take up the
25 matter of the disc.

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BY THE COURT

1 SOLICITOR KEENEY: Ms. Cappelmann sent me her
2 redactions, and I agree with everything. And so, I've
3 redacted it. It will be a stop/start. We can't
4 physically redact this type of video.

5 THE COURT: Okay.

6 SOLICITOR KEENEY: So, I will mute it during the
7 part, so that I don't accidentally mess anything up.

8 MS. CAPPELMANN: And I will say, I have not heard
9 the State's redactions. We don't know if it's going to
10 be in court and she's physically doing it. There were
11 several statements that we both agreed were either
12 hearsay, bolstering, or burden-shifting. And I just --

13 SOLICITOR KEENEY: I've redacted every single thing
14 on her list.

15 THE COURT: And she took them out.

16 MS. CAPPELMANN: And I'm just saying, I haven't
17 heard them yet, so I don't know --

18 SOLICITOR KEENEY: Because I can't do it until
19 we're in court, because there's no way to do it.

20 MS. CAPPELMANN: Exactly, so we're kind of, like,
21 there has been no test run. This is it. So, I will be
22 objecting to any of these statements that I find --

23 COURT REPORTER: I'm sorry. *That you find?*

24 MS. CAPPELMANN: That I find appropriate to object
25 to.

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BY THE COURT

1 THE COURT: If they're played.

2 MS. CAPPELMANN: If they're played.

3 THE COURT: Okay.

4 SOLICITOR KEENEY: And I just ask, at some point, I
5 don't know if it's --

6 THE COURT: I'm going to give an instruction to the
7 jury just to explain to them that it's not relevant
8 information and they are to disregard it. Okay? And
9 correct me if I'm wrong, this is which interview?

10 SOLICITOR KEENEY: This is the very first
11 interview.

12 THE COURT: Okay.

13 SOLICITOR KEENEY: And the only interview I'll be
14 playing.

15 THE COURT: Very good. Okay. And this is the one
16 that he denies everything, correct?

17 SOLICITOR KEENEY: Correct.

18 THE COURT: Okay. Let's bring the jury in.

19 BAILIFF: Yes, your Honor.

20 MS. CAPPELMANN: And the statements I was referring
21 to are statements made by law enforcement on the video,
22 as per *Brewer*, they would be inappropriate.

23 THE COURT: Okay. Provided you're not going to
24 play them, it shouldn't be a problem.

25 BAILIFF: The jury is entering the courtroom, your

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ARBELO DIRECT KEENEY

1 Honor.

2 THE COURT: Thank you.

3 JURORS ENTER COURTROOM 1:48 P.M.

4 BAILIFF: The jury is seated, your Honor.

5 THE COURT: Welcome back, ladies and gentlemen. I
6 hope you all had a nice lunch. At this time --

7 SOLICITOR KEENEY: The State calls Lieutenant
8 Robert Arbelo.

9 THE COURT: Okay.

10 BAILIFF: Come forward to be sworn, sir.

11 MADAM CLERK: Good afternoon. Please place your
12 left hand on the *Bible*, and raise your right hand. Do
13 you solemnly swear or affirm to truthfully answer all
14 questions asked of you -- all questions asked of you by
15 this court, so help you God?

16 LIEUTENANT ROBERT ARBELO: I do.

17 LIEUTENANT ROBERT ARBELO

18 DIRECT EXAMINATION

19 BY SOLICITOR KEENEY:

20 Q Lieutenant Arbelo, where do you work?

21 A At the Beaufort County Sheriff's Office.

22 Q What's your position?

23 A I'm a lieutenant, second in command of patrol.

24 Q How long have you worked at the Sheriff's Office?

25 A Twenty-seven years.

11-16-16 STATE V ONTIVERO

ARBELO DIRECT KEENEY

- 1 Q What was your position in January 22, 2014?
- 2 A I was a master sergeant in charge of patrol.
- 3 Q On February 6 of 2014, did you have an interaction
- 4 with the defendant in this case?
- 5 A I did.
- 6 Q Where did this interaction take place?
- 7 A At the investigations office on Duke Street, in
- 8 Beaufort, South Carolina.
- 9 Q Was it in a certain room in the investigations
- 10 office?
- 11 A It was in the kitchen.
- 12 Q Who was present?
- 13 A The defendant was present. Sergeant Boland was
- 14 present, Crumpton. And Sergeant Kelleher, who is now
- 15 Mr. Kelleher.
- 16 Q Was this interview audio and video recorded?
- 17 A It was.
- 18 Q And what was the purpose of you being present?
- 19 A I was translating.
- 20 Q And do you speak Spanish?
- 21 A I do.
- 22 Q How long have you spoke Spanish for?
- 23 A All my life.
- 24 Q How did you learn Spanish?
- 25 A My father was from Puerto Rico, and that was our

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ARBELO DIRECT KEENEY

1 primary language at home.

2 Q To translate for the Sheriff's Office, do you have
3 to have any certifications, take any tests?

4 A I had to take a test and pass it.

5 Q Did you pass that test?

6 A Yes, I did.

7 Q Do you frequently interpret or translate for the
8 Sheriff's Office in cases?

9 A Yes, I do.

10 SOLICITOR KEENEY: May I approach the witness?

11 THE COURT: You may.

12 BY SOLICITOR KEENEY:

13 Q I'm showing you what's been previously marked as
14 State's Exhibit 1, identification purposes only. Do you
15 recognize that paper?

16 A Yes, I do.

17 Q What is that?

18 A It's an advisement of *Miranda* rights.

19 Q How do you recognize it?

20 A Because it has my signature on it, and it has the
21 defendant's signature on it, and it is the paper that I
22 provided.

23 Q Is this a fair and accurate copy of the *Miranda*
24 form that you presented the defendant?

25 A It is.

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ARBELO DIRECT KEENEY

1 SOLICITOR KEENEY: At this time, the State moves to
2 admit State's Exhibit 1 into evidence.

3 THE COURT: Without objection?

4 MS. CAPPELMANN: No objection.

5 ITEM IDENTIFIED AS COPY OF
6 BEAUFORT COUNTY SHERIFF'S OFFICE
7 LA ADVERTENCIA 'MIRANDA,'
8 'MIRANDA' FORM

9 MARKED STATE'S EXHIBIT NUMBER 1
10 ADMITTED AS EVIDENCE.

11 SOLICITOR KEENEY: Permission to publish?

12 THE COURT: You may.

13 BY MS. KEENEY:

14 Q Can you go through this form? It's in Spanish,
15 correct?

16 A Yes, it is.

17 Q Can you read each thing for the jury, so they'll
18 know what it says?

19 A In Spanish or in English?

20 Q In English, please.

21 A You want Spanish, and then, English?

22 Q No, I'd just like English, please.

23 A *You have the right to remain silent. That's the*
24 *first one.*

25 The second one says: *anything you say can be used*

1 *against you in a court of law.*

2 The third one says: *you have the right to an*
3 *attorney to be present before or during any questioning,*
4 *if you wish.*

5 The fourth says: *you still have the right to -- no*
6 *-- if you don't have the means, the financial means, to*
7 *obtain a lawyer, one will be provided for you before any*
8 *questioning, if you wish.*

9 That's the form.

10 Q Did the defendant acknowledge those rights?

11 A He did.

12 Q How did he acknowledge them?

13 Q He put his initials on each one in the space
14 provided.

15 Q Will you move down to the second, bottom half of
16 that paper, and tell us what it says in English?

17 A It says: *do you understand each right that was*
18 *explained to you?*

19 And then, it has: *yes or no; a space provided, and*
20 *he wrote yes. It has yes there, and he still wrote yes,*
21 *that he understood that.*

22 And then, below that, it says: *with these rights*
23 *in mind, do you wish to speak with us now? And it has a*
24 *space for yes and no; and he wrote in yes.*

25 Q Okay.

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ARBELO DIRECT KEENEY

1 A And then, below that it says: *signature*, which he
2 signed. *Fecha*, which is date. And *hora*, which is time,
3 which he also put there.

4 Q What was the date and time?

5 A It was 2/06/14, at 12:19.

6 Q A.M. or P.M.?

7 A It just says 12:19. But it was P.M.

8 Q Okay.

9 A And then, that's *testigo*, which is witness. And
10 then, that's my signature; and *testigo*, which is the
11 other witness.

12 Q Okay. During the course of this interview with the
13 defendant, did you or anyone else threaten the defendant
14 in any way to make a statement?

15 A No.

16 Q Did you coerce him in any way to make a statement?

17 A No.

18 Q Did you or anyone else make any promises to him?

19 A No.

20 Q Did he appear to be under the influence of alcohol
21 or drugs?

22 A No.

23 Q Did he appear to have any physical or mental
24 disabilities that would impair his ability to understand
25 what was going on?

11-16-16 STATE V ONTIVERO

ARBELO DIRECT KEENEY

1 A Not that I could see.

2 Q If he needed to go to the bathroom, would he have
3 been allowed to go to the bathroom?

4 A Yes.

5 Q Did he ever ask to use the telephone?

6 A No.

7 Q If he needed water, would someone have given him
8 water?

9 A Yes.

10 Q Okay. When you were speaking with the defendant in
11 Spanish, did he appear to understand what you were
12 saying?

13 A Yes.

14 Q There didn't seem to be any problems with the
15 translations?

16 A No.

17 Q Okay.

18 SOLICITOR KEENEY: May I approach the witness?

19 I've shown Ms. Cappelmann.

20 THE COURT: You may.

21 BY SOLICITOR KEENEY:

22 Q I'm showing you what's been previously marked
23 State's Exhibit 2, for identification purposes only. Do
24 you recognize that disc?

25 A Yes, I do.

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ARBELO DIRECT KEENEY

1 Q What is that disc?

2 A This is a DVDR from the recording of the interview,
3 and I recognize it because my initials are there. It
4 has the case number there.

5 Q Perfect. Have you reviewed that disc?

6 A I have.

7 Q Is it a fair and accurate copy of the interview
8 that you conducted on February 6 of 2014?

9 A Yes.

10 SOLICITOR KEENEY: At this time, the State moves to
11 admit State's Exhibit 2 into evidence.

12 THE COURT: Subject to your prior objections. Very
13 good.

14 ITEM IDENTIFIED AS VIDEO RECORDING
15 OF FEBRUARY 6, 2014 INTERVIEW OF
16 DEFENDANT
17 MARKED STATE'S EXHIBIT NUMBER 2
18 ADMITTED AS EVIDENCE.

19 SOLICITOR KEENEY: Permission to publish.

20 THE COURT: You may.

21 Ladies and gentlemen, on this video, there is going
22 to be some starting and stopping during the video. Part
23 of this is because we are translating and doing English
24 to Spanish. Please understand that anything that is
25 stopped and not played is not relevant in this case, and

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ARBELO CROSS CAPPELMANN

1 has nothing to do with this case. So, please don't take
2 the starting and stopping as an indication of anything.
3 All right?

4 PLAYING ITEM IDENTIFIED AS VIDEO
5 RECORDING OF FEBRUARY 6, 2014
6 INTERVIEW OF DEFENDANT, STATE'S
7 EXHIBIT NUMBER 2.
8 END PLAYING ITEM IDENTIFIED AS VIDEO
9 RECORDING OF FEBRUARY 6, 2014,
10 INTERVIEW OF DEFENDANT, STATE'S
11 EXHIBIT NUMBER 2.

12 SOLICITOR KEENEY: No further questions for this
13 witness.

14 LIEUTENANT ROBERT ARBELO
15 CROSS-EXAMINATION
16 BY MS. CAPPELMANN:

17 Q All right. Before I ask you any questions about
18 the video we all just watched, I'd like to go back to
19 your qualifications as an interpreter. So, first of
20 all, you speak Spanish, but from a Puerto Rican dialect.

21 A I speak Spanish and some -- some words in Puerto
22 Rico may be a little different than, say, in Mexico.
23 However, general Spanish is Spanish.

24 Q Okay. Well, just like there are some things that
25 have a different meaning in England than they do in the

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ARBELO CROSS CAPPELMANN

1 United States, right?

2 A I have never been to England.

3 Q You understand that the British English is slightly
4 different than American English, though, right?

5 A I've heard.

6 Q And you are not certified in any capacity, other
7 than you took, like, an assessment-type test with the
8 Sheriff's Department.

9 A That's correct.

10 Q And really, that test was just to see if you knew
11 Spanish well enough to talk to the general public who
12 might be Spanish-speaking.

13 A I guess you could say that.

14 Q Now, you didn't -- you did not write a report in
15 this case, did you?

16 A Did not.

17 Q So then, to prepare for today's testimony, did you
18 review the video and other officers' reports?

19 A I saw the video a couple weeks ago. And then,
20 yesterday, for a little while, just skipping around, to
21 verify what the Solicitor wanted to present.

22 Q Okay.

23 A But that's about it.

24 Q Now, that lasted for, let's see, about forty-five
25 minutes. Do you think you could have remembered word-

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ARBELO CROSS CAPPELMANN

1 for-word everything that was said in that conversation
2 two years ago?

3 A Word-for-word, every single thing?

4 Q Right.

5 A Probably not.

6 Q Do you think you would have remembered everything
7 that was said?

8 A I think I would have remembered the gist of the
9 conversation, because I remember -- I remember meeting
10 Mr. Ontivero, and I remember the gist of what he was
11 talking about that day.

12 Q Right. But just saying -- of him saying he was not
13 guilty and he didn't do it.

14 A That he didn't do it.

15 Q But it was helpful looking at the video, wasn't it?

16 A Yes, it was.

17 Q All right. Speaking of the video and dialects, I
18 wanted to point out, you know, just a couple of things
19 that I noticed and picked up on. There was one moment
20 that he said that -- well, as per your translation, that
21 he would have run, but he's so humble that he came to
22 straighten this out. Now, humble doesn't actually fit
23 there as we understand it.

24 A Well, how do you understand it?

25 Q Well, I'm just saying, in that context, it kind of

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ARBELO CROSS CAPPELMANN

1 seems like what he's saying is he's an honest,
2 forthcoming person who wanted to handle the situation.
3 So, humble, while a very similar word, isn't really what
4 I consider to be out of context with that sentence what
5 exactly he meant.

6 A What do you think, exactly, he meant?

7 SOLICITOR KEENEY: Objection. She's not asking a
8 question.

9 THE COURT: Okay. You need to pose a question to
10 him. And sir, you can't ask her a question back. She's
11 the one asking you questions.

12 A Yes, ma'am.

13 THE COURT: If you don't understand something, you
14 can say, I don't understand; would you repeat or
15 rephrase.

16 A Yes, your Honor.

17 BY MS. CAPPELMANN:

18 Q What does humble mean to you?

19 A Humble means that -- it's a very simple person that
20 means well; is well-intentioned. That's what it means
21 to me.

22 Q And then, I believe there was another moment when
23 he said he didn't know where to put this, and you said,
24 I think he means where to put this in his life, right?

25 A In his mind.

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ARBELO RE-DIRECT KEENEY

1 Q In his mind.

2 A How to think about it.

3 Q Okay.

4 MS. CAPPELMANN: Beg the Court's indulgence.

5 I have no further questions.

6 LIEUTENANT ROBERT ARBELO

7 RE-DIRECT EXAMINATION

8 BY SOLICITOR KEENEY:

9 Q Mr. Arbelo, how old are you?

10 A Fifty-two.

11 Q So, you been speaking Spanish for approximately
12 fifty-something years?

13 A Yes, ma'am.

14 Q How many years have you been translating for the
15 Sheriff's Office?

16 A Twenty-one years.

17 Q And during your interview with the defendant, did
18 he appear to understand the conversation; you were able
19 to communicate with him well, despite any -- despite the
20 difference that you grew up with a Puerto Rican dialect
21 and he grew up somewhere else?

22 A Yes, ma'am. Absolutely.

23 Q Thank you.

24 SOLICITOR KEENEY: No further questions.

25 THE COURT: Anything further?

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A. MACHADO DIRECT KEENEY

1 MS. CAPPELMANN: No, ma'am.

2 THE COURT: All right, sir. You may be excused.

3 A Thank you, your Honor.

4 SOLICITOR KEENEY: The State calls Sergeant Angel
5 Machado.

6 BAILIFF: Come forward to be sworn, please.

7 MADAM CLERK: Good afternoon. If you would, place
8 your left hand on the *Bible*, and raise your right hand.
9 Do you solemnly swear or affirm to truthfully answer all
10 questions asked of you by this court, so help you God?

11 SERGEANT ANGEL MACHADO: Yes, ma'am, I do.

12 MADAM CLERK: Thank you.

13 SOLICITOR KEENEY: May it please the Court?

14 THE COURT: Yes, ma'am.

15 SERGEANT ANGEL MACHADO

16 DIRECT EXAMINATION

17 BY SOLICITOR KEENEY:

18 Q Officer Machado, where do you work?

19 A I work for the Beaufort County Sheriff's Office.

20 Q How long have you worked there?

21 A Ten years.

22 Q What's your position?

23 A I'm an investigator.

24 Q What was your position in 2014?

25 A I was an investigator back then.

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A. MACHADO DIRECT KEENEY

1 A On February 11 of 2014, did you talk to the
2 defendant during what we're going to call the second
3 interview?

4 A Yes, ma'am.

5 Q Who was present during the second interview?

6 A It was myself, Mr. Ontivero, and Lieutenant Baird.

7 Q Okay. What was the purpose of you being there?

8 A To assist in the translation.

9 Q Okay. And where did this interview take place?

10 A In the Law Enforcement Center, known as LEC, here
11 in Beaufort.

12 Q Here in Beaufort?

13 A Yes, ma'am.

14 Q So, you were there to translate. So, where are you
15 from?

16 A I'm originally from Puerto Rico.

17 Q What is your native language?

18 A Spanish.

19 Q So, how long have you been speaking Spanish?

20 A My whole life, pretty much.

21 Q Is there any type of test or certification that you
22 have to have to translate for the Sheriff's Office?

23 A There is no certification, but every officer has to
24 show knowledge that's going to be good enough to -- to
25 serve as a translator. So, we do take a test. And if

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A. MACHADO DIRECT KEENEY

1 you don't pass this test, you're not allowed to
2 translate for the Department.

3 Q So, I assume you passed the test?

4 A Yes, ma'am.

5 Q Okay. So, how long did you say you had been
6 translating for the Sheriff's Office? I don't remember
7 if I asked that.

8 A Since I've been employed, for the last ten years.

9 Q When you were speaking to the defendant, did it
10 appear that he understood what you were saying?

11 A Yes, ma'am.

12 Q Did you have any problems with him in the
13 translations?

14 A No, ma'am, not at all.

15 Q Have you ever had a problem with some translations
16 with other people?

17 A No, ma'am. And there's different dialects, and
18 every time there is something, we'll repeat the
19 question, or trying to get it to -- to be spoken in a
20 way that -- that the person we're addressing understands
21 it.

22 Q So, maybe they don't understand a word, you could
23 use another word?

24 A Yes, ma'am. But we always make sure to go back and
25 make sure that they understand what we're trying to ask.

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 Q Okay.

2 SOLICITOR KEENEY: May I approach the witness?

3 THE COURT: You may.

4 BY SOLICITOR KEENEY:

5 Q I am showing you what's been previously marked as
6 State's Exhibit 3. Do you recognize this document?

7 A Yes, ma'am. This is a *Miranda* warning form in the
8 language of Spanish --

9 Q How do --

10 A -- that was --

11 Q I'm sorry to cut you off, but how do you recognize
12 it?

13 A It's a form from my department.

14 Q Are there any signatures on the bottom?

15 A Yes, ma'am. There's the signature of the
16 defendant, Mr. Ontivero; Lieutenant Baird; and myself.

17 Q Okay. Did you present this form to the defendant?

18 A Yes, ma'am.

19 Q And is this a fair and accurate copy of the form
20 that you presented to the defendant?

21 A Yes, ma'am.

22 SOLICITOR KEENEY: At this time, the State moves
23 into evidence State's Exhibit 3.

24 THE COURT: Without objection?

25 MS. CAPPELMANN: No objection.

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 THE COURT: Without objection.

2 ITEM IDENTIFIED AS COPY OF BEAUFORT
3 COUNTY SHERIFF'S OFFICE LA
4 ADVERTENCIA *MIRANDA RIGHTS* FORM
5 MARKED STATE'S EXHIBIT NUMBER 3
6 ADMITTED AS EVIDENCE.

7 BY SOLICITOR KEENEY:

8 Q And you weren't in here, but Lieutenant Arbelo went
9 through it. Can you quickly go through what those
10 things say, just to make sure it's the same thing on the
11 other form?

12 A Yes, ma'am. And like I said, these are the Spanish
13 version. We have an English one. It just says, you
14 have the right to remain silent; anything you say can be
15 used against you in court; that you have the right to
16 have an attorney present before or during any
17 interrogation, if you want it; if you don't have the
18 financial means to obtain an attorney, one will be
19 assigned to you before we ask you any questions.

20 Q Did the defendant in this case, did he indicate to
21 you that he understood those rights?

22 A Yes, ma'am.

23 Q How did he indicate that?

24 A Well, he -- he goes through the rights with us as
25 we're reading them. And every time we read one, we ask

1 him if he understands. Then, he has to initial them to
2 verify that he understands those rights.

3 Q And he did so in this interview?

4 A Yes, ma'am.

5 Q What does the bottom half of the sheet of paper
6 say?

7 A Well, the bottom part is just a waiver to the
8 rights, just letting them know -- asking again if he
9 understands the rights were read to them, and just
10 asking to waive those rights.

11 So, what it says is: *with your rights in mind,*
12 *would you like to talk to us at the moment.* Which means
13 without an attorney, would be the waiving of the rights.

14 Q And did the defendant want to talk to you without
15 an attorney?

16 A Yes, ma'am.

17 Q Okay. During this second interview with you, the
18 defendant, Lieutenant Baird of the LEC, did anybody
19 threaten the defendant in any way?

20 A No, ma'am.

21 Q Did anyone coerce the defendant in any way to make
22 a statement?

23 A No.

24 Q Did anyone promise him anything?

25 A No, ma'am.

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 Q If he needed something to drink, like water, would
2 he have been given water?

3 A Yes, ma'am.

4 Q If he had needed a stretch break or some type of
5 break, would he have gotten it?

6 A Yes, ma'am.

7 Q Did he appear to be under the influence of any
8 alcohol or drugs?

9 A No, he did not.

10 Q And you said he appeared to understand what you
11 were saying, correct?

12 A Yes, ma'am.

13 Q Could you tell if he could speak any English?

14 A I -- I can recall he might understood a little bit,
15 but I -- I don't know.

16 Q Okay. During this second interview with Lieutenant
17 Baird, did the defendant make any statements to you?

18 A Yes, he did.

19 Q Can you tell the Court what he said?

20 A Yes, ma'am. Mr. Ontivero stated that, you know, he
21 didn't think something like this would happen to him.
22 He stated that one of the girls came up to him, and we
23 asked what girl are you referring to.

24 MS. CAPPELMANN: Objection. Just renewing my
25 objection.

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 THE COURT: Thank you.

2 BY SOLICITOR KEENEY:

3 Q You can keep going.

4 A Keep going. Okay. When we asked him what girl he
5 was talking about, he stated the name ^{Younger}_{Sister} as the
6 person he was referring to when he said a girl. He
7 stated that he owns -- he had a private room at the
8 residence with his bathroom, and he was coming out of
9 the bathroom with just a towel wrapped around his body.
10 He stated that ^{Younger}_{Sister} came into the room, and reached
11 under the towel and grabbed him, and he said that it
12 only happened one time. And then, he said it happened
13 more than one time. He stated she tried to touch him
14 first. And then, he changed it to, ^{Younger}_{Sister} did touch me.
15 And he said that, at that time, he proceeded to take
16 ^{Younger}_{Sister} out of the room, remove the child out of the room.

17 Q Okay. Do you remember if he said what location
18 this happened at? What street?

19 A Yes. I have to look at my notes, but I do. On
20 Winston --

21 Q What county is

22 A That's in Beaufort County.

23 Q At the beginning of the second interview, did the
24 defendant deny anything at first, and then, admit? How
25 did that transition?

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 A Until we reach the time of the interview, it was
2 unknown that some had taken place.

3 Q Okay.

4 A And the time of our interview is when he opened up
5 and said something did happen.

6 Q Okay. Now, I'm going to move on to the third
7 interview that took place the same day. Do you recall
8 that interview?

9 A Yes, ma'am.

10 Q Was that shortly after the second interview?

11 A That's correct, yes, ma'am.

12 Q Who was present during the third interview?

13 A It was Investigator Boland and Investigator
14 Kelleher.

15 Q So, Investigator Boland showed up for the third
16 interview; she wasn't previously there for the second
17 one?

18 A That's correct, yes, ma'am.

19 Q Okay. Where did this third interview take place
20 that same day?

21 A This interview took place at the Northern
22 Investigations Office.

23 Q Okay. And so, that's not the same building the
24 second took place?

25 A No, ma'am.

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 Q So, and that's -- where is that located, in
2 reference to the other building?

3 A It's just right across the street from the -- from
4 the Law Enforcement Center.

5 Q So, you all just took him across the street.

6 A Yes, ma'am.

7 Q Had him interview there. What does the room look
8 like where he was interviewed?

9 A It's just the kitchen area, pretty much.

10 Q Okay. And once again, your purpose was to
11 translate and just generally help investigate?

12 A Yes, ma'am.

13 SOLICITOR KEENEY: May I approach the witness?

14 THE COURT: You may.

15 BY SOLICITOR KEENEY:

16 Q I am showing you what's been previously marked as
17 State's Exhibit 4.

18 A Yes, ma'am.

19 Q How do you recognize it?

20 A This is another *Miranda* warning form in the
21 language of Spanish.

22 Q Are there any signatures on the bottom?

23 A Yes. It's Mr. Ontivero; Detective Boland, or
24 Investigator Boland; and myself.

25 Q Okay. And I'm assuming that this form says the

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 same exact thing that previous form I just had you
2 testify to?

3 A Yes, ma'am. Same exact form.

4 Q And so, once again, did the defendant indicate that
5 he wished to waive those rights, and speak with law
6 enforcement?

7 A Yes, ma'am.

8 Q Okay. And he signed?

9 A Yes, ma'am.

10 Q Perfect. At this time -- and this is a fair and
11 accurate copy?

12 A Yes, ma'am.

13 SOLICITOR KEENEY: At this time, the State moves
14 State's Exhibit 4 into evidence.

15 MS. CAPPELMANN: No objection.

16 THE COURT: Without objection.

17 ITEM IDENTIFIED AS COPY OF BEAUFORT

18 COUNTY SHERIFF'S OFFICE LA

19 ADVERTENCIA MIRANDA FORM

20 MARKED STATE'S EXHIBIT NUMBER 4

21 ADMITTED AS EVIDENCE.

22 BY SOLICITOR KEENEY:

23 Q During this interview, did the defendant appear to
24 understand what you were saying?

25 A Yes, he did.

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 Q No problems with translations?

2 A No, ma'am.

3 Q You all were able to have a conversation back and
4 forth?

5 A Yes.

6 Q During this third interview, did you threaten the
7 defendant in any way, or did anyone else threaten the
8 defendant?

9 A No, ma'am.

10 Q Did you all coerce him in any way to make a
11 statement?

12 A No, ma'am.

13 Q Did you all promise him anything?

14 A No, ma'am.

15 Q If he needed water, would he have been given water
16 or something?

17 A Yes.

18 Q If he needed some type of break, bathroom or
19 stretch break, would he have been given that?

20 A Yes, ma'am.

21 Q I'm assuming he didn't appear to be under the
22 influence of any alcohol or drugs from this brief
23 transition to --

24 A No, ma'am.

25 Q This interview is not recorded, correct?

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 A This interview?

2 Q This third interview.

3 A It was recorded, yes.

4 Q And do you know what happened to it?

5 A It's no longer available.

6 Q We don't have it? Okay.

7 A No, ma'am.

8 Q Okay. During this third interview, what did the
9 defendant tell you?

10 A We interviewed the defendant again at the
11 Investigation Office. He, once again, repeated the fact
12 that there was contacts with ^{Younger Sister} and he went ahead to
13 tell us one more time how the first incident took place,
14 where he was coming out of the shower, just wearing a
15 towel, and ^{Younger Sister} coming into the room and reaching and
16 grabbing his penis. And then, he proceeded to say that
17 he removed the child from the room.

18 Q Did he mention another towel involved?

19 A He mentioned, coming out, he had one around his
20 waist and one on his head.

21 Q And she came in and grabbed?

22 A Yes. Before he could even realize that she was in
23 the room.

24 Q Is that all he said about the first incident?

25 A Yes.

11-16-16 STATE V ONTIVERO

A. MACHADO DIRECT KEENEY

1 Q Okay. So, did he -- what did he say about the
2 second incident?

3 A The second incident, he stated he was actually
4 laying in his room, just wearing boxers and a t-shirt,
5 and that he was falling asleep watching T.V. And that
6 time, ^{Younger}_{Sister} came in his room one more time, and reached
7 through the seam of his boxers.

8 MS. CAPPELMANN: Objection. Renewing my previous
9 objection.

10 THE COURT: Okay. Noted, for the record. You can
11 keep on.

12 BY SOLICITOR KEENEY:

13 Q Go ahead.

14 A Yes. Mr. Ontivero reached in the seam of -- I'm
15 sorry -- ^{Younger Sister} the -- the victim, reached in the seam
16 of his boxers and grabbed his penis, Mr. Ontivero's
17 penis, and stuck it in her mouth before he realized.
18 So, he pushed the child away, and removed her one more
19 time --

20 COURT REPORTER: I'm sorry. And removed?

21 A Her from the room.

22 Q Was there any mention in the second and third
23 interview about liking something?

24 MS. CAPPELMANN: Objection. Leading.

25 BY SOLICITOR KEENEY:

11-16-16 STATE V ONTIVERO

MACHADO CROSS CAPPELMANN

1 Q Did the defendant make any other statements to you
2 during the interview?

3 A Mr. Ontivero made several other statements. He --
4 he -- he mentioned he knew he was going to be accused,
5 and he felt guilty, because he didn't tell anybody about
6 the things that happened to him.

7 He also said that the -- that the young lady,
8 Younger Sister must have liked it, because she was going around
9 accusing people of doing this stuff.

10 Q Okay. Do you see Elidoro Ontivero in the room
11 today?

12 A Yes, ma'am.

13 Q Could you point him out for the jury?

14 A Yes. Sitting over there.

15 Q What color shirt is he wearing?

16 A It look like a blue, maybe grayish.

17 Q Thank you.

18 SOLICITOR KEENEY: Let the record reflect he's
19 identified the defendant. Beg the Court's indulgence.

20 No further questions for this witness.

21 MS. CAPPELMANN: May it please the Court?

22 ANGEL MACHADO

23 CROSS-EXAMINATION

24 BY MS. CAPPELMANN:

25 Q Mr. Machado, you did not write any reports for this

11-16-16 STATE V ONTIVERO

MACHADO CROSS CAPPELMANN

1 investigation?

2 A No, ma'am.

3 Q Because there isn't a video, you had nothing to go
4 back and look at.

5 A That's correct.

6 Q To refresh your memory for your testimony today.
7 So, did you look at someone else's report?

8 A We have notes, yes, ma'am. There was a recording
9 that was generated from this incident.

10 Q But it wasn't a report that you wrote?

11 A No, ma'am.

12 Q I wanted to ask you -- I'm going to show you
13 State's Exhibit 3 again. Oop, not 3.

14 MS. CAPPELMANN: Permission to approach?

15 THE COURT: You may.

16 BY MS. CAPPELMANN:

17 Q Could you please tell us what the time is on that
18 first *Miranda* issue?

19 A Yes, ma'am. On the first *Miranda* warning form
20 that's in Spanish, the time on it is 9:39 in the
21 morning.

22 Q Okay. And then, you had just testifying that the
23 second interview happened very shortly after the first.

24 A When we finished the first one, yes, ma'am, we went
25 on to the second.

11-16-16 STATE V ONTIVERO

MACHADO CROSS CAPPELMANN

1 Q Would you say that -- would it be fair to say that
2 you went from one interview across the street to the
3 other interview?

4 A Yes, ma'am.

5 Q Okay. What's the time on that second one?

6 A It is 11:50.

7 Q Okay. Thank you.

8 A Yes, ma'am. And it's also 11:50 a.m. Sorry.

9 Q Great. Not p.m.?

10 A Not p.m.

11 Q All right. Do you know about how long that second
12 interview might have been?

13 A I do not recall, no, ma'am, the length of it.

14 MS. CAPPELMANN: Beg the Court's indulgence.

15 THE COURT: Yes.

16 BY MS. CAPPELMANN:

17 Q Co-counsel brought up a good point. I think we've
18 been improperly using the words *translator* and
19 *interpreter* interchangeably, but there's actually a
20 difference, isn't there?

21 A Yes.

22 Q Well, interpreter is usually unspoken. Whereas,
23 translating is usually written. Is that right?

24 A I -- I guess. I don't know. There's no difference
25 to me.

11-16-16 STATE V ONTIVERO

MACHADO CROSS CAPPELMANN

1 Q Okay. But to be clear, you didn't write anything,
2 so it wasn't translated?

3 A I did not write anything, no, ma'am.

4 Q So, it was interpreting.

5 A The only thing I wrote -- well, no, I did not write
6 anything. You're talking about a report, no.

7 Q I understand. So, you're interpreting, but you're
8 also investigating, yourself?

9 A Yes, ma'am.

10 Q All right. So, you had an interpreter role, but
11 also the dual purpose of investigating as well.

12 A That is correct.

13 Q So, there were three of you investigating Mr.
14 Ontivero.

15 A Yes, ma'am.

16 Q Okay. At the same time.

17 A Yes, ma'am.

18 Q Okay.

19 MS. CAPPELMANN: I don't believe I have any further
20 questions.

21 SOLICITOR KEENEY: Nothing from the State. May
22 this witness be excused?

23 THE COURT: Okay. You may step down, sir. Thank
24 you.

25 A Thank you.

11-16-16 STATE V ONTIVERO

BY THE COURT

1 STATE RESTS.

2 SOLICITOR KEENEY: Your Honor, at this time the
3 State rests.

4 BY THE COURT:

5 THE COURT: Ladies and gentlemen, at this time, the
6 State's rested their case. There is a matter of law I
7 need to take up with them. Again, I'm going to send you
8 back to your jury room. Please do not discuss this
9 case. It would not be appropriate to do so. We'll
10 bring you back when we're ready. All right? Thank you.

11 JURORS LEAVE COURTROOM 3:06 P.M.

12 BAILIFF: Jury is clear, and the door is closed,
13 your Honor.

14 MOTIONS AND RULINGS:

15 THE COURT: Thank you. Any motions?

16 MS. CAPPELMANN: Yes, your Honor. At this time, I
17 would make a motion for a directed verdict. With all
18 the testimony, and in reference to -- well, first of
19 all, in reference to the part of the amended indictment
20 that mentions that this happened during the spring and
21 summer months of 2006, Rosa Villalobos testified that
22 she left Waltherboro, I guess she said maybe December or
23 January. She couldn't really remember. The girls
24 certainly were -- they started school in February of
25 2007; and that she had lived with Julio for about a year

11-16-16 STATE V ONTIVERO

MOTIONS AND RULINGS

1 prior to that. That pretty much covers all of 2006.

2 So, given that the indictment is the notice
3 document, that's what we are prepared to defend against.
4 There has been testimony that he could not have done
5 this, because, everyone says, oh, the girls and Rosa --
6 Amber's, well, I guess, Rosa didn't know, but the girls
7 said that one person did it at one location; the other
8 person did it at the other location, whichever house
9 that might have been. But they are mutually exclusive.
10 So, if they were with Julio during 2006, it could have
11 only been with Julio.

12 THE COURT: Yes, ma'am?

13 SOLICITOR KEENEY: May it please the Court? As we
14 all know, an indictment's really a notice document.
15 Pursuant to *Gentry*, any challenges to the indictment are
16 before the jury is sworn in. Pursuant to *Tumbleston*,
17 time is not an element of a CSC offense, or a criminal
18 sexual conduct offense. Despite that, multiple
19 witnesses testified in the light most favorable to the
20 State that this happened in 2006. The girls testified
21 that it happened when they were out of school, when it
22 was hot outside. Kendra Twitty testified to time and
23 place, and she testified that Older Sister said it happened
24 in the spring or summertime of 2006.

25 So, despite -- the point of the indictment, in

1 narrowing it down, is so that the defense can generally
2 have an idea of when the criminal sexual conduct events
3 occurred. It's not an element. The only problems that
4 come is when you have the time frame that's four years,
5 like in *Baker*, and they amended it right before trial to
6 include five years. I can't remember the exact date. I
7 don't think that the indictment is -- the indictment's
8 not going back to the jury. I mean, most judges don't
9 send it back to the jury. And the State has proven in
10 the light most favorable that this happened in the
11 spring and summer months of 2006.

12 THE COURT: Okay. Well, as to that issue, I would
13 agree that, if there are any challenges to the
14 indictment, it needs to be made at the beginning. I
15 think what you're trying to say is that the evidence
16 that was proved in the case or shown in the case does
17 not show that it met the elements in the indictment of
18 spring and summer of 2006.

19 I think, taking the evidence in the light most
20 favorable to the State, there was testimony by Kendra
21 Twitty stating that ^{Older Sister} testified or told her -- I'm
22 sorry not testified -- but told her that she believed
23 the abuse occurred by this defendant in spring or summer
24 of 2006. And I think, also, ^{Younger Sister} when she testified,
25 stated she believed it was the summer months. She said

11-16-16 STATE V ONTIVERO

MOTIONS AND RULINGS

1 it was hot, and I know they testified that they were out
2 of school, or at least ^{Younger} _{Sister} testified that she was out
3 of school. So, again, you can certainly argue that to
4 the jury, but I do think it survives a directed verdict
5 motion. Any other motions?

6 MS. CAPPELMANN: Oh. Just to renew all my previous
7 objections.

8 THE COURT: Okay. Very good. And they are noted,
9 for the record, and again, relying on my prior rulings.

10 Do we need to take a break? I need to talk to your
11 client as to whether or not he wishes to testify, and I
12 need to know if this is the appropriate time, or?

13 MS. CAPPELMANN: If we could take a brief minute.

14 THE COURT: Sure.

15 MS. CAPPELMANN: Maybe ten minutes.

16 THE COURT: Okay.

17 MS. CAPPELMANN: Is that okay?

18 THE COURT: And that's fine. You said you may or
19 may not be putting up some testimony. How about we go
20 ahead and take about ten minutes; you can talk to him
21 some more; and then, I am going to ask him and explain
22 his constitutional rights to him. I will ask him
23 whether or not he wishes to testify. Or do you wish me
24 to ask that question maybe after any other witnesses
25 you're putting up?

11-16-16 STATE V ONTIVERO

DEFENDANT'S RIGHTS

1 MS. CAPPELMANN: No, you could -- you could go
2 ahead.

3 THE COURT: Do it now would be fine? Okay. I can
4 tell you, based on the time, you know, it's roughly 3:15
5 right now. If the testimony that you put up, if any, is
6 not too terribly long, I think we should go ahead and
7 get it done today, just based on the time. We're not
8 going to argue and charge until tomorrow. I certainly
9 don't want to keep this jury late. I think we need to
10 talk about the jury charge. And the jury's been going a
11 long time today. So, that's just my thoughts as of
12 right now, unless someone has a different schedule, but
13 I think we're probably better off to do it that way.

14 SOLICITOR KEENEY: I'm great with your schedule.

15 THE COURT: Perfect. All right. So, let's take
16 about ten minutes or so, you talk to your client, and
17 we'll be back. Okay?

18 OFF THE RECORD 3:12 P.M.

19 BACK ON THE RECORD 3:31 P.M.

20 DEFENDANT'S RIGHTS:

21 THE COURT: Are we ready to go?

22 MS. CAPPELMANN: I believe so, your Honor.

23 THE COURT: Okay. Mr. Ontivero, if you would
24 please rise, please, and we're going to swear you in.
25 Please raise your right hand.

11-16-16 STATE V ONTIVERO

DEFENDANT'S RIGHTS

1 Sir, do you swear or affirm the testimony you give
2 to be the truth, and nothing but the truth, so help you
3 God?

4 DEFENDANT ONTIVERO: Yes.

5 THE COURT: Thank you, sir.

6 Mr. Ontivero, at this time I'm going to explain to
7 you certain rights you have. If there is anything you
8 don't understand, please ask me to repeat or say it in a
9 different way.

10 Sir, we have reached the stage in the trial where
11 you may present your defense. You have the right to
12 claim the protections given to you by the *Fifth*
13 *Amendment* to the *Constitution of the United States*,
14 which states in part that no person can be compelled in
15 any criminal case to be a witness against himself.

16 This means you cannot be required to testify. Of
17 course, you have the right to testify, if you would like
18 to. However, no one can make you testify. Sir, if you
19 decide to testify, you are going to be subject to the
20 same rules that govern the other witnesses, and you may
21 be examined and cross-examined on any relevant issue in
22 this case.

23 In addition, sir, if you have any convictions
24 involving dishonesty or false statement, or for other
25 crimes punishable by imprisonment for more than one

11-16-16 STATE V ONTIVERODEFENDANT'S RIGHTS

1 year, and this Court determines that the probative value
2 of admitting that evidence outweighs its prejudicial
3 effect to you, the Assistant Solicitor will be able to
4 introduce your record to attack your credibility.

5 Sir, have you understood what I have explained to
6 you?

7 DEFENDANT ONTIVERO: Yes.

8 THE COURT: And have you had an opportunity to talk
9 with your lawyer about whether or not you should
10 testify?

11 DEFENDANT ONTIVERO: Yes.

12 THE COURT: Do you want to testify in this case,
13 sir?

14 DEFENDANT ONTIVERO: Yes.

15 THE COURT: Okay. All right, sir. And is that
16 your choice?

17 DEFENDANT ONTIVERO: Yes.

18 THE COURT: Made freely and voluntarily?

19 DEFENDANT ONTIVERO: Yes.

20 THE COURT: Very good, sir. Thank you. You may be
21 seated.

22 MS. CAPPELMANN: I did want to clarify. His
23 record, as far as I know, he only has traffic
24 violations.

25 THE COURT: Okay.

11-16-16 STATE V ONTIVERO

DEFENDANT'S RIGHTS

1 SOLICITOR KEENEY: That's correct. He has traffic
2 and other violations, and then, other pending General
3 Sessions charges.

4 THE COURT: Okay.

5 MS. CAPPELMANN: None of which would be
6 appropriate. Your Honor.

7 THE COURT: What are the other pending General
8 Sessions charges?

9 SOLICITOR KEENEY: HTO, and maybe a failure to stop
10 for a blue light.

11 MS. CAPPELMANN: I think it's a failure to stop for
12 blue light, non-HTO.

13 SOLICITOR KEENEY: Correct.

14 THE COURT: Okay.

15 SOLICITOR KEENEY: Nothing -- there's nothing that
16 can impeach him for it.

17 THE COURT: Okay.

18 MS. CAPPELMANN: And then, I guess, for scheduling
19 purposes, we would probably go ahead and do Mr.
20 Ontivero' testimony this afternoon. And then, my expert
21 from Columbia, she did have an engagement this evening
22 in Columbia and this afternoon, but she can be here in
23 the morning, I understand.

24 THE COURT: Okay. Do you have anyone other than
25 Mr. Ontivero and your expert to testify?

11-16-16 STATE V ONTIVERO

DEFENDANT'S RIGHTS

1 MS. CAPPELMANN: No, that's it.

2 THE COURT: Okay. Well, then, let's take his
3 testimony this afternoon. And then, we'll start first
4 thing in the morning with your expert's testimony.
5 Okay?

6 Sir?

7 INTERPRETER AYALA: Your Honor, tomorrow morning,
8 I'm supposed to be in Family Court about 10:30. I don't
9 know if you're going to be --

10 THE COURT: You're not going to be finished.

11 INTERPRETER AYALA: So, I could advise Family.

12 THE COURT: You need to. Whose courtroom are you
13 supposed to be in? Do you know?

14 INTERPRETER AYALA: I don't know which one.

15 THE COURT: I don't know either. Okay. Well,
16 you're going to have to let them know that you're still
17 here on a criminal trial.

18 INTERPRETER AYALA: Okay.

19 THE COURT: And tell them if there is a problem,
20 they can call me.

21 INTERPRETER AYALA: Okay.

22 THE COURT: But as soon as we finish here tomorrow,
23 I'll go ahead and release you. Is it downstairs at
24 Beaufort?

25 INTERPRETER AYALA: Yes, ma'am.

11-16-16 STATE V ONTIVERO

DEFENDANT'S RIGHTS

1 THE COURT: Okay. We'll release you as quick as we
2 can. Okay?

3 INTERPRETER AYALA: Thank you.

4 MS. CAPPELMANN: I'm sorry. May I beg the Court's
5 indulgence one moment?

6 THE COURT: All right. Is the State ready?

7 SOLICITOR KEENEY: The State's ready.

8 THE COURT: Is the jury ready?

9 BAILIFF: The jury is ready.

10 THE COURT: Thank you. Thank you, Norman. Sorry.
11 Are you ready, Ms. Cappelmann?

12 MS. CAPPELMANN: Yes.

13 THE COURT: Bring them in, Norman.

14 BAILIFF: Yes, your Honor.

15 MS. SAXON: Your Honor, what time would you like
16 Ms. Benedetto to be here in the morning?

17 THE COURT: I've got to ask the jury what time they
18 want to start. She's coming from Columbia?

19 MS. CAPPELMANN: Yes, ma'am.

20 THE COURT: Who is it?

21 MS. CAPPELMANN: Alicia Benedetto. She's with the
22 Children's Advocacy Center in Columbia. I think she has
23 her own private practice, too.

24 BAILIFF: The jury is entering the courtroom, your
25 Honor.

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 THE COURT: Thank you.

2 JURORS ENTER COURTROOM 3:38 P.M.

3 THE COURT: Welcome back, ladies and gentlemen.

4 All right, Ms. Cappelmann, will you call your first
5 witness, please.

6 MS. CAPPELMANN: Thank you, your Honor. May it
7 please the Court?

8 The Defense first calls Elidoro Ontivero.

9 THE COURT: Come on forward, Mr. Ontivero.

10 SOLICITOR KEENEY: Should we swear the interpreter
11 first?

12 MADAM CLERK: He's already been sworn.

13 THE COURT: He's already been sworn before the
14 trial.

15 MADAM CLERK: Do you solemnly swear or affirm to
16 truthfully answer all questions asked of you by this
17 court, so help you God?

18 MR. ONTIVERO: Yes.

19 ELIDORO CARRILLO ONTIVERO

20 DIRECT EXAMINATION

21 BY MS. CAPPELMANN:

22 Q Elidoro, would you state your full name, for the
23 record?

24 A Elidoro Carrillo Ontivero.

25 Q What do you do for a living? If it's easier -- I'm

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 sorry. Go ahead.

2 A He's a landscaper. Does hardscape.

3 Q If that's easier for you, that's fine to speak
4 Spanish.

5 Are you married?

6 A I'm engaged.

7 Q Okay. Congratulations. Do you have any children?

8 A Yes.

9 Q How many children do you have?

10 A I have two.

11 Q And how old are they?

12 A Six and seven.

13 Q How long have you been in Beaufort?

14 A Since 1990.

15 Q Okay. And where were you before then?

16 A In Virginia.

17 Q In Virginia? How long were you in Virginia?

18 A About four years.

19 Q And then, before Virginia, where were you?

20 A North Carolina.

21 Q So, you've been in the United States most of your
22 life?

23 INTERPRETER AYALA: Speak up.

24 Q I'm sorry. You've been in the United States most
25 of your life?

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 A Since I was fourteen years old.

2 Q What kind of occupation have you had throughout
3 that time?

4 A I have worked fitting, installing sheet rock, and
5 mostly landscape.

6 Q Did you have any formal education?

7 A I went to seminaries in Virginia to learn about
8 irrigation systems.

9 Q Do you consider yourself a religious person?

10 A Yes, I am.

11 Q What religion are you?

12 A I'm a Christian.

13 Q Do you go to church regularly?

14 A Four times a week.

15 Q I want to talk to you a little bit about the
16 allegations that bring us here today. And specifically,
17 I want to talk to you about these statements that we
18 just heard. I want to talk about the first statement.

19 Can you please explain for the jury what happened?

20 A The first -- okay. The first thing -- first thing
21 was, I was coming out of a bathroom with a towel wrapped
22 around my waist, and I was drying my hair with another
23 towel. Then, I felt that somebody was touching me. And
24 it was Younger Sister and I pushed her away, and I took her out
25 of the bedroom.

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 Q All right. I want to break that down. Did you see
2 her come into the bedroom?

3 A Yes.

4 Q How quickly did this happen?

5 A It was very quickly. It was -- it was immediately
6 that I felt something strange or -- or something was
7 wrong.

8 Q All right. But did you actually see her?

9 A When I took the towel away from my face that I was
10 drying my hair.

11 Q Okay. Then, let's back up. All right. What were
12 you doing at the time?

13 A I was coming out of the bathroom from a shower, and
14 I had a towel around my waist, and another one drying my
15 hair. And the bathroom is part of the bedroom.
16 Bedroom/bathroom combo.

17 Q Okay. So, it's an en suite. Sorry, it's a
18 bathroom that's attached to the master bedroom?

19 A Yes.

20 Q Did you realize ^{Younger}_{Sister} was there.

21 A I never saw her.

22 Q And then, once you felt her, how quickly or how
23 long did it take you to stop her?

24 A A second or two.

25 Q Could you have reacted any faster?

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 A As quickly as I could. I -- I felt her, and I --
2 and I took her away.

3 Q I want to talk about the second statement now.
4 Where were you when that happened?

5 A In my bed.

6 Q What were you doing?

7 A I had taken a bath, and I was laying down, watching
8 T.V.

9 Q Were you awake?

10 A Half asleep.

11 Q Why don't you explain for the jury what happened
12 that time?

13 A Once again, coming out of the bathroom with a towel
14 on my head.

15 COURT REPORTER: I'm so sorry. Can you start over?
16 I didn't hear the first of yours. *I something with a*
17 *towel on my head.*

18 INTERPRETER AYALA: I will repeat.

19 A I was coming out of the bathroom, once again, with
20 a towel over my head. I laid in bed. I turned on the
21 T.V., and I laid back. And I was half asleep, and I was
22 laying in bed, and -- and she came in, and she tried to
23 grab my -- my personal part.

24 Q Did she actually grab you?

25 A She tried.

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 Q But she did not. Is that what you're saying?

2 A She tried to grab me only, and I felt her, and I
3 took her away from me.

4 Q So, at no point did you ever have her mouth on you,
5 on your penis. Is that what you're saying?

6 A No. She only tried.

7 Q So, she tried. Why was she not able to? I know
8 that's a dumb question, but.

9 A I didn't give her time. I took her out of my
10 bedroom.

11 Q Why?

12 A Because she had to be -- she did not have to be
13 doing those things.

14 Q Did you want her to do those things?

15 A Never.

16 Q And at this time, who was living with you?

17 A My brother, Rosa, three children, and my cousin
18 John -- or Juan. John Juan.

19 Q Why did you never tell anyone?

20 A I knew it would --

21 INTERPRETER AYALA: I asked him to say it slow,
22 your Honor.

23 A I knew she was my brother's wife, and I was very
24 embarrassed to tell them. But after that occasion, it
25 never happened, because I would lock my door.

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 Q How long before they moved to the other house?

2 A It wasn't more than a month.

3 Q Did you ever bring this up to your brother? Did
4 you even bring this up to your brother?

5 A No.

6 Q And why not?

7 A It scares -- I was scared that I would be found at
8 fault for something that I had not commit, and there
9 might be bad feelings.

10 Q At this time, did you know that your brother was
11 abusing those children?

12 INTERPRETER AYALA: Repeat.

13 Q At this time, were you aware that your brother was
14 abusing those children?

15 A No.

16 Q They had their own room. Is that right?

17 A Yes.

18 Q Where were their rooms in relation to yours?

19 A My room was to the right. The kitchen, the living
20 room, and two rooms on the further end.

21 Q So, their rooms were separated.

22 A Yes.

23 Q From your room, is what I mean.

24 A No. They were not close to mine.

25 Q Do you know what has happened with your brother's

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ONTIVERO DIRECT CAPPELMANN

1 case?

2 A I know he declared himself guilty. I don't know if
3 he was guilty or not, but he declared himself guilty. I
4 have not talked to him.

5 Q Do you know that -- do you understand what it means
6 to plead guilty?

7 A To be guilty of the -- of the allegations.

8 Q And you understand how much time your brother is
9 doing?

10 A I -- I understood it when it was mentioned today.

11 Q Do you know what charge he pled to?

12 A It seems that two charges.

13 Q That's right. Was he charged with the same thing
14 you're charged with?

15 A Yes.

16 Q Do you know whether he was allowed to plead to
17 those charges, or whether he got a plea bargain?

18 A I don't -- I don't know, but it did seem strange
19 that he would declare himself not guilty -- I mean,
20 guilty.

21 Q I'm going to show you --

22 MS. CAPPELMANN: May I approach?

23 THE COURT: You may.

24 BY MS. CAPPELMANN:

25 Q I'm going to show you what's been marked for

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 identification purposes, and this would be Defendant's

2 1. Can you tell me what that is?

3 A It's a picture of my brother.

4 Q I just realized I had --

5 MS. CAPPELMANN: Move Defense's 1 into evidence.

6 THE COURT: Any objection?

7 SOLICITOR KEENEY: No, your Honor.

8 ITEM IDENTIFIED AS PHOTOGRAPH OF

9 DEFENDANT'S BROTHER

10 MARKED DEFENDANT'S EXHIBIT NUMBER 1

11 ADMITTED AS EVIDENCE.

12 MS. CAPPELMANN: Permission to publish?

13 THE COURT: You may.

14 MS. CAPPELMANN: How long would it take --

15 MADAM CLERK: It's on. Do you want this to be on?

16 MS. CAPPELMANN: Yeah, I just want to --

17 THE COURT: Just show that.

18 BY MS. CAPPELMANN:

19 Q So, this is a picture of your brother.

20 Tell me about the -- well, first, your work
21 schedule, as well as Julio's, back in 2006, when you all
22 lived together.

23 A It was the same, because I was a supervisor.

24 Q A supervisor for? Was it a company?

25 A It was a landscaping company.

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ONTIVERO DIRECT CAPPELMANN

1 Q And where did you work?

2 A In Fripp Island.

3 Q Where did Rosa work?

4 A She worked in the laundry on Fripp Island.

5 Q Did Elizabeth work with her at that time?

6 A For a short period of time only.

7 Q What time would you leave the house in the morning?

8 A 6:00, 6:30 in the morning. It's a long ways to
9 Fripp Island.

10 Q And what time would you usually get off of work?

11 A There was no set schedule.

12 Q Okay. Do you remember, just generally speaking?

13 A About 4:00 or 4:30.

14 Q Okay. When you got home, who would normally be
15 there?

16 A Sometimes, nobody. And sometimes, the children by
17 themselves.

18 Q As in, they had been left alone there?

19 A Correct.

20 Q What about any of the other adults?

21 A Not until --

22 COURT REPORTER: *Not until what would arrive? Not*
23 *until what would arrive?*

24 INTERPRETER AYALA: Let's repeat. Can you repeat
25 the question? I'll repeat the question to him.

11-16-16 STATE V ONTIVERO

ONTIVERO DIRECT CAPPELMANN

1 Q I think I asked when the other adults would be
2 home.

3 A They would be there between 6:00 and -- and 7:00
4 that evening.

5 Q Okay. And again, but was -- was Elizabeth there,
6 since she didn't work?

7 A At that time, she was working with Rosa.

8 Q Do you remember how long they all lived with you?

9 A Four to six months.

10 Q And did you ever do anything inappropriate to those
11 girls?

12 A Never.

13 Q Did you ever try to do anything inappropriate to
14 those girls?

15 A No.

16 Q I forgot to ask you this. Were you offered a
17 similar plea offer as your brother?

18 A Yes.

19 Q Why did you not take it?

20 A Because I am not guilty.

21 MS. CAPPELMANN: Beg the Court's indulgence.

22 BY MS. CAPPELMANN:

23 Q I want to go back briefly to the interviews that
24 you had with law enforcement. From the testimony that's
25 been presented, do you believe that your words were

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ONTIVERO CROSS KEENEY

1 fairly interpreted?

2 A There was some that I did not understand, because I
3 felt pressured, and I didn't have anybody to defend me.
4 And I didn't know how to find somebody to help me to
5 defend myself.

6 Q I wanted to go back and touch about your brother
7 for one second. I noticed his -- in his picture, he had
8 facial hair. Has he always had facial hair like that?

9 A Yes.

10 Q Did you ever threaten ^{Younger} _{Sister} or ^{Older} _{Sister}

11 A No.

12 Q Did you ever give them candy for doing anything
13 inappropriate?

14 A No.

15 Q Did you ever sexually assault ^{Younger} _{Sister} and ^{Older} _{Sister}

16 A No.

17 MS. CAPPELMANN: No further questions.

18 DEFENDANT ELIDORO CARRILLO ONTIVERO

19 CROSS-EXAMINATION

20 BY SOLICITOR KEENEY:

21 Q You've been living here since you were fourteen,
22 correct?

23 A Yes.

24 Q So, you can speak some English, correct?

25 A I understand it, and I speak it limited.

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ONTIVERO CROSS KEENEY

1 Q Okay. You told law enforcement, during your first
2 interview, that Juan only visited once, correct?

3 A Not correct.

4 Q Did you watch the video when we were in court
5 today?

6 A Not completely.

7 Q Okay. You said that you didn't understand how to
8 get help, correct?

9 A Si.

10 Q But law enforcement told you how to get help, not
11 once, not twice, but three times, correct?

12 A Um-hmm.

13 Q Is that a yes?

14 A Yes.

15 Q During your first interview, Sergeant Boland and
16 Sergeant Kelleher, the other guy that was not speaking
17 Spanish, asked you point blank if these girls came on to
18 you. And you said no, correct?

19 A Yes.

20 Q They asked you that question, and your response was
21 actually, no, they're good girls, correct?

22 A I do not remember saying that.

23 Q But you were here when the video was played before
24 the jury, correct?

25 How much do you weight?

11-16-16 STATE V ONTIVERO

ONTIVERO CROSS KEENEY

1 COURT REPORTER: I'm sorry. I didn't get an answer
2 there.

3 A Yes.

4 Q Yes.

5 Q How much do you weigh?

6 A I haven't weighed myself recently, but
7 approximately 300 pounds.

8 Q Were you approximately 300 pounds in 2006?

9 A No.

10 Q How much did you weigh then?

11 A About 260.

12 Q About 260. How tall are you?

13 A Six-two.

14 Q Is your brother bigger or smaller than you back in
15 2006?

16 A A little bit smaller than me.

17 Q He weighs about 170, correct?

18 A I don't know.

19 Q You testified, when Ms. Cappelmann first asked you,
20 you said you saw ^{Younger}_{Sister} come into the room, correct?

21 A No.

22 Q You didn't testify to just that?

23 A I didn't say that I saw her.

24 Q You testified that you saw her; and then, when she
25 asked you again, you changed it, and said you didn't see

11-16-16 STATE V ONTIVERO

ONTIVERO CROSS KEENEY

1 her; correct?

2 A I had the towel on my head, and when I -- and when
3 I saw her and took her away, that's when I saw her.

4 Q Moving on to your second interview with Lieutenant
5 Baird and Sergeant Machado, who is back there, you
6 admitted to them that there was two incidents with
7 Younger Sister correct? So, that's true, correct?

8 A Yes.

9 Q So, you first admit, you admit, was not true.

10 A No.

11 Q You said there was absolutely no contact in your
12 first statement, correct?

13 A Con -- contact for my behalf -- on my behalf.

14 Q But in your first interview, you told law
15 enforcement that the girls never came on to you in any
16 way, correct?

17 A Correct.

18 Q So, that's not true.

19 A It's not true what?

20 Q Your first statement was not true.

21 A Because they were asking me if I had touched them.

22 Q No. They asked you if the girls came on to you.

23 So, you admit there's two times where Younger Sister touched
24 you?

25 A Si.

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ONTIVERO CROSS KEENEY

1 Q She touched your penis, correct?

2 A Yes.

3 Q So, you're saying that law enforcement got your
4 statement right during this second interview that there
5 was two incidents?

6 A Correct.

7 Q But they got it wrong during the third interview
8 when you said ^{Younger}_{Sister} put your penis into her mouth. That
9 part's not true?

10 A I never said that she actually put it in her mouth.
11 I said that she tried.

12 Q Okay. Okay. During your first interview, you told
13 law enforcement that you were never alone with the
14 girls, correct?

15 A Correct.

16 Q But you had to be alone when ^{Younger}_{Sister} came in -- ^{Younger}_{Sister}
17 came in and touched your penis, correct?

18 A In my room, she was by herself.

19 Q Okay. In your bedroom, is there a door to your
20 bathroom?

21 A Yes.

22 Q So, when you were taking a shower that day, was the
23 door open or closed, the bathroom door?

24 A I had it open, because there was nobody in my room.

25 Q Okay. Was your bedroom door closed?

11-16-16 STATE V ONTIVERO

ONTIVERO RE-DIRECT CAPPELMANN

1 A It was closed, but I did not have a -- it was not
2 locked.

3 Q It was not locked. ^{Younger}_{Sister} would have been around
4 six years old at this time, correct?

5 A Yes.

6 Q And ^{Older Sister} would have been seven years old,
7 correct?

8 A Yes.

9 SOLICITOR KEENEY: No further questions.

10 THE COURT: Anything further?

11 MS. CAPPELMANN: Briefly.

12 DEFENDANT ELIDORO CARRILLO ONTIVERO

13 RE-DIRECT EXAMINATION

14 BY MS. CAPPELMANN:

15 Q You testified you didn't know how to get help. How
16 many hours were you subjected to interviews?

17 A A little more than an hour.

18 Q Not the first time. I mean the second and the
19 third interviews. How long did those last?

20 A I believe it's more than an hour.

21 Q All right, well, let's put it this way. Do you
22 recall signing the *Miranda* forms?

23 A Yes. I felt I was being forced to sign those.

24 COURT REPORTER: I'm sorry. I *'thought'* I was
25 being forced?

1 A Oh. It was something usual by the second and third
2 time to sign them. Just sign them.

3 Q Okay. All right. Why did you feel it was usual?

4 A Because, in one week, I had to read them several
5 times without having an opportunity to find an attorney.

6 Q At this time, had you been arrested?

7 A Yes.

8 Q Had you bonded out yet?

9 A Yes.

10 Q Think about that again. Had you been in the
11 Detention Center?

12 A Yes.

13 Q Did they take you from the Detention Center to the
14 Law Enforcement Center?

15 A Yes.

16 Q Have you ever been involved with the criminal
17 justice system?

18 SOLICITOR KEENEY: Objection. May we approach?

19 A First time.

20 THE COURT: Okay. You can approach.

21 OFF-THE-RECORD BENCH CONFERENCE, OUT
22 OF HEARING OF JURORS. PRESENT: THE
23 COURT, SOLICITOR KEENEY, MS. CAPPELMANN.
24 END BENCH CONFERENCE.
25 BY MS. CAPPELMANN:

11-16-16 STATE V ONTIVERO

ONTIVERO RE-DIRECT CAPPELMANN

1 Q Let me rephrase that. Have you ever been involved
2 with a General Sessions-level charge?

3 A No, just -- just this time.

4 Q Everything else was traffic-related? Okay.

5 A Yes.

6 Q Have you ever been involved with anything like this
7 before?

8 A First time.

9 Q Did you understand how to get an attorney?

10 A Not then. Now I do.

11 Q And before, Ms. Keeney was asking you about whether
12 you saw ^{Younger} _{Sister} or not. Have you ever testified before?

13 A No.

14 Q Have you ever sat on that stand?

15 A No.

16 Q How does it feel to sit on that stand?

17 SOLICITOR KEENEY: Objection, your Honor.

18 A Very bad.

19 THE COURT: Sustained.

20 BY MS. CAPPELMANN:

21 Q And lastly, did you ever do anything to those
22 girls?

23 A Again, no.

24 MS. CAPPELMANN: I have no further questions.

25 THE COURT: Anything further?

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ONTIVERO RE-CROSS KEENEY

1 SOLICITOR KEENEY: Just one.

2 ELIDORO CARRILLO ONTIVERO

3 RE-CROSS EXAMINATION

4 BY SOLICITOR KEENEY:

5 Q You've seen these forms, correct?

6 A Yes.

7 Q They tell you that an attorney will be appointed
8 for you if you cannot afford one.

9 A Yes.

10 Q And each and every single time law enforcement
11 showed you these forms, you said you understood and that
12 you wanted to talk to law enforcement, correct?

13 A Yes.

14 Q Thank you.

15 SOLICITOR KEENEY: No further questions.

16 THE COURT: Anything further?

17 MS. CAPPELMANN: I have nothing further.

18 BY THE COURT:

19 THE COURT: You may step down, sir.

20 All right. Ms. Cappelmann, I understand that we
21 have one more witness that will be here tomorrow
22 morning. Is that correct?

23 MS. CAPPELMANN: Yes, ma'am.

24 THE COURT: Okay.

25 Ladies and gentlemen, the last witness for the

11-16-16 STATE V ONTIVERO

CHARGE CONFERENCE

1 Defense cannot be here until in the morning. That
2 witness is coming from Columbia. We're going to go
3 ahead and break for the evening.

4 I need to tell you that what we have left to do
5 after we hear that last witness is hear the arguments
6 from the lawyers, and then I'm going to charge you on
7 the law that's applicable to the case, and we're going
8 to send it to you.

9 What I'm going to ask is that you be here tomorrow
10 morning at 10:00 a.m., where we're going to do that. We
11 are going to finish up this case tomorrow. It will be
12 sent to you for your deliberations tomorrow. Ladies and
13 gentlemen, I don't know what time we will finish. Of
14 course, that's just dependent on you and when you reach
15 a verdict. But I want you to go home tonight, get a
16 good night's sleep. Be well rested, ladies and
17 gentlemen. Again, do not discuss this case. Do not do
18 any independent research. I look forward to seeing you
19 all back in your jury room at 10:00 a.m., where we're
20 going to go ahead and conclude this case. Thank you.

21 JURORS LEAVE COURTROOM 4:20 P.M.

22 CHARGE CONFERENCE:

23 BAILIFF: Jury is clear, and the door is closed,
24 your Honor.

25 THE COURT: Thank you. All right. Does anybody

11-16-16 STATE V ONTIVERO

CHARGE CONFERENCE

1 have any specific requests to charge that you're going
2 to ask for?

3 SOLICITOR KEENEY: Your Honor, I don't have
4 anything specific. I would just like to know, with
5 respect to what your Honor charges about child -- or
6 children's credibility. I know that some judges charge
7 certain things. I just want to look at it.

8 THE COURT: We charge the *Desk Book*. But what I'm
9 asking Paige to do is, when she gets the charge
10 together, she can email you all, and so you can read it
11 to see exactly what it's going to be.

12 Anything particular you're thinking, Ms.
13 Cappelmann?

14 MS. CAPPELMANN: Honestly, not that I can think of
15 right now.

16 THE COURT: Take a look at it. If there's
17 anything, obviously, you object to, let's talk about it
18 in the morning, and we'll just go from there. If
19 there's anything that we've left, or you know, left out,
20 certainly, let us know, and we'll just go from there.
21 Okay?

22 I expect you all to be here by 9:30 tomorrow
23 morning. Maybe, you know, let's go ahead and say 9:15,
24 because we need to talk about the charge, just to make
25 sure that there is no issue. So, we can work on that

11-16-16 STATE V ONTIVERO

CHARGE CONFERENCE

1 and finish it. And you can take a look at the verdict
2 form at that point as well. Okay? So, we're going to
3 be back here at 9:15, hopefully.

4 For my interpreter, if you have a problem down in
5 court for some reason, do you know what attorney you're
6 translating for, or is it --

7 INTERPRETER AYALA: Yes, your Honor. Okay.

8 THE COURT: Yes, sir.

9 INTERPRETER AYALA: If I -- if I may, it's going to
10 be for Juvenile Justice.

11 THE COURT: Okay.

12 INTERPRETER AYALA: And it's a hearing to decide
13 whether he's going to have -- come home or go have
14 assessment.

15 THE COURT: Okay. Okay.

16 INTERPRETER: And it should probably be ten,
17 fifteen minutes.

18 THE COURT: Okay. You know, what we'll do is this.
19 Let me see. If we can get that done quickly, I'd rather
20 go ahead and see if we can't get that taken care of.
21 What time are you expected to be down there?

22 INTERPRETER AYALA: 10:30.

23 THE COURT: 10:30. Okay. Well, I can tell you
24 that we'll be in probably pretty good shape if we can
25 start at 10:00. If we could put this witness up, and

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CHARGE CONFERENCE

1 then, maybe take a break, that might give you time to
2 slip down there, and go ahead and do that. Okay. So,
3 we're just going to play it by ear. I'm just going to
4 tell the judge that we'll try and get you down there as
5 soon as I can. Okay?

6 INTERPRETER AYALA: Okay.

7 THE COURT: Okay.

8 INTERPRETER AYALA: I can talk to Family Services
9 and see if we could do it at 9:30 or something.

10 THE COURT: That would be wonderful.

11 INTERPRETER AYALA: That would be wonderful.

12 THE COURT: Right. Okay.

13 INTERPRETER AYALA: Because they start arriving --
14 I don't know if the family will be here at that time, or
15 have the juvenile here at that time or not.

16 THE COURT: Okay. Well, we'll try whatever we can,
17 and I know where to look for you if you're not here.

18 INTERPRETER AYALA: Okay. Thank you.

19 THE COURT: Okay. Thank you.

20 Anything else from anyone?

21 SOLICITOR KEENEY: Not from the State.

22 MS. CAPPELMANN: No.

23 THE COURT: If you do think of something over the
24 evening that you want, a specific request to charge,
25 will you please just email Paige and just remind her?

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CHARGE CONFERENCE

1 Okay?

2 MS. CAPPELMANN: Yes, ma'am.

3 SOLICITOR KEENEY: Yes, your Honor.

4 THE COURT: All right. We'll see you all at 9:15
5 tomorrow morning.

6 **END DAY THREE, WEDNESDAY,**

7 **NOVEMBER 16, 2016, 4:24 P.M.**

8 **BEGIN DAY FOUR, THURSDAY,**

9 **NOVEMBER 17, 2016, 9:39 A.M.**

10 CONTINUE CHARGE CONFERENCE:

11 BAILIFF: All rise. Court is now in session, the
12 Honorable Carmen Mullen presiding.

13 THE COURT: Thank you. Please be seated. Is Mr.
14 Ayala downstairs?

15 MS. CAPPELMANN: I believe he's still downstairs,
16 yes.

17 SOLICITOR KEENEY: He's still down there.

18 THE COURT: Okay. That's okay. I think we have a
19 little bit of time. So, we're talking, obviously, about
20 the jury charge. I did read the portion about children
21 testifying. I think we need to say something about
22 children testifying, but I would agree that maybe the
23 word *young children* is not appropriate, because they are
24 not young children.

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CHARGE CONFERENCE

1 SOLICITOR KEENEY: Your Honor?

2 THE COURT: Yes.

3 SOLICITOR KEENEY: The part I have a problem with
4 is, once you get to the part:

5 *Because young children may not fully*
6 *understand what is happening here, it's up*
7 *to you to decide whether the child understood*
8 *the seriousness of appearing as a witness in*
9 *a criminal case.*

10 And it keeps going down about the difference
11 between lying and telling the truth.

12 THE COURT: Right.

13 SOLICITOR KEENEY: And I will hand up *State versus*
14 *Dukes*, and I realize that it's not directly on point.
15 There's actually no case in South Carolina upholding the
16 child testimony charge.

17 THE COURT: Right.

18 SOLICITOR KEENEY: To me, it's the exact converse
19 of *Dukes*. *Dukes* is about being no corroboration charge.

20 THE COURT: Yes.

21 SOLICITOR KEENEY: And the Supreme Court says:

22 *For the judge to address the veracity*
23 *of both the victims' testimony, it's*
24 *instruction is that it's emphasizing the*
25 *weight of evidence.*

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CHARGE CONFERENCE

1 Now, that is something about giving it more
2 credibility.

3 THE COURT: Yes.

4 SOLICITOR KEENEY: And this is doing the exact
5 opposite, which I think is improper under our
6 constitution.

7 THE COURT: Well, the other thing, too, that I --
8 when I looked at this, because, obviously, this is just
9 a standard child charge, I thought about taking where
10 you started, which is: *because young children may not*
11 *fully understand*, just out of it, because you didn't
12 even ask of them -- you know, typically, when we have a
13 very young child on the stand, do you understand the
14 difference between telling the truth and not, and you
15 know what it means to tell a lie, and we go through all
16 of that. And we didn't do that, obviously, because
17 these girls are sixteen and seventeen years old. And
18 while they are still children, they are, they cannot
19 contract, and they are children under the law, I propose
20 just to leave the one portion in, just the very
21 beginning of up until where you start objecting, so,
22 *because young children*. Because I would agree, I don't
23 think that, number one, it's to the facts of this case;
24 and I do think that --

25 SOLICITOR KEENEY: And I am fine up to that point.

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1 THE COURT: As a comment, kind of -- on *Dukes*, I
2 agree with you. So, I think -- but I do think we need
3 to say something about them being young. And of course,
4 when this occurred they were young, if it occurred. So,
5 again.

6 SOLICITOR KEENEY: I'm fine up to that point that I
7 read, so.

8 THE COURT: And I'm happy to hear you.

9 MS. CAPPELMANN: And I would just say that I
10 believe the charge as written is appropriate. I think
11 it does go to, as your Honor said, the fact that they're
12 children is important for the jury to understand. But
13 then, also, I don't think it's very -- it's confusing at
14 all to the jury that they are to assess what the
15 children said and their demeanor on the stand, as you
16 would with any other witness.

17 THE COURT: Exactly.

18 MS. CAPPELMANN: So, I think it's appropriate as it
19 is, and --

20 THE COURT: I'm just going to -- I'm not going to
21 go into -- I don't think it fits the facts of this case,
22 that portion beyond that. What I don't want to get is,
23 it almost appears like it starts talking about maybe
24 memories, and you know, that this allegedly occurred
25 back when they were six and seven. I don't think it

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CHARGE CONFERENCE

1 fits the facts of this case. So, I'm only going to read
2 it, as I said, until the portion of it says they're
3 able, you know, ability to understand and answer the
4 questions, end, period. And so, I think it's the
5 correct charge on the law.

6 Obviously, we're taking the expert witness portion
7 out of it. We knew that was in there, because we
8 anticipated having someone this morning.

9 MS. CAPPELMANN: Yeah.

10 THE COURT: And my understanding we are not. Is
11 that correct?

12 MS. CAPPELMANN: That's right. I did a lot of
13 thinking like that, and honestly, I don't think it
14 serves any purpose. And why take up the Court's time,
15 so.

16 THE COURT: Okay. Okay. Any other objection to
17 the proposed charge from the State?

18 SOLICITOR KEENEY: No, your Honor.

19 THE COURT: From the Defense?

20 MS. CAPPELMANN: No, your Honor.

21 THE COURT: All right. And did you also see a copy
22 of the verdict form?

23 MS. CAPPELMANN: No, I did not.

24 THE COURT: And we may not have sent it to you.
25 I'm sorry. She's going to print one. I just want you

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CHARGE CONFERENCE

1 to look at it. It's, you know, obviously, it's two
2 separate counts. And we put in there as to each of the
3 victims, just to make sure they understood. So. And
4 it's pretty much straight up or down, so. Okay? All
5 right.

6 SOLICITOR KEENEY: And I'm assuming she will be
7 closing first, since she presented evidence?

8 MS. CAPPELMANN: That's my understanding.

9 THE COURT: Yes.

10 MS. CAPPELMANN: Thank you.

11 THE COURT: Okay. Well, let's get a copy. Like I
12 said, I want you all to see the verdict form, approve of
13 it, and we'll just go from there. And I am just going
14 to ask the rest of you, seems like -- I feel like we've
15 had -- and I don't know why it feels like the
16 courtroom's been small, but it feels like there's been a
17 lot of movement in this trial, people kind of been
18 coming and going. And Rick's not here, so we're going
19 to blame him. He's been coming in that door an awful
20 lot. So, let's just all try to sit during these closing
21 arguments, so we can let the lawyers argue, and let the
22 jury focus on the lawyers and what they're saying. So,
23 I will ask that. And I don't know why, but I've also
24 noticed people peering in the windows so much lately.
25 I'll tell this for the lawyers that are here and the

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CHARGE CONFERENCE

1 people in the courtroom a lot, it just doesn't look good
2 when you're doing all that in the back of the courtroom.
3 You need to stop that, so.

4 With that said, let's get you a copy of the verdict
5 form. You all take a deep breath, and we'll go ahead
6 and just go straight into closings. Actually, we
7 probably need to renew.

8 MS. CAPPELMANN: I was going to say.

9 THE COURT: If that's fine with you, let's go ahead
10 and do that right now.

11 MS. CAPPELMANN: Yeah. I just want to renew my
12 motion for a directed verdict and all previous
13 objections. Thank you.

14 THE COURT: Okay. And I also want you to formally
15 rest, for the record in front of the jury. I think it's
16 important for them to see that.

17 MS. CAPPELMANN: Yes.

18 THE COURT: So, when they first come in, and
19 obviously, we told them not to be here 'til 10:00, but I
20 think the first thing I'm going to do is, they're going
21 to come in, and I'm going to say, you know, you're just
22 going to say we are going to go ahead and rest the
23 defendant's case; sit down; and then, obviously, I will
24 explain to them that we have now rested the case; what
25 we have left to do is the closing arguments, and we'll

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BY THE COURT

1 go straight into closing arguments at that point in
2 time. Okay?

3 MS. CAPPELMANN: Yes, ma'am.

4 THE COURT: All right. Pardon?

5 SOLICITOR KEENEY: Four jurors not here yet.

6 THE COURT: Four jurors not here yet? Okay. Okay.

7 SOLICITOR KEENEY: The only problem I see with it
8 is the date at the bottom.

9 THE COURT: Oh, yes. Thank you.

10 SOLICITOR KEENEY: Sorry.

11 THE COURT: Thank you.

12 MS. SAXON: You've got a really good eye, because I
13 read that, and I was like, perfect; it's fine.

14 THE COURT: Okay. So, no objection, other than the
15 March 2015, to today's date from the State?

16 SOLICITOR KEENEY: Nothing from the State.

17 THE COURT: Anything from the Defense?

18 MS. CAPPELMANN: No, ma'am.

19 THE COURT: All right. I'm going to step down, you
20 all. We're going to wait until these people are here.
21 I roughly anticipate that being right at 10:00 o'clock,
22 and we'll be ready to go. Okay?

23 OFF THE RECORD 9:46 A.M.

24 BACK ON THE RECORD 10:06 A.M.

25 BY THE COURT:

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BY THE COURT

1 BAILIFF: All rise.

2 THE COURT: Thank you. Please be seated. All
3 right. We still don't have Mr. Ayala, do we?

4 MS. CAPPELMANN: I'll run downstairs and see what's
5 going on.

6 THE COURT: Okay. Actually, do you mind going?
7 Because you're going to have more pull, and do you have
8 your badge with you? Because you're going to maybe be
9 able to go in and get him. You just need to go to the
10 deputies. Who's down in the Court right now?

11 DEPUTY: We've got Jeff Merrell and we've got --

12 BAILIFF: Do you know your way down there, or do
13 you want me to go with you?

14 THE COURT: Norman, can you go ahead and go with
15 her?

16 BAILIFF: Yeah, I can go with her.

17 THE COURT: Yes, I need someone who can get him
18 quick and --

19 MS. SAXON: Get it done, Norm.

20 THE COURT: Okay. All right. Well, I guess we
21 will continue to be at ease. What about as far as a
22 translator for the mother?

23 SOLICITOR KEENEY: I think we're okay.

24 THE COURT: You're okay?

25 SOLICITOR KEENEY: Yeah.

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BY THE COURT

1 THE COURT: Okay. Okay. Okay. All right. Not
2 going to worry about it, then. Okay. Well, we'll be
3 back when we have a translator.

4 OFF THE RECORD 10:08 A.M.

5 BACK ON THE RECORD 10:12 A.M.

6 BY THE COURT:

7 THE COURT: Please be seated. All right. Are we
8 ready to go?

9 SOLICITOR KEENEY: State's ready.

10 THE COURT: State's ready? Defense is ready?

11 MS. CAPPELMANN: Defense is ready.

12 THE COURT: Okay. Very good. Let's bring the jury
13 in, Norman.

14 BAILIFF: Yes, your Honor.

15 THE COURT: Okay.

16 Wanda, I'll just go ahead and put on the record,
17 I'll just note, for the record, that Ms. Cappelmann has
18 renewed, even after she rested, again, she's already
19 renewed all her motions, all of her previous objections.
20 Respectfully, I rely on my earlier rulings denying
21 those.

22 BAILIFF: Jury is entering, your Honor.

23 THE COURT: Thank you.

24 JURORS ENTER COURTROOM 10:14 A.M.

25 BAILIFF: The jury is seated, your Honor.

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CLOSING DEFENSE

1 THE COURT: Thank you. Good morning, ladies and
2 gentlemen.

3 RESPONSES FROM JURORS.

4 THE COURT: Ms. Cappelmann?

5 DEFENSE RESTS:

6 MS. CAPPELMANN: Your Honor, at this point Defense
7 rests.

8 THE COURT: Ladies and gentlemen, the State (sic)
9 has also rested their case. So, what we have left to do
10 is just to hear the closing arguments from the
11 attorneys. I'm going to charge you on the law that's
12 applicable to this case, and we are going to send it to
13 you. All right? So, if you would give the attorneys
14 your attention for the closing arguments.

15 MS. CAPPELMANN: Thank you, your Honor. May it
16 please the Court?

17 CLOSING ARGUMENT ON BEHALF OF THE
18 DEFENSE, BY MS. CAPPELMANN:

19 Ladies and gentlemen, the evidence in this case
20 really boils down to the memories of ^{Younger} and ^{Older Sister}
21 and then, the statement that was allegedly made by
22 Elidoro. I told you at the beginning that I thought
23 there was going to be some testimony as to memories, how
24 trauma affects that, cognitive behaviors. The judge is
25 going to tell you, the Defense doesn't have to put up a

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CLOSING DEFENSE

1 case. We don't have any burden to prove anything. So,
2 I just go off of what I think might be presented to you,
3 and sometimes I'm wrong.

4 And then, I believe yesterday you were told that I
5 was going to have a witness this morning. Quite
6 frankly, I think you have heard everything that you need
7 to make an informed decision in this case.

8 I first want to try to put out there for you what
9 the time line is, because we're talking about a decade
10 ago that this allegedly happened. And I tried to get it
11 out, and it was a little bit confusing. But if you
12 recall, Rosa said that ^{Younger}_{Sister} and ^{Older Sister} started in
13 Colleton County school district, which is where
14 Walterboro is, in February of 2007; and that she had
15 lived with Julio about a year at that point. R.O.
16 the daughter that she has with Julio, was born in March
17 of 2007. So, if you go back to nine months from then,
18 that would have been June 2006. And she said she'd been
19 living with Julio about three or four months when she
20 got pregnant. So that puts us more in March/April of
21 2006. And then, before then is when they lived with
22 Elidoro for four to six months.

23 Now, the government is probably going to tell you
24 that it doesn't matter when it actually happened; all
25 they have to prove is that the girls were under eleven.

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CLOSING DEFENSE

1 But it does matter, doesn't it? Because by all
2 accounts, ^{Younger Sister} ^{Older Sister} and you even heard Kendra
3 Twitty from Hope Haven said that this happened during
4 the spring and summer months of 2006. They were living
5 with Julio at that point.

6 Now, don't get me wrong. I'm not saying that
7 anyone got on the stand and lied to you. What happened
8 to ^{Younger Sister} and ^{Older Sister} is real. They were traumatized by
9 Julio. And that's made a horrible impression on them.

10 ^{Younger Sister} told us that she can't remember whether she
11 went to kindergarten, or what elementary school she went
12 to. Things are hazy, and again, this happened a decade
13 ago, and they were very young at that time.

14 You know, if you look at the example of the
15 visitation with R.O. Rosa remember that Julio would
16 come up to Walterboro. ^{Older Sister} remembered that they
17 would go down to Beaufort. ^{Younger Sister} really didn't
18 remember. I'm not saying they're making anything up.
19 I'm just saying it's hazy; they might be a little bit
20 confused, and that Elidoro is not the one who did those
21 things.

22 Now, you know that there was a statement made.
23 Well, let's look at the context of how that statement
24 was made. Elidoro was brought into an interrogation, he
25 was given the *Miranda* form, and he signed it. He told

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CLOSING DEFENSE

1 them that they didn't do it -- or that he didn't do
2 those things that they were accusing of, and they
3 arrested him. Then, he sat in jail for five days,
4 without access to his bank account to hire an attorney,
5 without any attorney coming to see him. He sat there
6 for five days, until he was taken again for another
7 interrogation, and he signed another *Miranda* paper.

8 And after two-and-a-half hours, he started telling
9 them what happened. And that got into another
10 interrogation, where he signed another piece of paper.
11 And at this point, ladies and gentlemen, what does it
12 really mean? The form says you've got a right to an
13 attorney, but it doesn't tell you how. It doesn't even
14 really matter if you feel like you can't even ask the
15 interrogators to stop. People who don't speak the same
16 language -- and I'm sure the government's going to point
17 that Elidoro does speak some English. He's been here
18 awhile. Yeah, sure he does, but he's much more
19 comfortable speaking Spanish.

20 So, you bring him to this interview with an
21 interrogator, who is also supposed to be interpreting
22 for him. Make no mistake, they're interrogating him.
23 They're trying to get a statement. And the interrogator
24 is from Puerto Rico, and he told you when he was on the
25 stand that he doesn't really understand the different

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CLOSING DEFENSE

1 dialects between Puerto Rican Spanish and Mexican
2 Spanish. And the difference in those dialects might be
3 the difference between she did or did not put her mouth
4 on my penis.

5 Elidoro has a constitutional right to not take the
6 stand. He doesn't have to say anything. The judge is
7 going to tell you that he doesn't have to prove that he
8 is innocent. All of the burden of proof is on the
9 government. But he took that stand, because he wanted
10 you to know what happened. And if he was going to lie,
11 why wouldn't he just say they made that up, I didn't say
12 that at all. Because he's honest. He's a real person:
13 And I'm not saying that to downplay what's happened to
14 Younger and Older Sister I'm not. But you have to understand
15 Sister that, with the benefit of hindsight, Younger and Older Sister
16 Sister understood what was happening to them, but maybe not
17 back in 2006.

18 And if you've spent any time around children,
19 you'll know that they are naturally curious. When my
20 dad got re-married, he had three more kids. I've seen
21 them all grow up. The youngest one is sixteen now.
22 They're naturally curious. But when you inject into
23 that Julio, who is teaching them behaviors, they're not
24 appropriate, but he's teaching them that they're normal,
25 what does that do? And Elidoro stood there, and he told

1 you -- or sat up there, and he told you it happened, but
2 she did not put her mouth on him, and he pushed her
3 away. Stopped her immediately. And that he didn't want
4 that to happen. He did not intend for anything like
5 that to happen, and that's important, because the judge
6 is going to tell you that criminal intent is something
7 that has to be established. He has to have intended to
8 have done this. He didn't. Make no mistake. He told
9 you he stopped it as soon as he could.

10 I'm not saying he was overborne by a five-year-old.
11 That's ridiculous. That's not what I'm saying. I'm
12 saying that something happened, but he stopped it.
13 Something that was out of his control. With children,
14 you turn your back for a second, they're into something
15 they're not supposed to. I'm not being glib about it.
16 What I'm saying is that these girls were going through
17 something at that time, and I don't know what that does
18 to a child.

19 You also got to see the video of the first
20 interrogation, and you got to see Elidoro's reactions,
21 and he was in shock. He was really in disbelief. And
22 when you look his facial features, when he is -- or when
23 you look at his face when he's trying to tell law
24 enforcement that he didn't do these things, it's a look
25 of disgust.

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CLOSING DEFENSE

1 I'm sure the government's going to bring up the
2 point that he never told anyone that this happened back
3 in 2006, the two incidents with Younger Sister I don't know how
4 I would have reacted if it was a brief thing that was
5 hard to understand, that maybe it didn't even mean
6 anything, I would be embarrassed, and maybe a little
7 afraid, for fear that I would be accused of doing
8 something, and being put on trial for something that I
9 didn't do.,

10 Another thing that we saw in the video is that
11 Elidoro, several years back, apparently helped law
12 enforcement find a guy who had been similarly charged
13 with a similar incident, or at least a sexual case. And
14 he pled guilty and was deported. And then, Julio, the
15 man who has done all of this, has already pled. He's
16 already stood here in front of a judge in open court;
17 its public records; said he is guilty of the things that
18 he did to those girls. These allegations, these exact
19 same allegations, he has pled and said that he did this.
20 And you heard that his plea bargain was twenty years.

21 I understand that the girls have said -- or
22 referred to Julio as Cesar. I'm not really sure why.
23 Rosa has called him Julio, law enforcement called him
24 Julio, Elidoro's called him Julio. You saw his picture.
25 It looks very similar. You heard back in 2006, Elidoro

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CLOSING DEFENSE

1 was slimmer. He was more like, I believe he said, 180.
2 And he's six-two. And that Julio is about 170, and he's
3 a little bit shorter. But to children, everyone's
4 taller. And I don't know if they would recognize and
5 distinguish inches in height, and you've also heard that
6 he's always had the beard. Julio also told you these
7 incidents happened when Julio was living with them. He
8 had already done the abuse.

9 As soon as I sit down, the government's going to
10 come up and tell you why I'm wrong. But I want to leave
11 you with a couple of parting thoughts. The Judge is
12 about to tell you -- she's about to instruct you on the
13 law. And she's going to let you know that, again, we
14 don't have to prove anything. Elidoro doesn't have to
15 prove his innocence, and that the State alone has all of
16 the burden of proof beyond a reasonable doubt.

17 And a reasonable doubt is defined as, typically, a
18 doubt that would cause a reasonable person to hesitate
19 to act. Now, what does that mean? That's kind of an
20 ambiguous sentence. But this is kind of what I think of
21 it as. I'm from Alabama, and my aunt and uncle have a
22 lake house on Lake Martin, which is, if you're familiar
23 with Alabama at all, about forty-five minutes northeast
24 of Auburn. In this middle of this huge lake, there is
25 this four-story monstrosity called Chimney Rock. It's

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CLOSING DEFENSE

1 this huge boulder or whatever, cliff. And I'm sure that
2 every lake has a Chimney Rock. I think Lake Murray
3 does, too. So, Chimney Rock has about four different
4 places where you can jump off. And every year, every
5 summer, there's probably like, hundreds of people that
6 jump off Chimney Rock. And I've jumped off the smaller
7 ones, but -- and I'm a thrill-seeker. Don't get me
8 wrong. I love roller coasters, and really, I think, to
9 be a trial attorney, you have to have at least some
10 degree of being an adrenaline junkie.

11 But the people jump off of the tippy-top, hundreds
12 of them, they've been doing this for decades. Probably
13 be like tens of thousands of people who have jumped off
14 the top of those rocks. But every couple of years, we,
15 unfortunately, hear that some people get hurt jumping
16 off of it. Either they hit the water wrong, or there's
17 a rock that you can't see just below the surface.
18 People get really hurt. That right there is enough of a
19 reason for me not to jump.

20 You're also going to hear that, if you do have any
21 doubt, that the benefit of that doubt goes to Elidoro.
22 And the government wants you to take that jump. But can
23 you? I think, when you consider all the testimony that
24 you've heard, all the evidence, there is a very real
25 reason to think Elidoro is not guilty, to believe he's

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CLOSING STATE

1 not guilty. And at the end of your deliberations, I
2 know that you will find that Elidoro is entitled to a
3 verdict of not guilty. Thank you.

4 SOLICITOR KEENEY: May it please the Court?

5 THE COURT: Yes.

6 CLOSING ARGUMENT ON BEHALF OF THE

7 STATE, BY SOLICITOR KEENEY:

8 SOLICITOR KEENEY: Good morning. This is not a
9 case about mistaken identity. This is a case about two
10 little girls who went from one nightmare to another.
11 This case is not about Julio Cesar. He is being held
12 accountable for what he did. He's in prison. This case
13 is about this man, what Elidoro did to a six-year-old
14 and seven-year-old little girl.

15 Now, I want to go over it, the evidence in this
16 case and the testimony that you heard. You first heard
17 from Amber Allen, who was ^{Younger Sister} counselor at Coastal
18 Empire Mental Health. ^{Younger Sister} was going to Ms. Allen
19 because she had some disruptive behavior, some
20 aggression, depression. And during her counseling
21 session, ^{Younger Sister} disclosed sexual abuse to Ms. Allen, back
22 in 2006, and it happened on , the location
23 where the defendant lived.

24 Now, as a mandatory reporter, Ms. Allen immediately
25 reported it to law enforcement, and that's when our

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CLOSING STATE

1 investigation began.

2 Now, you heard from Rosa, the mother of ^{Younger} and
3 ^{Older Sister} Rosa set up a living situation for them. She
4 told you that she first lived in the house with the
5 defendant. He rented a room to her, two rooms. He
6 rented a room, and Rosa lived in one, and the siblings
7 lived in the other room. That would have been S.V.
8 who was just a toddler at the time; ^{Older Sister} who would
9 have been seven at the time; and ^{Younger Sister} who would have
10 been six at the time. In the other room would have been
11 the defendant and the defendant's girlfriend.

12 Now, Rosa explained to you, at a certain point, she
13 started dated Julio Cesar. That's his name. The girls
14 called him Cesar because his name is Julio Cesar
15 Ontivero, and they just picked Cesar. They're kids.
16 They call people weird names. They call them by their
17 middle. They pick whatever name they want to call.

18 She explained to you, at a certain point, she moved
19 out of the defendant's house, and into Julio's house,
20 Julio Cesar. After moving there, she stayed with him
21 for awhile. They didn't date for that long. And then,
22 they moved to Walterboro. She didn't know about this
23 abuse. ^{Older Sister} said, we tried to tell her, but then the
24 defendant and his brother would be around, and said they
25 threatened to hurt their family. The little girls are

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CLOSING STATE

1 scared, and just they said, I'm just kidding, I'm just
2 kidding, and just blew if off, because they were scared
3 that he was going to hurt their mother.

4 You heard from Kendra Twitty. She was the
5 counselor from Hope Haven, that interviews children that
6 are alleging sexual abuse or some type of abuse. She
7 talked to both ^{Older Sister} and ^{Younger Sister} on January 22, 2014.
8 And both of those girls disclosed sexual abuse to Kendra
9 Twitty. Now, they both said they were around the ages
10 of six and seven at the time, and it happened when it
11 was hot outside, spring or summertime. And they both
12 said that it occurred in the same residence in Beaufort,
13 and it happened in a bedroom, in a bed.

14 You heard from ^{Older Sister} She was the first girl to
15 testified. She's a teenager now. She's seventeen years
16 old. She's in high school. She likes math. She
17 testified, and she told you about the living situation
18 as well. She told you, first, they lived with the
19 defendant and his girlfriend; and then, they moved in
20 with Julio Cesar. She told you that her mother dated
21 Julio Cesar, and she told you exactly what this man did
22 to her. Not Julio Cesar. She started off with him,
23 because the sexual abuse began with him and ended with
24 his brother.

25 Now, she told you that the defendant would take her

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1 to his room, put her on his bed, undress her clothes,
2 and then, put her mouth on his penis, to the point
3 where, after a little while, liquid came out, and she
4 would run to the bathroom and throw up. And I told you
5 all from the beginning that these are difficult things
6 to talk about, and this is a difficult case, because I
7 don't like having to make a seventeen-year-old testify
8 about that. There's nothing enjoyable about that, but
9 we're here. He has the right to a trial, and we are
10 here, and she told you exactly what that man did to her.

11 And after she got done telling you what he did to
12 her, she said what his brother did to her. And it was
13 similar stuff, I agree. They went from one nightmare to
14 the next. She also told you that she saw Elidoro take
15 Younger Sister to Elidoro's room, and shut the door and lock it.
16 She didn't see any sexual abuse in there. She just
17 thought that, because guess what, ladies and gentlemen?
18 these crimes -- these crimes happen in private. They
19 happen in the bedrooms of people's homes. These aren't
20 crimes that are on video, for the most part. This is a
21 secret crime.

22 She would tell you that she would try to tell her
23 mom, but then she would get scared, because he would be
24 nearby, and that he had threatened her. He had bribed
25 her with candy once he got what he wanted. And then, he

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1 would tell her that, you know, if you say anything, I'm
2 going to hurt someone; I'm going to hurt your mom; I'm
3 going to hurt your family. So, she didn't say anything.
4 So, that's why it took eight years for it to come out,
5 because they had to be away from this man and his
6 brother before they felt safe enough to say anything.

7 You heard from Younger Sister She also explained to you
8 the living situation. Once again, she said that, first,
9 she was with Elidoro, his girlfriend. Sometimes, they
10 called her his wife. They didn't know the difference
11 between a wife and girlfriend, but she lived with them.
12 And obviously, her siblings and her mother, and she was
13 approximately six years old at the time.

14 And she told you, just like Older Sister that once all
15 the adults were gone, the defendant would take her to
16 his bedroom; put her on his bed; undress her clothes,
17 and then, he would touch her with his penis on her
18 vagina and butt. The only part that she's unclear about
19 is whether his penis went inside her butt, and whether
20 it went inside her vagina. She is crystal clear on the
21 oral sex, and that's what we're here for, the oral sex.
22 She's crystal clear that, when he took her pants off,
23 that he put his mouth on her vagina. And I won't even
24 say the rest. You heard what she said. She was in
25 tears. She could barely get it out. She was talking

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1 about something that was so uncomfortable, it's tough to
2 talk about in general, no less than a roomful of
3 strangers, about the worst time of her life.

4 She even told you that one time it hurt because of
5 his beard, and she told him that it hurt. So, what did
6 he do? He went to the bathroom and shaved his beard,
7 and came back and did it all over again. She told you
8 that, after he was done, he would give her candy, just
9 like he gave ^{Older Sister} And then, he would threaten her
10 family. I asked her point blank, why did it take you so
11 long to tell? Because she's scared.

12 Then, she talked about how she had been, after
13 living with him, moved in with the brother, Julio Cesar.
14 The stories are all matching up so far. And when she
15 moved in with Julio Cesar, he didn't perform oral sex on
16 her. He forced her to do oral sex on him. He would put
17 his penis in her mouth and make her swallow his semen.
18 She's not confused about who did what. She knows where
19 the abuse began and where the abuse ended.

20 You heard from Lieutenant Arbelo. He was the
21 officer who spoke Spanish, and he did the very first
22 interview of the defendant. And you might have been
23 asking yourself during that why I was even playing that
24 for you, because all he did was deny, and I was stopping
25 and starting it. And here's why I played it for you.

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1 Because he adamantly denied any type of contact with
2 these two girls. He said nothing happened; I was never
3 even really alone with them; there was only one time
4 where there was an incident where there was sour cream
5 on the ground, and I yelled at him and that's, you know,
6 they're making it up, because they're mad. That is
7 crazy. Little girls don't make up a story about --
8 because of sour cream on the floor.

9 And the interesting part about the interview is
10 that, he says that the girls never even saw him nude,
11 not even by accident. Maybe that's a good time to chime
12 in, well, there was these two times where this little
13 girl, six-year-old girl, is trying to grab my penis.
14 No. No contact, nothing. Nada.

15 He also says when Investigator Kelleher asked him,
16 well, did the girls ever offer to do this stuff to you
17 and you stopped it; did the girls ever come onto you?
18 He not only said no, he said, no, they're good girls.

19 Now, they want you to believe that there's just
20 some crazy problem with the translations. The defendant
21 knew what these investigators were saying. He was there
22 to speak Spanish. The investigator told you that they
23 understood each other. They were having a conversation
24 that was fine, and he's been here since he was fourteen.
25 He understands English. It just benefits him to have a

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1 translator. And guess what? The Sheriff's Office
2 provided him a translator. There was no confusion.

3 You heard from Machado, he was the other
4 investigator that spoke Spanish. Both investigators
5 have been speaking Spanish their entire lives. He also
6 testified that he understood the defendant; the
7 defendant understood him; there was no problems with any
8 translations; if there was a problem, they would have
9 figured it out. They would have figured the right words
10 to go with what. And he said, after being read *Miranda*
11 -- all interviews, they read the defendant *Miranda*,
12 advised him of his right, and that form, the defendant
13 even admitted to you that that form says, if you can't
14 afford an attorney, one would be appointed to you. He
15 knew. They told him not once, not twice, but three
16 times exactly that he had a right to an attorney, and he
17 had a right to stop talking at any time he wanted, and
18 he didn't do that. He kept talking. He kept telling
19 his story, lie after lie, to make his culpability
20 lessen, and to blame a six-year-old little girl for
21 something that he did.

22 Now, Machado talked to you about the second
23 interview. This is with Lieutenant Baird. Angie Boland
24 was not there during that interview. Machado told you
25 that, first, the defendant denied any contact. And

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1 then, he said, well, there's these two incidents with
2 Younger Sister who was six years old at the time, where they
3 were in -- he was in the shower; he had a towel on; he
4 was drying his hair; and all of the sudden, Younger Sister comes
5 in and goes underneath his towel, under his towel, and
6 grabs his penis. Okay?

7 Then, they take him across the street to meet with
8 Sergeant Boland, to talk with her, since she's the lead
9 investigator, and they read a *Miranda* again. He says,
10 yeah, I want to tell the story; I want to talk. He goes
11 into both incidents again, and he recaps the first story
12 about the shower. Then, he goes into the second story
13 about being in the bedroom watching T.V., half asleep,
14 boxers on, shirt on, and a six-year-old little girl came
15 in, got into his boxer hole, pulled out his penis, and
16 put his penis into her mouth before he could stop it.
17 That is what he told law enforcement.

18 Then, he told law enforcement that these little
19 girls must have liked doing this type of stuff, because
20 they've accused him and his brother.

21 Now, some of the issues that I want to point out in
22 this case are this. Ms. Cappelmann has said that
23 there's no question that these girls were sexually
24 abused. So, we know they're not lying. We know they
25 were sexually abused. We know that that's credible.

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1 She's not even contesting sexual abuse. She's just
2 saying her client didn't do it. Well, the problem with
3 that is that you heard from both girls, and they both
4 told you who started the sexual abuse. And it's that
5 man. Not Julio Cesar. It begins with him. Ends with
6 Cesar.

7 And the other problem she has is that her own
8 client admitted to sexual contact with Younger Sister He wants
9 to play the victim and act like a six-year-old little
10 girl sexually assaulted him? Come on, ladies and
11 gentlemen. You are allowed to use your common sense.

12 Now, the other issue that's been brought up is that
13 these little girls, okay, they're not lying, but maybe
14 they're just confused, memory's hazy. They are not
15 confused. They told you exactly what happened. They
16 told you who it started with and who it ended with.

17 Older Sister told you exactly how the defendant forced his
18 penis into her mouth to the point where she threw up.

19 Younger Sister told you exactly how he performed oral sex on her,
20 and it hurt, and he shaved his beard and he re-started
21 it. The only confusion at all was from Younger Sister when she
22 said, I'm not a hundred percent sure if his penis went
23 inside me or if his penis went into my rear. A hundred
24 percent sure about the oral sex, and that's what we're
25 here for.

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1 The other thing is, we know that these two brothers
2 did this to this girl. We know it was just more than
3 one person, because one man is sitting in prison at the
4 Department of Corrections, and the other man admitted to
5 sexual contact with Younger Sister We know there's two.
6 There's no question about that.

7 Now, you might ask about the missing video. It
8 hasn't really been harped on that much by Defense
9 Counsel, but I want to address that. Sergeant Boland,
10 she messed up. She admitted she messed up. She's
11 human. Law enforcement makes mistakes. She didn't get
12 that video off the server in enough time, and it
13 recorded over, so we didn't have it. But you know what
14 we did have? The defendant got up on the stand and told
15 you, yeah, he made those statements to law enforcement.
16 Law enforcement is right about every single thing, every
17 statement that he's made, except one thing, that when
18 Younger Sister went into his boxers and pulled his penis out,
19 that his penis did not go in her mouth; it almost went
20 into her mouth. That's the only part that law
21 enforcement messed up, and that's quite convenient since
22 the allegation that I have to prove to you is that there
23 was oral sex.

24 Now, the other thing that I want to talk to you
25 about is witness credibility. Judge Mullen, at the end

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1 of this, she's going to charge you about witness
2 credibility, and how you are to determine who's credible
3 and who's not. Well, the ultimate answer is up to you.
4 You are the fact finders. You get to determine who's
5 credible, who's not. You can believe five witnesses
6 over one, or you could believe one witness over five.
7 It's up to you. It's all up to you.

8 And here's what I want to talk about. Let's talk
9 about the girls' credibility. They told you exactly
10 what happened to them. These two now-teenagers got up
11 on the witness stand, and talked to a roomful of
12 strangers about the worst thing that's ever happened to
13 them. You saw the tears coming down Younger Sister face when I
14 had to ask her these uncomfortable questions. She could
15 barely form a sentence because she was so upset. And we
16 know they're not making up sexual abuse, because the
17 Defense counsel told you they're not. She told you
18 they're not lying about sexual abuse; it was just Julio
19 Cesar and not her client. But it was both men.

20 Now, let's talk about the defendant's credibility.
21 The defendant has lied from interview one. Interview
22 one is when he denied everything. He said that they
23 never saw them naked, not even by accident. He said
24 that they never came on to him, nothing like that ever
25 happened, and they were good girls. And he even told

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1 you what I find interesting during that first interview
2 that came up at trial is that, he told you who was
3 living in the house, and he said Juan, the cousin, only
4 visited one time; and he testified on the stand that
5 Juan lived there. I don't know if he was trying to
6 shift the blame to, maybe, Juan, but the girls are
7 crystal clear who the abuse began with, and it's him.

8 He then testified, when his own attorney asked him
9 if he saw Alexa come into the room, or the bathroom,
10 during the incident where she grabbed his penis
11 underneath the towel, and he said, yeah, I saw her. And
12 that wasn't the answer she was looking for, so she re-
13 phrased the question. And he was like, oh, no, no, no,
14 I had a towel on my head; I didn't see her. And then,
15 when I asked him about it, he said, oh, I didn't testify
16 to that. We all heard it, ladies and gentlemen. We all
17 heard that he saw the little girl come into the bedroom.
18 He can't fight off a six-year-old girl? Come on.

19 Like I said, we can use our common sense. Ladies
20 and gentlemen, if there's one thing that I've learned in
21 life, it's hard to keep straight your lies. You've all
22 been told that. That, when you lie, they get all
23 tangled up and you can't under -- you can't remember
24 them. You know what's easy to remember? The truth.

25 Now, I'm going to move on to the law of the case.

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1 I have to prove to you that he committed two counts of
2 CSC with a minor, first degree. Now, you consider those
3 counts separately. So, for example, if you believe he
4 did it to Younger Sister but didn't do it to Older Sister you can
5 find him guilty of Younger Sister and not guilty with Older Sister
6 If you think he did it to both of them, you can find him
7 both guilty -- find him guilty of both.

8 Now, CSC with a minor first degree requires that I
9 prove to you beyond a reasonable doubt that he engaged
10 in a sexual battery with the victim who is less than
11 eleven years of age. Well, the second requirement,
12 victim less than eleven years of age, I don't think
13 anybody's disputing that. Both of these girls are well
14 under the age of eleven. You probably won't even
15 discuss that much.

16 You're going to talk about the first requirement, I
17 imagine, which is whether he engaged in a sexual
18 battery. So, what is a sexual battery? In the charge,
19 she's going to tell you it means any sexual intercourse;
20 cunnilingus, which means oral sex on a female; fellatio,
21 which means oral sex on a male. So, basically, any type
22 of oral sex counts. Any anal intercourse or any
23 intrusion, however slight, to any part of a person's
24 body. So, if I proved any one of those things beyond a
25 reasonable doubt, then, he's guilty.

1 Here, we're talking about the cunnilingus and
2 fellatio language, oral sex. You heard the testimony
3 from ^{Younger}_{Sister} and ^{Older Sister} where they describe in detail
4 about the oral sex that he had been engaged in. And you
5 heard from the defendant, through those interviews,
6 about how ^{Younger}_{Sister} put his penis into her mouth.

7 The Judge is going to tell you what reasonable
8 doubt is. I have to prove to you beyond a reasonable
9 doubt that he committed these two crimes. She's also
10 going to tell you that reasonable doubt doesn't mean
11 beyond every single doubt a person might have. There's
12 very few things in life that we know with absolute
13 certainty. If you are firmly convinced that he did this
14 to these two girls, then, you must find him guilty.

15 In conclusion, these little girls -- ^{Younger}_{Sister} told her
16 therapist. They told Kendra Twitty what happened to
17 them. They told you what happened to them. In South
18 Carolina, victims -- any testimony -- no testimony has
19 to be corroborated. You can believe these victims,
20 these girls. And if you believe them, then, he's
21 guilty. But you know what? We have more than just
22 their word, we have his words, what he admitted to.
23 He's blaming a six-year-old girl.

24 They want to make Rosa look like a bad mom, because
25 she left them with him and Julio Cesar. She was trying

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1 to work, and get a roof over their head and food on the
2 table. She didn't know that these two men were doing
3 this to her daughters. How about, let's blame the men
4 that did it to them? Let's blame him. Let's make him
5 accountable for what he did. Find him guilty of both
6 counts. Thank you.

JURY CHARGE:

8 THE COURT: Mr. Foreperson, ladies and gentlemen of
9 the jury, you have followed very patiently and listened
10 very tentatively to the presentation of evidence in this
11 case, and I thank you for that, and also, the arguments
12 made by the Assistant Solicitor Ms. Keeney, and by Ms.
13 Cappelmann, on behalf of the Defendant.

14 It now becomes the duty of the trial judge and the
15 constitution of this state to charge and instruct you on
16 the law that's applicable to this case. And it's your
17 duty, as jurors, to accept and apply the law as I now
18 state it to you. As jurors, it is your exclusive duty
19 to decide all issues of fact in this case. You must
20 determine the effect, the value, the weight and the
21 truth of the evidence. Now, both the State and the
22 defendant have a right to expect that you will carefully
23 consider and evaluate the evidence and apply the law of
24 the case to the evidence. And by doing so, both the
25 State of South Carolina and the defendant will receive

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JURY CHARGE

1 and obtain a fair and impartial trial of this matter.

2 Now, the State of South Carolina, by the bill of
3 indictments in this case, charge the defendant, Elidoro
4 Ontivero Carrillo, with two counts of criminal sexual
5 conduct with a minor in the first degree. I remind you
6 that the fact the defendant was arrested, charged, and
7 indicted in this case is not evidence in this case, and
8 cannot be considered by you as evidence of guilt in this
9 case; nor does it create any presumption or inference of
10 guilt. The document is simply the formal written
11 instrument which contains the charge made against the
12 defendant. It is the formal document by which this case
13 is brought into this courtroom.

14 Now, the defendant in this case has pled not guilty
15 to these indictments, and that plea puts the burden on
16 the State to prove the defendant guilty beyond a
17 reasonable doubt. A person charged with committing a
18 criminal offense in South Carolina is never required to
19 prove themselves innocent. I charge you that it's an
20 important rule of law that a defendant in a criminal
21 trial, no matter what the seriousness of the charge may
22 be, will always be presumed to be innocent of the
23 offense for which the indictment was issued, unless
24 guilt has been proven by evidence satisfying you, the
25 jury, of that guilt beyond a reasonable doubt. This

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JURY CHARGE

1 presumption of innocent does not end when you begin your
2 deliberations, but it accompanies the defendant
3 throughout the trial, until you reach a verdict of
4 guilt, based on evidence satisfying you of that guilt
5 beyond a reasonable doubt.

6 The presumption of innocence is not a legal -- it's
7 not just a mere legal theory. It's not just a legal
8 phrase we use. It is a substantial right to which every
9 defendant is entitled, unless you, the jury, are
10 satisfied from the evidence of the defendant's guilt
11 beyond a reasonable doubt.

12 Now, what is reasonable doubt in the law? A
13 reasonable doubt is the kind of doubt that would cause a
14 reasonable person to hesitate to act. Now, the State
15 has the burden of proving the defendant guilty beyond a
16 reasonable doubt. Now, some of you may have served as
17 jurors in civil cases, where you were told that it was
18 only necessary to prove that a fact is more likely true
19 than not true, such as by what we call the greater
20 weight, or the preponderance of the evidence. In
21 criminal cases, the State's proof must be more powerful
22 than that. It must be beyond a reasonable doubt. Proof
23 beyond a reasonable doubt is proof that leaves you
24 firmly convinced of the defendant's guilt.

25 Now, there are very few things we know in this

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JURY CHARGE

1 world with absolute certainty, and in criminal cases,
2 the law does not require proof that overcomes every
3 possible doubt. If, based upon your consideration of
4 the evidence, you are firmly convinced that the
5 defendant is guilty of the crime charged, you must find
6 him guilty. If, on the other hand, you think there is a
7 real possibility that the defendant is not guilty, you
8 must give the defendant the benefit of the doubt, and
9 find him not guilty.

10 I remind you that, during this trial, you and I
11 have certain duties to perform. As the trial judge,
12 it's my responsibility to preside over the trial of this
13 case, and I also have the duty to rule on the
14 admissibility of the evidence that's offered during this
15 trial. You are to consider only the competent evidence
16 before you. You are to consider only the testimony
17 which has been presented from the witness stand, and any
18 other exhibits which have been made a part of the record
19 in this case.

20 I have the additional duty to charge you the law
21 that's applicable to this case. As the presiding judge,
22 I am the sole judge of the law of this case, and it's
23 your duty to accept and apply the law as I now state it
24 to you. If you already have any idea as to what the law
25 is or what the law ought to be, and it does not agree

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JURY CHARGE

1 with what I now tell you the law is, you must abandon
2 this idea, because you are sworn to accept the law and
3 apply it exactly as I state it to you.

4 In every case tried in this court before a jury,
5 the jury becomes the sole and exclusive judge of the
6 facts in this case. A trial judge cannot intimate,
7 state, comment on, or make any statement to a trial jury
8 about the facts in a case. And since you, the jury, are
9 the sole judge of the facts of this case, you are not to
10 infer from what I've said during the progress of this
11 trial in ruling upon the admissibility of evidence or
12 otherwise, or anything that I say now during the course
13 of this instruction to you, that I have any opinion
14 about the facts in this case. The law does not allow me
15 to have an opinion about the facts in this case. This
16 is a matter solely for you, the jury, to determine. And
17 as jurors, again, it is your duty to determine the
18 effect, the value, the weight, and the truth of the
19 evidence that's presented during this trial.

20 Now, in this trial, you heard the testimony of a
21 witness who testified in Spanish. This witness
22 testified through an interpreter. Now, some of you may
23 have some knowledge of Spanish. However, you cannot
24 rely on your own knowledge of Spanish, even if you
25 disagree with the interpreter's translation. You must

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1 accept the translation of the witness's testimony by the
2 interpreter.

3 Now, there are two types of evidence that are
4 generally presented during a trial. There is direct
5 evidence and circumstantial evidence. Direct evidence
6 is the testimony of a person who claims to have actual
7 knowledge of a fact, such as an eyewitness.
8 Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact.

10 Ladies and gentlemen, offenses may be proven by
11 circumstantial evidence. The law makes no distinction
12 between the weight or value to be given to either direct
13 or circumstantial evidence. However, to the extent the
14 State relies on circumstantial evidence, all of the
15 circumstances must be consistent with each other, and
16 when taken together, point conclusively to the guilt of
17 the accused beyond a reasonable doubt. If these
18 circumstances merely portray the defendant's behavior as
19 suspicious, the proof has failed. The State has the
20 burden of proving the defendant guilty beyond a
21 reasonable doubt, and this burden rests with the State,
22 regardless of whether the State relies on direct
23 evidence, circumstantial evidence, or some combination
24 of the two.

25 Now, as jurors, you must determine the credibility

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1 of witnesses who have testified in this case, and
2 credibility simply means believability. It becomes your
3 duty as jurors to analyze and to evaluate the evidence,
4 and determine which evidence convinces you of its truth.
5 In determining the believability of the witnesses who
6 have testified in this case, you may believe one witness
7 over several witnesses, or several witnesses over one
8 witness. You may believe a part of the testimony of a
9 witness, and reject the remaining part of the testimony
10 of that same witness. You may believe the testimony of
11 a witness in its entirety, or reject the testimony of a
12 witness in its entirety. You may consider whether any
13 witness has exhibited to you any interest, bias,
14 prejudice, or other motive in this case. You may also
15 consider the appearance and manner of a witness while on
16 the witness stand.

17 Now, there has been admitted into evidence in this
18 case a statement allegedly to have been made by the
19 defendant. Before you may consider this statement as
20 evidence for any purpose, you must determine four
21 things. First, did the defendant make the statement.
22 Second, was the defendant warned of his constitutional
23 rights? Third, did the defendant knowingly and
24 intelligently waive his constitutional rights? And
25 last, was the statement given freely and voluntarily?

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JURY CHARGE

1 The fact that the Court has admitted a statement
2 into evidence should not be considered by you as any
3 evidence whatsoever that the defendant made such a
4 statement, or that the constitutional safeguards which
5 are required, were, in fact, provided and waived by the
6 defendant; or that the statement was voluntarily given;
7 because these issues are for you, the jury, to
8 determine. The State must prove beyond a reasonable
9 doubt each of the four essentials, or four requirements
10 that I just read to you, and before you are allowed to
11 consider that statement.

12 Now, there's been evidence presented that witnesses
13 made prior statements which are not consistent with the
14 witness's present testimony. You may use this evidence
15 whether to decide to believe the witness. You may also
16 use the evidence of the earlier contradictory statements
17 to determine the truth of those statements. It is up to
18 you to decide whether to believe the earlier statements
19 or the testimony given at trial. If a witness has shown
20 to have knowingly testified untruthfully concerning any
21 material matter, you may consider this in determining
22 whether to trust the witness's testimony as to other
23 matters. You may reject all testimony of that witness,
24 or give all or part of the testimony the weight you
25 think it deserves.

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JURY CHARGE

1 Now, during this trial, you have heard testimony
2 from children. Where a witness is a child, you must
3 determine, as with any witness, whether that testimony
4 is believable. In deciding believability, you may
5 consider not only matters that I've already discussed
6 with you, but you may also consider the age of the
7 child, the child's ability to observe and remember
8 facts, and the child's ability to understand and answer
9 questions.

10 Now, in order to establish criminal liability,
11 criminal intent is required. For example, the mental
12 state required to be proven by the State for a
13 particular crime might be purpose, intent, knowledge,
14 recklessness, or criminal negligence. Criminal intent
15 must be proven by the State beyond a reasonable doubt.
16 Criminal intent is always a matter that must be
17 determined by the jury from the circumstances
18 surrounding the situation, and there's no way to prove
19 intent to a mathematical certainty. There's no way
20 medical science can dissect a person's brain, and
21 determine what the person had in mind. So, the law says
22 that criminal intent may be inferred from the
23 circumstances shown to have existed. This is how you
24 make a determination of whether the element requiring
25 intent was present. It is not necessary to establish

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JURY CHARGE

1 intent by direct and positive evidence, but intent may
2 be established by inference in the same way as any other
3 fact, by taking into consideration the facts of the
4 parties and all of the facts and circumstances of the
5 case, based on evidence entered during the trial of this
6 case.

7 Criminal intent is a mental state. It's a
8 conscious wrongdoing. It is up to you to determine what
9 the defendant intended to do, based on the circumstances
10 shown to have existed.

11 Now, the indictments in this case allege two
12 separate offenses against the defendant, and the first
13 charge is 2014-GS-07-00327, criminal sexual conduct with
14 a minor, as to Older Sister . And the second
15 charge is 2014-GS-07-00328, criminal sexual conduct with
16 a minor, as to Younger Sister . Each indictment
17 charges a separate and distinct offense. You must
18 decide each indictment separately on the evidence and
19 the law applicable to it, uninfluenced by your decision
20 as to any other indictment. The defendant may be
21 convicted or acquitted on any or all of the offenses
22 charged. You are going to be asked to write a separate
23 verdict of guilty or not guilty as to each indictment,
24 and I remind you that the State must prove each element
25 of each of the offenses charged beyond a reasonable

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JURY CHARGE

1 doubt.

2 Now, the defendant is charged with first degree
3 criminal sexual conduct with a minor. The State
4 therefore must prove beyond a reasonable doubt the
5 defendant engaged in the sexual battery with the minor.
6 Now, a sexual battery is sexual intercourse,
7 cunnilingus, fellatio, anal intercourse, or any
8 intrusion, however slight, of any part of a person's
9 body, or any object into the genital or anal openings of
10 another person's body, except when the intrusion is
11 accomplished for medically recognized treatment or
12 diagnostic purposes. The State must then prove beyond a
13 reasonable doubt that the minor was less than eleven
14 years old at the time of the sexual battery. Consent,
15 willingness, indifference, or ignorance on the part of
16 the minor, if any, as to what was taking place does not,
17 in any way, affect the charge of criminal sexual conduct
18 with a minor.

19 Mr. Foreperson, members of the jury, as you retire
20 to begin your deliberations in this case, I wish to
21 express the hope that each of you are mindful of the
22 importance of your duty here today. You're not called
23 upon very often to serve as jurors, and the proper
24 performance of that duty requires that each of you reach
25 the height of freeing your mind of all improper

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JURY CHARGE

1 influences.

2 You and I are acting for the community, and that is
3 why we must see to it that this trial is fair, and the
4 verdict is just. You have observed the presiding
5 officer of this court is always addressed as your Honor.
6 The reason is the Court is entrusted with the honor of
7 this community, the honor of this state, and in honor of
8 this country, in seeing that every case tried here
9 receives fair and impartial justice. Now, you, the
10 jury, take into your care and preservation the honor of
11 this community, the honor of this state, and the honor
12 of this country.

13 Ladies and gentlemen, please don't get the idea
14 that I am trying to intimate to you how you should
15 decide this case. As I've already told you, under the
16 laws of our state, you, the jury, are the sole judge of
17 all questions of fact, and it would be highly improper
18 for me to influence you in your performance of that
19 duty. However, as the presiding judge of this court, I
20 am concerned that whatever verdict you reach will be a
21 result of you going back into that jury room, and
22 confining your consideration to the evidence and the law
23 that you've heard here in this courtroom, weighing it
24 fairly and impartially, as I have every confidence you
25 will.

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JURY CHARGE

1 Everyone is entitled to justice in this case, both
2 the State and the defendant. You owe no support or
3 sympathy to anyone. The Court is of the confirmed
4 opinion that whatever verdict you reach will represent
5 truth and justice for all parties concerned.

6 Mr. Foreperson, I remind you, the verdict must be
7 unanimous. It must be the verdict of all twelve jurors,
8 and to that end, my law clerk has prepared a verdict
9 form. It has the case caption, which is the *State of*
10 *South Carolina versus Elidoro Ontivero Carrillo,*
11 *defendant.* And there are two questions, both of which
12 you must answer. The first questions asks:

13 *As to Indictment Number 2014-GS-07-00327,*
14 *the charge of criminal sexual conduct with a*
15 *minor, first degree, as to Older Sister*
16 *We, the jury, find the defendant, Elidoro*
17 *Ontivero Carrillo, either not guilty or guilty.*
18 The second question is:

19 *Indictment Number 2014-GS-07-00328, the*
20 *charge of criminal sexual conduct with a*
21 *minor, first degree, as to Younger Sister*
22 *We, the jury, find the defendant, Elidoro*
23 *Ontivero Carrillo, and again, either guilty or*
24 *not guilty.*

25 Ladies and gentlemen, don't infer the order that I

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JURY CHARGE

1 put not guilty or guilty. Every trial I simply reverse
2 that.

3 After that, Mr. Foreperson, there is a line for you
4 to sign and to date the form. When the jury has reached
5 a unanimous verdict, I ask that you knock on your jury
6 room door, and we are going to accept you back into the
7 courtroom to read your verdict.

8 Mr. Foreperson and members of the jury, I would
9 also like to instruct you that, while you see my court
10 reporter down here, taking down everything that's being
11 said in this courtroom, we don't have a printed
12 transcript of the trial. If there is testimony you wish
13 to have played back, what I can do is bring you back
14 into the courtroom, and we can play it by audio. The
15 only thing I need to make sure you understand is that I
16 am required to play that witness's testimony in its
17 entirety. So, again, you can't pick portions of it.
18 You can do it in its entirety, if you need to. All
19 right?

20 Ladies and gentlemen, for the last time, I'm going
21 to send you back to your jury room, and tell you not to
22 discuss this case. If there's anything further
23 the lawyers want me to instruct you on the law, I'm
24 going to bring you back out here and instruct you
25 further. If not, Mr. Foreperson, I'm going to send the

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BY THE COURT

1 verdict form and the other evidence that was entered
2 into this case, and that's going to be your signal to
3 begin your deliberations. All right?

4 Ladies and gentlemen, you are excused back to your
5 jury room.

6 JURORS LEAVE COURTROOM 11:16 A.M.

7 BY THE COURT:

8 BAILIFF: Jury is clear, and the door is closed,
9 your Honor.

10 THE COURT: Thank you, Norman.

11 Any exceptions or additions to the charge on the
12 law from the State?

13 SOLICITOR KEENEY: No, your Honor.

14 THE COURT: From the Defense?

15 MS. CAPPELMANN: No, your Honor.

16 THE COURT: All right. Ladies and gentlemen, make
17 sure we've gone through with Wanda. Here's the verdict
18 form. Thank you, Wanda.

19 COURT REPORTER AND ATTORNEYS

20 REVIEWING EXHIBITS.

21 THE COURT: Do they still need you downstairs, sir?

22 INTERPRETER AYALA: Yes, ma'am.

23 THE COURT: Okay. Are we okay to go ahead and let
24 him be excused downstairs? Just come on back up when
25 you're done. Or we may have someone come and find you,

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BY THE COURT

1 if we need to. Okay? Will you explain to him what
2 you're doing, so he knows that you're not abandoning
3 him. Thank you.

4 SOLICITOR KEENEY: Judge Mullen, do you want the
5 C.D. to go back? They obviously can't play it back
6 there.

7 THE COURT: No. Let's leave it here for now, and
8 if they want to play back, they can ask us.

9 BAILIFF: Are you all satisfied?

10 SOLICITOR KEENEY: Yes.

11 THE COURT: Okay. Thank you. You want to bring me
12 the alternates.

13 BAILIFF: Are you ready for the alternates, Judge?

14 THE COURT: Please.

15 BAILIFF: Yes, ma'am.

16 VERDICT FORM AND EXHIBITS TAKEN

17 TO JURORS 11:16 A.M.

18 MS. SAXON: Your Honor, may I approach?

19 THE COURT: Just a second. I'm waiting for the
20 alternates to come out.

21 MS. SAXON: Oh.

22 THE COURT: So, let's just -- yes. Ms. Cappelmann,
23 if you'll step back for me, and we'll go ahead and
24 dismiss them. Then, you all are more than welcome to.

25 MS. CAPPELMANN: Sorry about that.

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BY THE COURT

1 BAILIFF: Are you ready for the alternates, Judge?

2 THE COURT: Yes, please.

3 BAILIFF: You stand right here. You stand right
4 here. You got to face the Judge.

5 THE COURT: Yes, you all are fine right there.
6 Gentlemen, I want to thank you. Obviously, I didn't
7 lose any jurors in this case, and I hope not, but at
8 this point, I'm going to go ahead and excuse you, and
9 I'm going to excuse you from jury duty for the remainder
10 of the week.

11 ALTERNATE JUROR: Okay.

12 THE COURT: At this time, you are permitted to
13 discuss this case, and sometimes the lawyers maybe want
14 to ask you what your thoughts are. You're not required
15 to talk to anyone if you don't want to. Also, though, I
16 would ask that -- I have no idea how long this jury is
17 going to be out. If, for some reason, they are out
18 overnight, I want to make sure you all don't speak to
19 them before they've reached a verdict in this case,
20 which I'm sure you won't, but I'm not concerned.

21 I will tell you that it's my understanding -- I am
22 going to do a couple of bonds here, and we're going to
23 do other work this afternoon. You're welcome to stay.
24 I understand if you would like to go, gentlemen, but
25 just to let you know.

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BY THE COURT

1 Also, if you are interested in what the verdict is,
2 and if there is a verdict of guilty, the sentence, if
3 you just leave your phone number with the bailiffs,
4 we'll call you and let you know, if you are interested.
5 So, completely up to you.

6 I will also tell you that, if there is a
7 conviction, it will likely be in the newspaper. If
8 there's not, it likely won't be, but also, you certainly
9 are welcome, and we'll call you if you are interested
10 and want us to.

11 ALTERNATE JUROR: Are you saying that we can stay?

12 THE COURT: You're welcome to if you want to.

13 ALTERNATE JUROR: Can we just sit?

14 THE COURT: Absolutely, absolutely.

15 ALTERNATE JUROR: Oh, okay.

16 THE COURT: If you want to see what we're doing
17 here. We're going to do some other things. My
18 understanding is, Judge Nettles is obviously also here,
19 and he has been doing guilty pleas this morning. I
20 understood that he thought we were going to have a third
21 trial. For some reason, that didn't go forward. I
22 don't know why, because I wasn't there, obviously, but
23 he is going to take some guilty pleas. I know I've got
24 a couple of bond settings that are going to be in front
25 of me. I'm not sure if they're right here, right now,

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FIRST NOTE FROM JURORS

1 or if the people are in detention. So, they may have to
2 bring them over. But yes, you're welcome to absolutely
3 stay and watch a little bit if you're interested, so.
4 Either way, you just need to grab your things. But
5 thank you. I appreciate it.

6 ALTERNATE JUROR: And be here for when they come
7 out?

8 THE COURT: If you would like to, too, certainly.

9 ALTERNATE JUROR: I'm just asking.

10 THE COURT: Absolutely. Absolutely. If you would
11 like to, certainly. Okay? Gentlemen, thank you. I
12 appreciate it very much.

13 ALTERNATE JUROR: You did a good job.

14 THE COURT: Thank you.

15 All right. So, we're at ease.

16 OFF THE RECORD 11:23 A.M.

17 BACK ON THE RECORD 12:48 P.M.

18 FIRST NOTE FROM JURORS:

19 BAILIFF: All rise.

20 THE COURT: Thank you. Please be seated. I have
21 received a note from the jury. We're back on the record
22 in our case. And the note asks:

23 *Is there testimony to identify if*
24 *Julio lived in the same house in Beaufort with*
25 *Ontivero?*

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FIRST NOTE FROM JURORS

1 I can't comment on the facts of the case, and
2 that's just going to be my response is, you know, I
3 cannot comment on the facts of the case. Unless anyone
4 else has other suggestions.

5 SOLICITOR KEENEY: I'd just remind if they want to
6 listen to a witness's testimony, that's available.

7 MS. CAPPELMANN: I agree with that, because, I
8 guess, for what it's worth, there was some testimony
9 about that. I don't --

10 THE COURT: Oh, there was clearly testimony about
11 that.

12 MS. CAPPELMANN: Yeah.

13 THE COURT: But it's in doubt as -- good for you.
14 I think your own client testified to it as well, so. As
15 well as, both victims, or alleged victims, and the
16 mother, so.

17 I just said: *the Court cannot comment on the facts*
18 *of the case.* So, that's what's going back to them.
19 Okay?

20 BAILIFF: You need to stamp it first?

21 THE COURT: You don't need to stamp it until
22 afterwards, yes. Just hang onto it. Okay.

23 ITEM IDENTIFIED AS FIRST NOTE FROM

24 JURORS

25 MARKED COURT'S EXHIBIT NUMBER 11.

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SECOND NOTE FROM JURORS

1 OFF THE RECORD 12:50 P.M.

2 BACK ON THE RECORD 1:10 P.M.

3 SECOND NOTE FROM JURORS:

4 THE COURT: Thank you. Please be seated. All
5 right. Show them the note.

6 They want the testimony played back of Rosa. The
7 jury has asked for that. I will tell you that we have
8 ordered them lunch. I'm not sure when it's going to get
9 here, but we've already done that. So, they said that
10 they needed it.

11 COURT REPORTER: Oh, here it is.

12 THE COURT: Thank you. Okay. It says: *can the*
13 *jury listen to -- it's Rosea, R/o/s/e/a, -- testimony?*

14 So, we're going to go ahead and play that back.

15 Okay?

16 Have you queued it up?

17 COURT REPORTER: Yes.

18 THE COURT: You're ready?

19 COURT REPORTER: Yes, I'm ready. So, is the jury
20 coming in here?

21 THE COURT: Jury's coming back in, yes.

22 COURT REPORTER: All right. Gotcha.

23 THE COURT: Okay. Do you have any idea how long it
24 was?

25 COURT REPORTER: It's thirty minutes.

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1 THE COURT: Okay. Everybody sits tight. Thank
2 you.

3 BAILIFF: Are you ready, your Honor?

4 THE COURT: Yes, sir.

5 BAILIFF: Jury's entering the courtroom, your
6 Honor.

7 JURORS ENTER COURTROOM 1:12 P.M.

8 THE COURT: Welcome back, ladies and gentlemen.
9 It's my understanding from the note that you wanted
10 Rosa's testimony, to have that played back for you. Is
11 that correct?

12 MR. FOREPERSON: Yes, ma'am.

13 THE COURT: Thank you. All right. So, we're going
14 to go ahead, and we've got it queued up for you. We're
15 going to play it. As I told you before, I have to play
16 it in its entirety. And hopefully, you'll be able to
17 hear it. If, at any point, you all can't understand or
18 can't hear it, just flag me and we'll get Wanda to
19 adjust it. Okay? And hopefully, by that point, your
20 lunch will be here. I'm hoping that comes at about
21 twenty -- okay.

22 PLAYING BACK TESTIMONY OF ROSA

23 VILLALOBOS.

24 END PLAYING BACK TESTIMONY OF ROSA

25 VILLALOBOS.

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VERDICT

1 COURT REPORTER: That is all.

2 THE COURT: Okay. Mr. Foreperson, is that what you
3 wanted to hear? Yes?

4 MR. FOREPERSON: Yes.

5 THE COURT: Okay. Okay.

6 MR. FOREPERSON: Thank you.

7 THE COURT: Please return to your room for a break,
8 please. Hopefully, the food is there.

9 Tom, is it there yet?

10 JURORS LEAVE COURTROOM 1:42 P.M.

11 THE COURT: All right. We'll be at ease.

12 ITEM IDENTIFIED AS SECOND NOTE

13 FROM JURORS

14 MARKED COURT'S EXHIBIT NUMBER 12.

15 OFF THE RECORD 1:42 P.M.

16 BACK ON THE RECORD 3:54 P.M.

17 Nothing on 1036.

18 VERDICT:

19 BAILIFF: All rise.

20 THE COURT: Please be seated. All right. Ladies
21 and gentlemen, it's my understanding that the jury has a
22 verdict in this case. Please, if, for some reason, you
23 can't contain yourself, please remove yourself now.
24 Can't have any outbursts. So, with that said, let's
25 bring the jury in. You all ready?

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VERDICT

1 MS. CAPPELMANN: Yes, ma'am.

2 BAILIFF: Yes, your Honor.

3 THE COURT: Okay.

4 BAILIFF: Are you ready, your Honor?

5 THE COURT: Yes, sir.

6 BAILIFF: Jury is entering the courtroom, your
7 Honor.

8 THE COURT: Thank you.

9 JURORS ENTER COURTROOM 3:55 P.M.

10 THE COURT: Mr. Foreperson, I understand that the
11 jury has reached a verdict?

12 FOREPERSON: Yes, your Honor.

13 THE COURT: Would you please hand it to the
14 bailiff, sir.

15 Will you all please rise.

16 In the case of the State of South
17 Carolina versus Elidoro Ontivero Carrillo --
18 sorry -- Carrillo -- as to Indictment
19 2014-GS-07-00327, the charge of criminal
20 sexual conduct with a minor first degree,
21 as to Older Sister, we, the jury,
22 find the defendant guilty.

23 In the case of the State of South
24 Carolina versus Elidoro Ontivero Carrillo,
25 as to Indictment 2014-GS-07-00328, the

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POLLING JURORS

1 charge of criminal sexual conduct with a
2 minor first degree, as to Younger Sister
3 we, the jury, find the defendant guilty.
4 Signed by our foreperson, and dated today.
5 You may be seated.
6 Ms. Cappelmann, would you like me to poll the jury?
7 MS. CAPPELMANN: Yes, please.
8 POLLING JURORS:
9 THE COURT: Ladies and gentlemen, I am going to
10 call each of your names, and I'm going to ask you if
11 this is your verdict, and if it is still your verdict.
12 All right? And when I call your name, if you'll please
13 just raise your hand to indicate, so I know who I'm
14 speaking with. All right?
15 Mr. Fletcher. Sir, I apologize. Sir, is this your
16 verdict?
17 JUROR NUMBER 92: Yes, your Honor.
18 THE COURT: Is it still your verdict?
19 JUROR NUMBER 92: Yes, your Honor.
20 THE COURT: Thank you, sir.
21 Mr. Pappas? Sir, is this your verdict?
22 JUROR NUMBER 229: Yes, your Honor.
23 THE COURT: Is it still your verdict?
24 JUROR NUMBER 229: Yes, your Honor.
25 THE COURT: Mrs. Schiavon? Ms. Schiavon. Is this

1 your verdict?

2 JUROR NUMBER 273: Yes.

3 THE COURT: Is it still your verdict?

4 JUROR NUMBER 273: Yes, your Honor.

5 THE COURT: Thank you.

6 Ms. Torres. Is this your verdict?

7 JUROR NUMBER 316: Yes, your Honor.

8 THE COURT: Is it still your verdict?

9 JUROR NUMBER 316: Yes, your Honor.

10 THE COURT: Thank you. Ms. Habberstad. I
11 apologize. That was not on here.

12 Ms. Stokes. Is this your verdict?

13 JUROR NUMBER 303: Yes, your Honor.

14 THE COURT: Is it still your verdict?

15 JUROR NUMBER 303: Yes, ma'am.

16 THE COURT: Thank you.

17 Mr. Marshall. Sir, is this your verdict?

18 JUROR NUMBER 182: Yes, your Honor.

19 THE COURT: Is this still your verdict?

20 JUROR NUMBER 182: Yes, your Honor.

21 THE COURT: Thank you.

22 Mr. Urys. Sir, is this your verdict?

23 JUROR NUMBER 320: Yes, ma'am.

24 THE COURT: Is it still your verdict?

25 JUROR NUMBER 320: Yes, ma'am.

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POLLING JURORS

1 THE COURT: Thank you.

2 Mr. Comfort. Sir, is this your verdict?

3 JUROR NUMBER 55: Yes, ma'am.

4 THE COURT: Is it still your verdict?

5 JUROR NUMBER 55: Yes, ma'am.

6 THE COURT: Thank you, sir.

7 Mr. Rosene. Sir, is this your verdict?

8 JUROR NUMBER 266: Yes, it is, your Honor.

9 THE COURT: Is this still your verdict?

10 JUROR NUMBER 266: Yes, it is.

11 THE COURT: Thank you, sir.

12 Ms. Ruba. Is this your verdict?

13 JUROR NUMBER 269: Yes, it is.

14 THE COURT: Is this still your verdict?

15 JUROR NUMBER 269: Yes, it is.

16 THE COURT: Thank you.

17 Mr. Wilson.

18 JUROR NUMBER 339: Yes, ma'am.

19 THE COURT: Sir, is this your verdict?

20 JUROR NUMBER 339: Yes, your Honor.

21 THE COURT: Is this still your verdict?

22 JUROR NUMBER 339: Yes, ma'am.

23 THE COURT: Thank you, sir.

24 And lastly, Mr. Murphy. Sir, is this your verdict?

25 JUROR NUMBER 209: Yes, it is.

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BY THE COURT

1 THE COURT: Is it still your verdict?

2 JUROR NUMBER 209: Yes, your Honor.

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

4 BY THE COURT:

5 Is anything further required of this jury from the
6 State?

7 SOLICITOR KEENEY: Nothing from the State.

8 THE COURT: From the Defense?

9 MS. CAPPELMANN: No, your Honor.

10 THE COURT: Ladies and gentlemen, I want to thank
11 you for resolving this matter for us. In addition to
12 this case, there were a number of cases on the trial
13 roster this week. Your civil service in being here and
14 being willing to hear these cases helps resolve them,
15 not only by jury trial, but also by other means, guilty
16 plea and other things.

17 I want to thank you for your service here today. I
18 know it's not easy to perform jury service, and I truly
19 appreciate the hard work you all have done. At this
20 time, what I'm going to do is go ahead and sentence Mr.
21 Ontivero. You're welcome to stay, or you certainly may
22 go ahead and leave if you would like.

23 At this point, you are permitted to discuss this
24 case when you go home. You can tell friends or a loved
25 one or a spouse what you've been doing up here and, you

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BY THE COURT

1 know, what the result was. But, of course, you're never
2 required to talk to anyone about it. If anyone
3 persists, I want you to call the Clerk of Court's Office
4 and let me know who it is, and I will go talk to them,
5 and take care of them.

6 But at this time, I am going to go ahead and
7 sentence Mr. Ontivero. If you would like to leave, now
8 is probably the time to do it. If not, you can just
9 keep your seats until the sentencing is over. So,
10 again, if you would like to leave, now is the time to do
11 it.

12 If you need a work excuse or anything else along
13 those lines, the bailiffs will take care of it. But
14 either way, that is absolutely up to you. Okay? Thank
15 you.

16 MR. FOREPERSON: Thank you, your Honor.

17 THE COURT: Thank you, sir.

18 All right. Do you have a sentencing sheet?

19 SOLICITOR KEENEY: Your Honor, it's on the way up.

20 THE COURT: It's on the way up.

21 RENEWED MOTIONS:

22 MS. CAPPELMANN: And your Honor, I guess, at this
23 time, I would just renew my motion for a directed
24 verdict, and renew any of my previous motions and
25 objections.

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SENTENCING

1 THE COURT: Thank you. They're all noted, for the
2 record.

3 Wanda?

4 COURT REPORTER: Yes.

5 THE COURT: Go ahead and make that part of the
6 record, and I'm going to give you a copy of this as
7 well. Okay?

8 SOLICITOR KEENEY: May I step out for a second?

9 THE COURT: You may.

10 COURT REPORTER: The charge will be Court's 13.

11 ITEM IDENTIFIED AS JURY CHARGE

12 MARKED COURT'S EXHIBIT NUMBER 13.

13 SOLICITOR KEENEY: I apologize.

14 SENTENCING:

15 THE COURT: All right. Ms. Cappelmann, you all can
16 stay where you are, but I need you all to rise, if you
17 would. And certainly, any mitigation that you have and
18 anything you'd like to tell me in regards to sentencing.

19 MS. CAPPELMANN: Yes, ma'am. First and foremost,
20 Mr. Ontivero has been out on electronic monitoring since
21 he bonded out in March 2014. I don't have the exact
22 amount of days that he would be given credit.

23 I'm sorry. One moment, please.

24 As you know, the minimum charge for this charge,
25 there's twenty-five years, day for day, no parole. At

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SENTENCING

1 this point, Mr. Ontivero is forty-seven years old. That
2 would put him at seventy-two upon release, and quite
3 frankly, after that, he'd probably just be deported.
4 And that's assuming that he made it that long, which,
5 statistically, he wouldn't.

6 In the year that I have represented him, he has
7 always maintained that he didn't do what the girls are
8 maintaining that he did; and he's always told me the
9 same story that we tried to convey to the jury today.
10 And to the State, he still maintains his innocence
11 throughout this entire trial. He is a Christian. He is
12 a God-fearing man. He's been to -- he goes to church
13 four times a week. And his fiancée, Evilia, would like
14 to speak at the appropriate time, if your Honor would
15 allow. And Jose Ramos, who is a leader with the church,
16 would also like to speak on his behalf. His fiancée has
17 been in the courtroom. He does have two children, and I
18 actually -- I think they actually just had a child a few
19 months ago. So, if I remember correctly.

20 So, with all that in mind, I don't see where
21 justice is better-served by giving him more than the
22 mandatory minimum of twenty-five, and I would just ask
23 your Honor to sentence him to that.

24 THE COURT: All right. I'm happy to hear from his
25 fiancée and a member of his church.

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SENTENCING

1 DEPUTY: That's good. That's good right there.

2 THE COURT: Yes, ma'am. Your name, for the record?

3 EVILIA MIRANDA: Evilia Miranda.

4 THE COURT: Thank you, ma'am. And what would you
5 like to say?

6 EVILIA MIRANDA: I want to say that I have -- it's
7 going to be approximately eight years being together
8 with this man in our home, and he's innocent of what
9 he's being accused. I mean, this lady, I don't know
10 what happened. With Cesar, I can't say the same, but
11 with him, I can. He is innocent. May God have mercy on
12 her. The young ladies know that he is innocent. That's
13 all.

14 THE COURT: Thank you. Yes, sir. Your name, sir?

15 JOSE RAMOS CANTERRO: Good afternoon. May God
16 bless you. José Ramos.

17 THE COURT: Yes, sir?

18 JOSE RAMOS CANTERRO: It's been a year and a half
19 since I've known this young man. I know Mr. Elio
20 because I work with him, and we go to church together.
21 What impresses me -- what I am impressed with is that,
22 never -- up to this day, he has always given me a good
23 testimony. He's a serious person, respectful. He likes
24 to be of service, and he's always happy. To me, he -- I
25 do not believe that he is guilty in this case, but I say

11-17-16 STATE V ONTIVERO

SENTENCING

1 God is with us. And the *Bible* says, all works that are
2 good to those who love God. And God may bless you.

3 THE COURT: Thank you, sir.

4 MS. CAPPELMANN: Your Honor, I do have that he was
5 incarcerated in Beaufort County Detention Center for 46
6 days. And then, he's been on electronic monitoring for
7 970.

8 THE COURT: Mr. Ontivero, is there anything you
9 would like to say, sir?

10 DEFENDANT ONTIVERO: I am sorry in any and all ways
11 if I offended anyone. I will continue to say that I am
12 innocent, and I'm sorry for all that's happening. And I
13 am very sorry for my family.

14 THE COURT: Anything else from the State?

15 SOLICITOR KEENEY: Yes, your Honor. You heard the
16 facts of this case. These girls were six and seven
17 years old at the time this defendant sexually abused
18 them. You heard about the threats and the abuse. You
19 know, when we do this job, we wonder why it takes so
20 long for victims to disclose why it takes eight years,
21 or however long. But the reason is the threats. These
22 two girls were scared, and they had to get out of that
23 environment to feel safe, to tell someone.

24 Now, the State is asking for life in this case.
25 Those two girls will have to live with what the

1 defendant and his brother did with them for the rest of
2 their life. I recognize that his brother is doing
3 twenty years. That was a benefit of the bargain for
4 which he pled. And the reason that we do that is, your
5 Honor, is so that we don't have to put the victims back
6 on the stand. And I know you don't punish people for
7 having trials and exercising their constitutional right,
8 but at the end of the day, he should get what he
9 deserves because of what he did to these two girls. He
10 shouldn't get the benefit of any bargain that was
11 offered. With all that being said, you heard the facts
12 of the case. We're asking for life.

13 THE COURT: On Indictment 2014-GS-07-00327, for
14 criminal sexual conduct with a minor first degree, the
15 sentence of this Court is that you be committed to the
16 Department of Corrections for a period of thirty years.
17 On Indictment 2014-GS-07-00328, for criminal sexual
18 conduct with a minor first degree, the sentence of this
19 court is you be committed to the Department of
20 Corrections for a period of thirty years. Those will
21 run concurrent to each other, and I'm giving him credit
22 for the time served. Good luck to you, sir.

23 SOLICITOR KEENEY: Thank you, your Honor. And just
24 to be clear, is he getting credit for the ankle monitor?

25 THE COURT: I believe statutorily he's entitled to

11-17-16 STATE V ONTIVERO

SENTENCING

1 it, because he is still in custody. But if you want me
2 to do any further research on that, you're welcome to.

3 SOLICITOR KEENEY: I think it's optional, but I'm
4 okay with it.

5 THE COURT: He's been on an ankle monitor, and
6 that's certainly restricted his movement, as we all
7 know.

8 SOLICITOR KEENEY: Yeah. He does have other
9 pending General Sessions charges. The State will
10 evaluated whether we want him to plead. I doubt it.
11 It's just traffic offenses. So, as long as there's no
12 victims, I'll probably nol pros them.

13 THE COURT: Okay. Very good. Just make sure you
14 let his lawyer know. All right. Good luck to you.
15 Ladies and gentlemen of the jury, I'm going to excuse
16 you to go back to your jury room for just a brief
17 moment. Okay? Thank you.

18 JURORS LEAVE COURTROOM 4:14 P.M.

19 THE COURT: Can we go ahead and get one side out of
20 the courtroom before the other leaves? Okay. Thank
21 you.

22 Well, good luck to the families as well. Thank
23 you. And you'll make sure everyone gets out?

24 MS. LEMPESIS: I'll be back in just a few moments.
25 Is there anything you need me to do?

11-17-16 STATE V ONTIVERO

SENTENCING

1

THE COURT: All right. We'll be at ease.

END DAY FOUR, THURSDAY, NOVEMBER

17, 2016, END TRIAL 4:15 P.M.

11-17-16 STATE V ONTIVERO

CERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

NOVEMBER 14, 15, 16, AND 17, 2016 TRANSCRIPT OF TRIAL
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing November 14, 15, 16, and 17, 2016 Transcript of Trial is a true, accurate, and complete record of the proceedings had and exhibits admitted on said dates, in the case of State of South Carolina versus Elidoro Carrillo Ontivero, Beaufort County, Court of General Sessions, Case Numbers 2014-GS-07-00327 and 2014-GS-07-00328; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of this transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature May 28, 2017.


Wanda H. Rowe, CVR-CM
Official Court Reporter

Page 455

JUN 05 2017

ORIGINAL

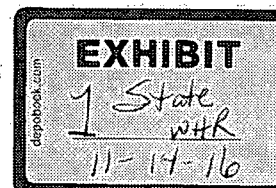
APPELLATE DEFENSE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)

IN THE COURT OF GENERAL SESSIONS
 FOURTEENTH JUDICIAL CIRCUIT
 INDICTMENT NOS.: 2014GS0700327
 2044GS0700328

STATE OF SOUTH CAROLINA)
)
 versus)
)
 ELIODORO ONTIVEROS,)
)
 Defendant.)

DEFENDANT'S VOIR DIRE



Comes now the Defendant, by and through his counsel, Kate Cappelmann, and requests that the Court ask the following questions of the venire:

1. Is there any member of the jury panel, or any friend or family member of anyone in the jury panel, who has ever been the victim of any crime?
2. Is there any member of the jury panel, or any friend or family member of anyone in the jury panel, who has ever been a member of an anti-crime advocacy organization such as MADD, SADD, CAVE, CAPA, CODA, etc.?
3. Has any member of the jury panel, or any friend or family member of anyone in the jury panel, ever been an employee of a fire department or an emergency medical service corporation?
4. Has any member of the jury panel, or any friend or family member of anyone in the jury panel, ever been employed by a law enforcement agency, an Attorney General, Solicitor's office, or any other prosecuting agency?
5. Has any member of the jury panel, or any friend or family member of anyone in the jury panel, ever volunteered for a law enforcement agency, participated in a citizen's police academy course, or attended a crime-prevention seminar?
6. Does any member of the jury panel volunteer or work with children?
7. Has any member of the jury panel, or any friend or family member of anyone in the jury panel, ever been involved in any way in a sexual assault case, even if criminal charges were never filed?
8. Has any member of the jury panel, or any friend or family member of anyone in the jury panel, ever been a teacher, psychologist, medical professional, or any other profession that requires mandatory reporting of sexual or physical assault cases?

9. Has any member of the jury panel have experience with or know something about people who have been affected by sexual assault or abuse?
10. Does any member of the jury panel currently have children under the age of 16 in their household?
11. Has any member of the jury panel received any special training or education in the subject of sexual abuse offenses whether against minors or adults?
12. You have heard that this case involves allegations of sexual molestation of a child. Does anyone feel that subject matter is such that they will not be able to be fair and impartial?
13. Is there any member of the jury panel who believes a person is guilty of a crime simply because he/she was arrested?
14. Is there any member of the jury panel who would prefer for the Defendant to testify during this trial in order to make a decision in this case? If the Defendant chose not to testify, would you assume the Defendant would be hiding something?
15. Is there any member of the jury panel who has particular opinions or feelings about sexual assault, which would keep you from sitting as an impartial juror in this case?
16. Does any member of the jury panel believe that if a child tells an adult or parent they have been touched inappropriately that the child must be telling the truth?
17. If you returned a verdict of not guilty, would that be a problem for you with regard to friends or family members since the case involves accusations of sexual assault of a child?
18. Does any member of the jury panel have strong feelings about the rule of law in American Justice that requires a jury to stand firm on the principal that an accused is presumed innocent?
19. Does any member of the jury panel have strong feelings about the rule of law in American Justice that requires the State to prove an accused guilty by proof of guilt beyond a reasonable doubt?

Respectfully Submitted,



Kate Cappelmann
Attorney for the Defendant

November 14, 2016
Beaufort, SC



BEAUFORT COUNTY SHERIFF'S OFFICE

La Advertencia Miranda

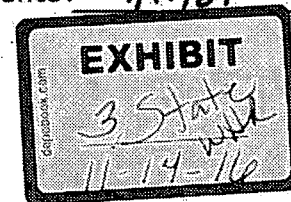
Número del Caso: 2014.0122-0341

Localización donde la Advertencia Miranda fue dada: NORTHERN INVESTIGATIONS

OFFICE- OFICINA DE INVESTIGACIONES DEL NORTE

Nombre: ELIODORO ONTIVEROS

Fecha de Nacimiento: ^{DOB} 9/11/69



Statement of Rights

- E.O. 1. Usted tiene el derecho a guardar silencio.
(Iniciales)
- E.O. 2. Cualquier cosa que usted diga puede ser usado en su contra en un tribunal.
(Iniciales)
- E.O. 3. Usted tiene el derecho a tener un abogado presente antes o durante cualquier interrogatorio si lo desea.
(Iniciales)
- E.O. 4. Si usted no tiene los medios financieros para obtener un abogado, uno será designado para usted antes de que le hagamos preguntas a usted si lo desea.
(Iniciales)

Renuncia de Derechos

¿Entiende usted cada derecho que se le ha explicado?

Sí: SI No: _____
(Iniciales)

Con estos derechos en mente, ¿desea usted hablar con nosotros ahora? Sí: SI No: _____
(Iniciales)

Firma: Elodoro Ontiveros Fecha: 02-06-14 Hora: 12:19

Testigo: R. A. A. A. Fecha: 2-6-14 Hora: 12:19

Testigo: [Signature] Fecha: 2-6-14 Hora: 12:19



BEAUFORT COUNTY SHERIFF'S OFFICE

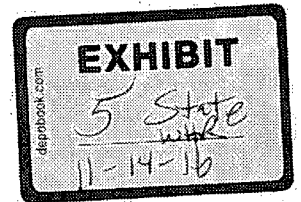
La Advertencia Miranda

Número del Caso: PN-14-005

Localización donde la Advertencia Miranda fue dada: _____

Nombre: Ortiz, Eliodoro Fecha de Nacimiento: _____

Statement of Rights



- E.O. 1. Usted tiene el derecho a guardar silencio.
(Iniciales)
- E.O. 2. Cualquier cosa que usted diga puede ser usado en su contra en un tribunal.
(Iniciales)
- E.O. 3. Usted tiene el derecho a tener un abogado presente antes o durante cualquier interrogatorio si lo desea.
(Iniciales)
- E.O. 4. Si usted no tiene los medios financieros para obtener un abogado, uno será designado para usted antes de que le hagamos preguntas a usted si lo desea.
(Iniciales)

Renuncia de Derechos

¿Entiende usted cada derecho que se le ha explicado?

Sí: SI No: _____
(Iniciales)

Con estos derechos en mente, ¿desea usted hablar con nosotros ahora?

Sí: SI No: _____
(Iniciales)

Firma: Eliodoro Ortiz Fecha: 02-11-14 Hora: 9:39

Testigo: [Signature] Fecha: 02-11-14 Hora: 9:39 AM

Testigo: [Signature] Fecha: 2-11-2014 Hora: 0939

BEAUFORT COUNTY SHERIFF'S OFFICE
CONSENT FOR POLYGRAPH EXAMINATION



PLACE: BCSO
DATE: 2-11-14
TIME: 0941

I am voluntarily agreeing to a polygraph examination concerning:

sexual abuse of Alixa + Mileidy

The below listed polygraph rights have been explained to me:

1. I have the right to refuse to take this polygraph examination.
2. I have the right to stop the examination at anytime during the polygraph process.
3. I have the right to refuse to answer any individual question during the examination.

WAIVER AND CONSENT

I have read this statement of my rights and I understand what my polygraph rights are. I voluntarily agree to be examined by means of polygraph during this process. I further understand and agree that the information provided by me during this process will be shared with appropriate authorities. I understand and know what I am doing, no threats or promises have been made to me and no pressure or coercion has been used against me to obtain my consent for the use of the polygraph. I agree that I will not attempt to manipulate any of the data during this test. I understand the examination room does contain audio and video recording devices and the entire process will be monitored and recorded.

Examinee: Chadwick Davis

Examiner: [Signature]

PG Case # PN-14005 DATE: 2/11/14 EXAMINER: [Signature]

[Signature]



BEAUFORT COUNTY SHERIFF'S OFFICE

La Advertencia Miranda



Número del Caso: 201401220341

Localización donde la Advertencia Miranda fue dada: Northern Investigation Office

Nombre: Eliodoro Ontivero Fecha de Nacimiento: 9-11-69

Statement of Rights

- E.O. 1. Usted tiene el derecho a guardar silencio.
(Iniciales)
- E.O. 2. Cualquier cosa que usted diga puede ser usado en su contra en un tribunal.
(Iniciales)
- E.O. 3. Usted tiene el derecho a tener un abogado presente antes o durante cualquier interrogatorio si lo desea.
(Iniciales)
- E.O. 4. Si usted no tiene los medios financieros para obtener un abogado, uno será designado para usted antes de que le hagamos preguntas a usted si lo desea.
(Iniciales)

Renuncia de Derechos

¿Entiende usted cada derecho que se le ha explicado?

Sí: E.O. No: _____
(Iniciales)

Con estos derechos en mente, ¿desea usted hablar con nosotros ahora? Sí: E.O. No: _____
(Iniciales)

Firma: Eliodoro Ontivero Fecha: 2-11-14 Hora: 11:30

Testigo: [Signature] Fecha: 2-11-14 Hora: 11:50

Testigo: [Signature] Fecha: 2-11-14 Hora: 11:50 am

WITNESSES

Boland - BCSO

ARREST WARRANT NUMBER

2014A0710400072

ACTION OF GRAND JURY

True BillForeperson of Grand Jury
Date:**MAR 27 2014**

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0700327

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

March Term 2014

THE STATE

vs.

Elidoro Carrillo Ontivero

Indictment for

Criminal sexual conduct with minor - victim
under 11 yrs 1st DegreeSC Code: 16-03-0655(1)
CDR Code:0385After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2014GS0700327

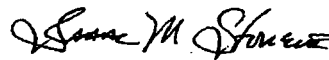
At a Court of General Sessions, convened on March 27, 2014, the Grand Jurors of Beaufort County present upon their oath:

Criminal Sexual Conduct with Minor - Victim under 11 yrs 1st Degree

That in Beaufort County, South Carolina, during the spring and summer months of 2006, the Defendant, Elidoro Carrillo Ontivero, date of birth 1964-09-11, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: engaged in acts of fellatio and cunnilingus upon Miledy Villalobos, date of birth 10/01/1999, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

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

FILED
ENT



Solicitor

WITNESSES

Boland - BCSO

ARREST WARRANT NUMBER

2014A0710400072

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: JUL 21 2016

VERDICT

GUILTY

Daryl Marshall

True Bill

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0700327

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

JULY 2016 TERM

THE STATE

vs.

Eldoro Carrillo Ontivero

Amended Indictment for

Criminal Sexual Conduct with a Minor, First Degree

SC Code: 16-03-0655
CDR Code:0385

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

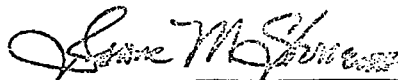
AMENDED INDICTMENT
2014GS0700327

At a Court of General Sessions, convened on July 21, 2016, the Grand Jurors of Beaufort County present upon their oath:

Criminal Sexual Conduct with a Minor, First Degree

That in Beaufort County, South Carolina, during the spring and summer months of 2006, the Defendant, Elidoro Carrillo Ontivero, did commit a sexual battery upon a minor, ^{Older Sister}, who was less than eleven years of age; all in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

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



Solicitor

WITNESSES

Boland - BCSO

ARREST WARRANT NUMBER

2014A0710400073

ACTION OF GRAND JURY

True BillForeperson of Grand Jury
Date:

MAR 27 2014

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2014GS0700328

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

March Term 2014

THE STATE

vs.

Eldoro Carrillo Ontivero

Indictment for

Criminal sexual conduct with minor - victim
under 11 yrs 1st degreeSC Code: 16-03-0655(1)
CDR Code:0385After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

Solicitor

WITNESSES

Boland - BCSO

ARREST WARRANT NUMBER

2014A0710400073

ACTION OF GRAND JURY

John
 Foreperson of Grand Jury
 Date: JUL 21 2016

VERDICT

GUILTY

True Bill

Foreperson of Petit Jury
 Date:
 INDICT

DOCKET NO. 2014GS0700328

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS**JULY 2016 TERM****THE STATE**

vs.

Elidoro Carrillo Ontivero

Amended Indictment for

Criminal Sexual Conduct with a Minor, First Degree

SC Code: 16-03-0655
 CDR Code: 0385

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

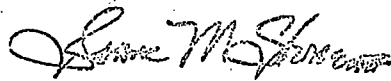
Amended INDICTMENT
2014GS0700328

At a Court of General Sessions, convened on July 21, 2016 the Grand Jurors of Beaufort County present upon their oath:

Criminal Sexual Conduct with a Minor, First Degree

That in Beaufort County, South Carolina, during the spring and summer months of 2006, the Defendant, Elidoro Carrillo Ontivero, did commit a sexual battery upon a minor, ^{Younger Sister} (DOB 8/27/2000), who was less than eleven years of age; in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

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

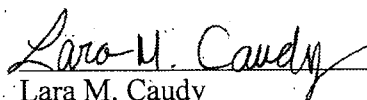


Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record, on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

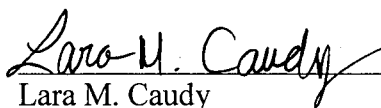
ATTORNEY FOR APPELLANT

This 30th day of November, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 30th day of November, 2017.

RECEIVED

NOV 30 2017

SC Court of Appeals