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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
The Honorable Eugene C. Griffith, Jr., Post-Conviction Relief Judge

Appellate Case No. 2017-001877
Circuit Court Case No. 2014-CP-32-04769

LANCE AUSTIN WILLIAMS, #345477

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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INDEX

INDEX

Transcript of Record 1

Selection of jury 9

Pre-trial motions 53

Opening statements: By Solicitor 117

Opening statements By Defense attorney 121

Witnesses

Ed Prestigigacomo (in camera)

Direct (by State) 53

Cross (by Defense) 71

Redirect (by State) 78

Recross (by Defense) 80

Katie Cooper

Direct (by State) 128

Cross (by Defense) 144

Brittany B.

Direct (by State) 147

Cross (by Defense) 169

Redirect (by State) 173

Recross (by Defense) 175

LeeAnn Harvey

Direct (by State) 181

Cross (by Defense)	197
Redirect (by State)	204
Tommi Hutto	
Direct (by State)	206
Cross (by Defense)	217
Redirect (by State)	221
Recross (by Defense)	222
Marlena Clary	
Direct (by State)	223
Cross (by Defense)	290
Redirect (by State)	297
Adrienne Riley-Hefney	
Direct (by State)	300
Cross (by Defense)	306
Redirect (by State)	309
Dr. Susan Luberoff	
Direct (by State)	310, 314
Voir Dire	313
Cross (by Defense)	350
Redirect (by State)	367
Recross (by Defense)	375
Ed Prestigiacomo	
Direct (by State)	380

Cross (by Defense)	399
Redirect (by State)	405
Recross (by Defense)	408
Shelby Derrick	
Direct (by State)	410
Cross (by Defense)	413
Troy Crump	
Direct (by State)	414, 439
Cross (by Defense)	444
Beth Harmon	
Direct (by State)	421
Cross (by Defense)	433
Brittany B.	
Direct (by State)	434
Candy Kyzer	
Direct (by State)	436
Cross (by Defense)	438
Mildred Moore	
Direct (by Defense)	468
Cross (by State)	470
Redirect (by Defense)	478
Recross (by State)	479
Lance Williams	

Direct (by State)	482
Cross (by State)	516
Closing arguments: By Defense attorney	546
Closing arguments: By Solicitor	559
Court's charge to the jury	569
Verdict of the jury	594
Polling of the jury	595
Post-trial motions	603
Sentence of the Court	635
Indictments	638
Final Brief of Appellant	642
Final Brief of Respondent	668
Final Reply Brief of Appellant	687
South Carolina Court of Appeals' Opinion No. 5161	698
Petition for Rehearing	714
South Carolina Court of Appeals' Order denying rehearing	721
Petition for Writ of Certiorari	722
Return to Petition for Writ of Certiorari	741
South Carolina Supreme Court Order	766
Remittitur	767
Application for Post-Conviction Relief	769
Return to Application for Post-Conviction Relief	781
Amended Application for Post-Conviction Relief filed Oct. 25, 2016	787

Filing of S.C. Dept. of Corrections Records.....	797
PCR Evidentiary Hearing Transcript, Jan. 30-31, 2017.....	804
James R. Snell	
Direct Examination by Mr. Harpootlian	817
Cross Examination by Ms. Valenzuela	888
Redirect Examination by Mr. Harpootlian	919
Edward Robert Friedlander, M.D.	
Direct Examination by Mr. Harpootlian	928
Voir Dire Examination by Ms. Valenzuela	935
Direct Examination Continued by Mr. Harpootlian	943
Cross Examination by Ms. Valenzuela.....	960
Redirect Examination by Mr. Harpootlian.....	980
Howard Wayne Floyd	
Direct Examination by Mr. Harpootlian.....	988
Cross Examination by Ms. Valenzuela.....	1023
Redirect Examination by Mr. Harpootlian.....	1033
Recross Examination by Ms. Valenzuela.....	1042
Exhibits for PCR Evidentiary Hearing.....	1053
Motion to Amend Pleadings	1121
Return to Motion for Leave to Amend.....	1158
Second Amended Application for Post-Conviction Relief.....	1179
Order Granting Motion to Amend	1187
Order Granting Post-Conviction Relief	1191

Motion to Alter or Amend.....	1225
Applicant's Memorandum of Law in Opposition to State's Motion to Alter or Amend	1245
Order Denying Motion to Alter or Amend	1265

*Applicant's Exhibits 3-6 are photographs that are not part of this Appendix, but were separately transported.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
PLAINTIFF,

10-GS-32-1860
10-GS-32-1861

-vs-

TRANSCRIPT

LANCE AUSTIN WILLIAMS,
DEFENDANT.

MARCH 30 & 31, 2011,
& APRIL 1 & 5, 2011.
LEXINGTON, S. C.

BEFORE:

HONORABLE R. KNOX McMAHON, JUDGE.

APPEARANCES:

L. SUZANNE MAYES
Assistant Solicitor for the
Eleventh Judicial Circuit
Attorney for the State.

JAMES R. SNELL, JR.
Lexington, S. C.

H. WAYNE FLOYD
West Columbia, S. C.
Attorneys for Defendant.

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INDEX

1		
2	Selection of jury	9
3	Pre-trial motions	53
4	Opening statements: By Solicitor	117
5	By Defense attorney	121
6	Defendant questioned by the Court	459
7	Closing arguments: By Defense attorney	546
8	By Solicitor	559
9	Court's charge to the jury	569
10	Verdict of the jury	594
11	Polling of the jury	595
12	Post-trial motions	603
13	Sentence of the Court	635
14	Certificate of court reporter	636

INDEX OF IN CAMERA WITNESSES

AS TO JACKSON v. DENNO HEARING:

18	<u>FOR THE STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
19	1. Ed Prestigiacomo	53	71	78	80

FOR THE DEFENSE

(There were no in camera witnesses presented by the
Defense.)

INDEX OF TRIAL WITNESSES

	<u>FOR THE STATE</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	1. Katie Cooper	128	144		
4	2. Brittany B	147	169	173	175
5	3. LeeAnn Harvey	181	197	204	
6	4. Tommi Hutto	206	217	221	222
7	5. Marlena Clary	223	290	297	
8	6. Adrienne Riley-Hefney	300	306	309	
9	7. Dr. Susan Luberoff	310, 314	350	367	375
10	Voir dire		313		
11	8. Ed Prestigiacomo	380	399	405	408
12	9. Shelby Derrick	410	413		
13	10. Troy Crump	414, 439	444		
14	11. Beth Harmon	421	433		
15	12. Brittany B	434			
16	13. Candy Kyzer	436	438		
17					
18	<u>FOR THE DEFENSE</u>				
19	1. Mildred Moore	468	470	478	479
20	2. Lance Williams	482	516		
21					
22					
23					
24					
25					

INDEX OF EXHIBITS

	<u>COURT'S EXHIBITS</u>	<u>FOR ID</u>	<u>IN EVID</u>
1			
2			
3	1. Statement	65	65
4	2. Notes from jury		593
5	3. Notes from jury		593
6			
7	<u>STATE'S EXHIBITS</u>	<u>FOR ID</u>	<u>IN EVID</u>
8	1. Photo of victim		140
9	2. Photo of victim		140
10	3. Photo of victim		140
11	4. Photo of victim		140
12	5. Photo of victim		140
13	6. Photo of victim		140
14	7. Photo of victim		140
15	8. Photo of victim		142
16	9. Poster		240
17	10. Poster		246
18	11. Poster		251
19	12. Photo of victim		276
20	13. Photo of victim		276
21	14. Photo of victim		276
22	15. Photo of victim		276
23	16. Photo of victim		325
24	17. Photo of victim		325
25	18. Photo of victim		325

1 EXHIBITS - CONTINUED

2 STATE'S EXHIBITSFOR ID IN EVID

3	19. Photo of victim		325
4	20. Photo of victim		325
5	21. Photo of victim		349
6	22. Statement of Defendant		390
7	23. Photo of soiled diapers	415	441
8	24. Photo of soiled diapers	415	441
9	25. Photo of soiled diapers	415	441
10	26. Photo of soiled diapers	415	441
11	27. Photo of soiled diapers	415	441
12	28. Photo of soiled diapers	415	441
13	29. Photo of soiled diapers	415	441
14	30. Photo of soiled diapers	415	441
15	31. Photo of soiled diapers	415	441
16	32. Photo of soiled diapers	415	441
17	33. Photo of soiled diapers	415	441
18	34. Photo of soiled diapers	415	441

19

20 DEFENSE EXHIBITS

21 (There were no exhibits presented by the Defense.)

22

23

24

25

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

3 MS. MAYES: May it please the Court, the State
4 calls the State of South Carolina v. Lance Austin Williams.
5 This is indictment 2010-GS-32-1860. This indictment is for
6 unlawful neglect of a child, later codified as unlawful
7 conduct towards a child. Indictment 2010-GS-32-1861, the
8 State of South Carolina v. Lance Austin Williams. This
9 indictment is for criminal sexual conduct with a minor.

10 THE COURT: Thank you. Thank you very much,
11 Solicitor. Mr. Snell, Mr. Floyd, is Mr. Williams present?

12 MR. SNELL: He is, Your Honor.

13 THE COURT: And are you ready for trial?

14 MR. SNELL: We are, Your Honor.

15 THE COURT: All right. Thank you. Thank you
16 very much. Ladies and gentlemen of the jury panel, if you
17 would please give me your complete and undivided attention,
18 we're going to conduct a process whereby we select a trial
19 jury for the next case that has been called for trial by
20 the Solicitor's Office. It is entitled the State vs. Lance
21 Austin Williams. I'm going to publish or read to you the
22 indictments in this case. The indictments are not
23 evidence. The indictments are the formal documents by
24 which an individual is placed on notice of charges that
25 have been brought against him or her. They contain mere

1 allegations and are, in no way, evidence of any of the
2 allegations contained therein. I read to you or publish
3 these indictments to you because of the questions that I
4 will ask you concerning your ability to serve as a fair and
5 impartial juror in the trial of this case for both the
6 State and Mr. Williams. The first indictment, 2010-GS-32-
7 1860, reads that Lance Austin Williams in Lexington County,
8 South Carolina, on or about April 15th of 2010, while
9 having been responsible for the welfare of the minor child,
10 Victim [REDACTED] date of birth [REDACTED] did
11 or caused to be done unlawfully or maliciously any bodily
12 harm to the child so that the life or health of the child
13 is endangered or likely to be endangered, to wit, did
14 strike the victim causing bruises to several areas of her
15 body as defined by section 63-7-20 and in violation of 63-
16 5-70 of the South Carolina Code of Laws. That is the
17 unlawful neglect of a child. The next indictment, 2010-GS-
18 32-1861, alleges that Lance Austin Williams did in
19 Lexington County, South Carolina, on or about April 15th,
20 2010, did commit a sexual battery upon a minor, Victim [REDACTED]
21 [REDACTED] date of birth [REDACTED] who was less
22 than 11 years of age, to wit, the Defendant did digitally
23 penetrate the victim's vagina in violation of section 16-3-
24 655 (a-1) of the Code of Laws of South Carolina. That is
25 an indictment for criminal sexual conduct with a minor.

1 Again, ladies and gentlemen, the indictments are not
2 evidence. They are the formal charging documents by which
3 an individual is placed on notice of the charges that have
4 been brought against him or her. They are, in no way, any
5 evidence of the allegations contained therein. The State
6 in this case is represented by Assistant Solicitor Mayes.
7 If you would please stand and introduce yourself to the
8 jury panel and any other members of the Solicitor's Office
9 staff that are going to assist you in the prosecution of
10 this case.

11 MS. MAYES: Yes, sir, Your Honor. May it please
12 the Court, my name is Suzanne Mayes. I'm a member of the
13 Eleventh Circuit Solicitor's Office. I will be prosecuting
14 this case. Also present in the courtroom is Kevin Wilson
15 with the Eleventh Circuit Solicitor's Office and Wendy
16 Frazier, a victim's advocate with the Eleventh Circuit
17 Solicitor's Office.

18 THE COURT: Thank you. Thank you very much,
19 Solicitor. The Defendant in the case is represented by Mr.
20 Snell and Mr. Floyd. If y'all would please stand and
21 introduce yourselves to the jury panel and your client.

22 MR. SNELL: I'm James Snell. I'm a lawyer; I
23 practice here in Lexington. Standing next to me is Lance
24 Williams, and seated at the table is our assistant,
25 Brittany Ashline.

1 MR. FLOYD: My name is Wayne Floyd, and I
2 practice law in West Columbia.

3 THE COURT: Thank you. Thank you very much, Mr.
4 Snell, Mr. Floyd and Mr. Williams. Is any member of
5 the jury panel related by blood or marriage or close
6 personal friends or have any business or professional
7 relationship with either Assistant Solicitor Mayes, Mr.
8 Wilson or any employee of the Eleventh Circuit Solicitor's
9 Office? If so, please stand.

10 (Juror stands.)

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

12 PROSPECTIVE JUROR: I'm juror 13, Mary Barnett.

13 THE COURT: All right. And I believe you had
14 told me previously you worked with Ms. Frazier.

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: All right. And, for the record, will
17 you refresh my memory in that regard, Ms. Barnett?

18 PROSPECTIVE JUROR: When she worked at West
19 Columbia as a detective, I worked for the City of Cayce.

20 THE COURT: And, Madame Clerk, can you cut my
21 speaker on? Oh, I have it on. I'm sorry. Thank you.
22 Now, what timeframe was that, Ms. Barnett?

23 PROSPECTIVE JUROR: It was before 2002.

24 THE COURT: And how long did you work with her?

25 PROSPECTIVE JUROR: Approximately six years

1 I guess.

2 THE COURT: All right. The fact that you worked
3 with her for that period of time during that timeframe,
4 could you still be a fair and impartial juror in the trial
5 of this case for both the State and the defense?

6 PROSPECTIVE JUROR: Yes, sir.

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

8 COURT REPORTER: Judge, I did not hear what she
9 did for the City of Cayce. I heard you---

10 THE COURT: She said she worked with her.

11 COURT REPORTER: That's all? Okay.

12 THE COURT: Is any member of the jury panel
13 related by blood or marriage or close personal friends or
14 have any business or professional relationship with the
15 attorneys for Mr. Williams in this matter? That would be
16 either Mr. Jim Snell or Mr. Wayne Floyd. If so, please
17 stand.

18 (Juror stands.)

19 THE COURT: Sheriff, if you find that cell phone,
20 confiscate it. Yes, your number and name, please?

21 PROSPECTIVE JUROR: Juror 51, Ellen Ellsworth.

22 THE COURT: I'm sorry. I can't quite hear you.

23 PROSPECTIVE JUROR: Juror 51, Ellen Ellsworth.

24 Mr. Floyd is a customer at our bank, Congaree State Bank.

25 THE COURT: All right. And how long has he been

1 a customer? How long have you known him?

2 PROSPECTIVE JUROR: About four years.

3 THE COURT: All right. And that's the only
4 capacity you know Mr. Floyd, as a customer?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: All right. The fact that he is a
7 customer at the bank where you work, could you still be a
8 fair and impartial juror in the trial of this case for both
9 the State and the defense?

10 PROSPECTIVE JUROR: Yes, sir.

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

12 COURT REPORTER: Judge, she said the name of the
13 bank, and I did not hear her. I'm sorry.

14 THE COURT: Congaree State Bank. Is that
15 correct?

16 PROSPECTIVE JUROR: Yes, sir.

17 COURT REPORTER: I'm sorry, Judge.

18 THE COURT: Thank you. Yes, sir, your number and
19 name, please?

20 PROSPECTIVE JUROR: One hundred two, Ryan McCabe.
21 Mr. Snell and I have a case together. We are on opposite
22 sides in a civil matter.

23 THE COURT: All right. And the fact that you
24 represent a client and Mr. Snell represents the other
25 client, the other side in the matter, Mr. McCabe, could you

1 still be a fair and impartial juror in the trial of this
2 case for both the State and the defense?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Thank you. Thank you very much, Mr.
5 McCabe. You may be seated. Any others?

6 (There is no response.)

7 THE COURT: Has any member of the jury panel ever
8 been represented by, either you, your family member or
9 close personal friend, ever been represented by or
10 prosecuted by Assistant Solicitor Mayes or any employee of
11 the Eleventh Judicial Circuit Solicitor's Office? If so,
12 please stand.

13 (There is no response.)

14 THE COURT: Has any member of the jury panel ever
15 been represented by, or any member of your family or close
16 personal friends, ever been represented by Mr. Snell or Mr.
17 Floyd or been on the other side of a case in which Mr.
18 Snell or Mr. Floyd represented the other client? If so,
19 please stand.

20 (There is no response.)

21 THE COURT: Is any member of the jury panel
22 related by blood or marriage or close personal friends
23 or have any business or personal relationship with Lance
24 Austin Williams, the Defendant in this matter? If so,
25 please stand.

1 (There is no response.)

2 THE COURT: Is any member of the jury panel
3 related by blood or marriage to the named victim in this
4 case, Victim [REDACTED] or her family? If so, please
5 stand.

6 (There is no response.)

7 THE COURT: This case alleges an incident that
8 occurred in Lexington County on or about April 15th of
9 2010. Does any member of the jury panel have any knowledge
10 about the case? If so, please stand.

11 (There is no response.)

12 THE COURT: Does any member of the jury panel
13 have any bias or prejudice towards the parties, that being
14 the State or Mr. Williams, the Defendant, or towards the
15 subject matter involved in the case? If so, please stand.

16 (There is no response.)

17 THE COURT: Has any member of the jury panel
18 heard or know anything about the case from any source
19 whatsoever? If so, please stand.

20 (There is no response.)

21 THE COURT: All right. I'm going to ask a number
22 of voir dire questions. Mr. Floyd or Mr. Snell, do y'all
23 have any objections to any of the State's requested voir
24 dire? If so, just indicate by number.

25 MR. SNELL: No, Your Honor.

1 THE COURT: Has any member of the jury panel been
2 employed now or in the past at the Columbia Metropolitan
3 Airport? If so, please stand.

4 (There is no response.)

5 THE COURT: Has any member of the jury panel been
6 employed now, are you employed now or in the past have you
7 been employed, with U.S. Air Parts Division on Platt
8 Springs Road in Lexington County? If so, please stand.

9 (Juror stands.)

10 THE COURT: All right. Yes, sir, Mr. McCabe.

11 PROSPECTIVE JUROR: Judge, the last question--I'm
12 sorry--actually I've represented Columbia Metropolitan
13 Airport in the past.

14 THE COURT: All right. And what timeframe are we
15 talking about, Mr. McCabe?

16 PROSPECTIVE JUROR: Three to five years ago.

17 THE COURT: All right. And the fact that, in
18 your occupation as an attorney you've represented Columbia
19 Metropolitan Airport in the past, could you still be a fair
20 and impartial juror in the trial of this case for both the
21 State and the defense?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Thank you, Mr. McCabe. You may be
24 seated. Has any member of the jury panel or any member of
25 your immediate family ever been a victim of a crime or

1 investigated or charged with a crime of a sexual nature
2 involving a child? If so, please stand.

3 (There is no response.)

4 THE COURT: Has any member of the jury panel or
5 any member of your immediate family ever been a victim of a
6 crime of personal violence? If so, please stand.

7 (Juror stands.)

8 THE COURT: All right. Yes, ma'am, would you
9 come up to the court reporter for me, please? Would you
10 stand right here for me, please?

11 (The following bench conference with the Court,
12 counsel and the juror is reported.)

13 THE COURT: Would you tell me your name and
14 number?

15 PROSPECTIVE JUROR: Kathy Saye, 146.

16 THE COURT: And tell me your response to that
17 question, Ms. Saye. You've been a victim?

18 PROSPECTIVE JUROR: Yes. About four years ago, I
19 had my husband taken to jail for abuse.

20 THE COURT: Domestic violence? Is that what
21 you're talking about?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Is that the only time you've been a
24 victim of a crime of personal violence.

25 PROSPECTIVE JUROR: No. There were several times

1 prior that I called the police on him.

2 THE COURT: And that's been domestic violence
3 every time?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: All right. The fact that you have
6 been a victim of such instances, could you still be a fair
7 and impartial juror in the trial of this case for both the
8 State and the defense?

9 PROSPECTIVE JUROR: I believe so.

10 THE COURT: All right. And, when you say you
11 believe so, that's probably just semantics. But you know
12 yourself.

13 PROSPECTIVE JUROR: Yes, I think I can.

14 THE COURT: You could decide based on what you
15 hear in the courtroom---

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: ---not based on what may have
18 happened to you in this past. Is that correct?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Thank you very much. You may step
21 down. Thank you. Do not say anything to your fellow
22 jurors.

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you.

25 (The bench conference is concluded.)

1 THE COURT: Is any member of the jury panel
2 related by blood or marriage or close personal friends or
3 have any business or professional relationship with any
4 employee of the Lexington County Sheriff's Department or
5 the State Law Enforcement Division? If so, please stand.

6 (Jurors stand.)

7 THE COURT: All right. Yes, ma'am, right here,
8 your number and name, please?

9 PROSPECTIVE JUROR: Number 12, Patricia Banco.

10 THE COURT: All right. And, Ms. Banco, tell me
11 your response to that question.

12 PROSPECTIVE JUROR: I'm good friends with a SLED
13 arson investigator.

14 THE COURT: All right. And who would that be,
15 Ms. Banco?

16 PROSPECTIVE JUROR: Jason Harbaugh.

17 THE COURT: All right. And the fact that you're
18 good friends with Mr. Harbaugh--- He lives in your
19 neighborhood or he did.

20 PROSPECTIVE JUROR: He did.

21 THE COURT: He did. Could you still be a fair
22 and impartial juror to both the State and the defense in
23 this case?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: And let me ask you one other

1 question, Ms. Banco. Your brother-in-law, that's Pete?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Is he still employed with the City of
4 Columbia?

5 PROSPECTIVE JUROR: He is, as a fraud
6 investigator.

7 THE COURT: All right. And the fact that your
8 brother-in-law is employed with the Columbia Police
9 Department, could you still be a fair and impartial juror
10 to both the State and the defense in this case?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Thank you. Thank you very much, Ms.
13 Banco. You may be seated. All right. Yes, sir, your
14 number and name, please?

15 PROSPECTIVE JUROR: Juror Number 48, Floyd
16 Derrick.

17 THE COURT: All right. And, yes, Mr. Derrick,
18 your response to that question?

19 PROSPECTIVE JUROR: My daughter is a Lexington
20 County deputy, CSI.

21 THE COURT: All right. And how long has she been
22 employed?

23 PROSPECTIVE JUROR: I think about five or six
24 years.

25 THE COURT: All right. The fact that your

1 daughter is employed with the Lexington County Sheriff's
2 Department Crime Scene Investigation, could you still be a
3 fair and impartial juror in the trial of this case for both
4 the State and the defense?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Thank you, Mr. Derrick. You may be
7 seated. Yes, all the way in the back?

8 PROSPECTIVE JUROR: Number 181, Kelly Wilson.

9 THE COURT: All right.

10 PROSPECTIVE JUROR: My first cousin's husband
11 works for the Sheriff's Department, Darren Amick.

12 THE COURT: Your first cousin's husband works for
13 the Sheriff's Office.

14 PROSPECTIVE JUROR: Uh-huh (indicating
15 affirmative response).

16 THE COURT: I've got so many first cousins I
17 can't keep up with where all mine work. But what's his
18 name?

19 PROSPECTIVE JUROR: Darren Amick.

20 THE COURT: Mr. Amick. All right. Darren Amick.
21 The fact that--- Let me make sure I get this straight. The
22 fact that Mr. Amick is married to your first cousin---

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: ---could you still be a fair and
25 impartial juror in the trial of this case for both the

1 State and the defense?

2 PROSPECTIVE JUROR: Yes, sir.

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

4 Yes, ma'am, your number and name, please? In the bright
5 color. Well, they're both bright. In the non-green color.

6 I don't know what color you call that.

7 PROSPECTIVE JUROR: Juror Number 17, Lisa Bird.

8 THE COURT: Ms. Burroughs?

9 PROSPECTIVE JUROR: Bird.

10 THE COURT: Bird. All right.

11 PROSPECTIVE JUROR: My husband is with the
12 highway patrol, and we know several Lexington County
13 Sheriff's deputies and also SLED agents. I also work for
14 the DMV---

15 COURT REPORTER: Judge---

16 THE COURT: And what now?

17 PROSPECTIVE JUROR: I also work for the DMV in
18 licensing, as a licensing agent, and SLED writes those
19 tickets for us. So I may or may not know some SLED agents
20 in this case. And also Lexington County Zoning works with
21 us in reference to car lots.

22 THE COURT: All right. Given those various
23 friendships, your husband's occupation and the fact of your
24 interaction with law enforcement through your occupation,
25 could you still, could you be a fair and impartial juror in

1 the trial of this case for both the State and the defense?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Thank you. You may be seated. Yes,
4 in the back?

5 PROSPECTIVE JUROR: Letitia Tanks, number 163.

6 My father is the chief of police in Trenton, South
7 Carolina.

8 THE COURT: All right. Your father is Chief
9 Tanks?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: All right. And how long has he been
12 the chief down there?

13 PROSPECTIVE JUROR: A long time. As long as I
14 can remember.

15 THE COURT: All right. As long as I can remember
16 too, and that's a lot longer than you can remember. I know
17 Chief Tanks. The fact that your father is the chief of
18 police in Trenton, could you still be a fair and impartial
19 juror in the trial of this case for both State and the
20 defense?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you. Thank you very much, Ms.
23 Tanks. You may be seated. Yes, your number and name,
24 please?

25 PROSPECTIVE JUROR: Eighty-one, Desiree Ford. My

1 first cousin is a highway patrolman.

2 THE COURT: All right. And the fact that your
3 first cousin---

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: ---is a highway patrolman, you could
6 still be a fair and impartial juror---

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: ---could you still be a fair and
9 impartial juror for both the State and the defense?

10 PROSPECTIVE JUROR: (Witness nods indicating
11 affirmative response.)

12 THE COURT: Is that a yes?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you so much. You may be
15 seated. Any others?

16 (Juror stands.)

17 THE COURT: All right. Yes, sir, your number and
18 name, please?

19 PROSPECTIVE JUROR: Number 90, Jeff Langlois. My
20 nephew is a Lexington County deputy, and my son-in-law is a
21 South Carolina state trooper.

22 THE COURT: All right. And the fact that you
23 have a nephew that's a Lexington County deputy and your
24 son-in-law is a state trooper, could you still be a fair
25 and impartial juror in the trial of this case for both the

1 State and the defense?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Thank you. You may be seated. Any
4 others?

5 (There is no response.)

6 THE COURT: Thank you. Is any member of the jury
7 panel or any member of your immediate family or close
8 personal friends affiliated with or contributors to any
9 auxiliary police organization or citizen's group whose
10 primary aim is the prosecution or pursuit of individuals
11 involved in criminal activity or the pursuit of victim's
12 rights such as SADD, Students Against Drunk Driving, or
13 MADD, Mothers Against Drunk Driving, or CADRE? If you're a
14 member of or contributor to any type of organization,
15 please stand.

16 (Juror stands.)

17 THE COURT: All right. Yes, sir, this is Mr.
18 Derrick?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: And what organization, Mr. Derrick?

21 PROSPECTIVE JUROR: MADD. My wife is one of
22 the charter members in South Carolina.

23 THE COURT: All right. The fact that--- And this
24 was number 46 I believe.

25 PROSPECTIVE JUROR: Forty-eight.

1 THE COURT: Forty-what?

2 PROSPECTIVE JUROR: Forty-eight.

3 THE COURT: Forty-eight? I couldn't read my own
4 writing. Forty-eight. The fact that your wife was a
5 charter member of MADD in South Carolina, could you still
6 be a fair and impartial juror in the trial of this case for
7 both the State and the defense?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Thank you, Mr. Derrick. You may be
10 seated. Any others?

11 (There is no response.)

12 THE COURT: Has any member of the jury panel
13 heard any discussion about this case besides what you have
14 heard now during this jury qualification or been approached
15 by anyone in regards to this case prior to jury
16 qualification? If so, please stand.

17 (There is no response.)

18 THE COURT: Has any member of the jury panel read
19 anything in the newspaper or on the internet or seen
20 anything on television or heard anything about this case on
21 the radio? If so, please stand.

22 (There is no response.)

23 THE COURT: Does any member of the jury panel
24 have any religious or moral beliefs that would prevent you
25 from rendering judgment on another person as a member of

1 the jury? If so, please stand.

2 (There is no response.)

3 THE COURT: Any additional requested *voir dire*
4 from the State?

5 MS. MAYES: Yes, sir, Your Honor. May we
6 approach?

7 THE COURT: Yes, ma'am.

8 (Whereupon, there is a bench conference off the
9 record in the presence of the jury but out of the hearing
10 of the jury.)

11 THE COURT: Has any member of the jury panel or
12 any member of your immediate family ever been a victim of,
13 investigated for or charged with an incident involving
14 child abuse of a physical nature or child abuse of a sexual
15 nature? If so, please stand.

16 (There is no response.)

17 THE COURT: Any others?

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

19 THE COURT: Mr. Snell?

20 MR. SNELL: Nothing from the Defendant, Your
21 Honor.

22 THE COURT: All right. Now, ladies and
23 gentlemen, I'm going to call a list of names of potential
24 witnesses in the trial of this case. The question, of
25 course, is any member of the jury panel related by blood or

1 marriage or close personal friends with any of these
2 individuals whose names I call; if so, please stand. I
3 would ask, if any of these individuals are present at the
4 time I call your name, if you would please stand and face
5 the jury panel. I would advise the jury panel that the
6 witnesses are not required to be present during this
7 proceeding; therefore, names may be called and no one
8 stands. The first five names: Brittany [B] This is
9 Brittany [B] to my front right. Thank you. Thank you,
10 Ms. [B] You may be seated. Kevin [B] This is Kevin
11 [B] also to my front right. Thank you, Mr. [B] Katie
12 Cooper. Ms. Cooper to my front right. LeeAnn Harvey. Ms.
13 Harvey to my front right. Tommi Hutto to my front right.
14 Thank you, Ms. Hutto. Again the question is: Is any
15 member of the jury panel related by blood or marriage or
16 close personal friends with any of those individuals whose
17 names I just called and/or who stood before you? If so,
18 please stand.

19 (Jurors stand.)

20 THE COURT: Your name and number.

21 PROSPECTIVE JUROR: Ellen Ellsworth, number 51.

22 THE COURT: All right. And don't respond to me
23 yet. I'm going to have y'all come forward in a moment.

24 And your name and number, please, ma'am?

25 PROSPECTIVE JUROR: Sixty-one, Jennifer

1 Gillespie.

2 THE COURT: And, yes, sir, your name and number?

3 PROSPECTIVE JUROR: One forty-three, Mike Sandy.

4 THE COURT: All right. And, if y'all would
5 please, line up on the bailiff at the podium.

6 (The following bench conference with the Court,
7 counsel and the juror is reported.)

8 THE COURT: All right. Yes, ma'am?

9 BAILIFF: Juror Number 51, Your Honor.

10 THE COURT: Stand right there for me. This is
11 Ms. Ellsworth?

12 PROSPECTIVE JUROR: Yes, sir.

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

14 PROSPECTIVE JUROR: Ms. Hutto and I went to
15 school together, and I have been a friend of hers over 20
16 years.

17 THE COURT: All right. Did I call Edward Hutto
18 or Tommi Hutto? Is that who you're referring to?

19 PROSPECTIVE JUROR: Uh huh (indicating
20 affirmative response).

21 THE COURT: The fact that you went to school with
22 Ms. Hutto and she's been a friend of yours for---

23 PROSPECTIVE JUROR: Over 20 years.

24 THE COURT: ---over 20 years, could you still be
25 a fair and impartial juror in the trial of this case for

1 both the State and the defense?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Would you be able to judge her
4 credibility as you would other witnesses if she were called
5 as a witness?

6 PROSPECTIVE JUROR: (Nods indicating affirmative
7 response.)

8 THE COURT: Is that a yes or no?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Thank you so much. You may be
11 seated.

12 (The juror leaves the bench, and a bench
13 conference with the next juror is reported as follows.)

14 THE COURT: All right. Yes, sir?

15 BAILIFF: Juror 61, Your Honor.

16 THE COURT: This is Ms. Gillespie?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: All right. Tell me your situation,
19 Ms. Gillespie.

20 PROSPECTIVE JUROR: Ms. Hutto cuts my hair---

21 THE COURT: All right.

22 PROSPECTIVE JUROR: ---and I've seen her
23 daughter, LeeAnn, in there.

24 THE COURT: Her daughter?

25 PROSPECTIVE JUROR: LeeAnn.

1 THE COURT: LeeAnn, that's Ms. Harvey?

2 PROSPECTIVE JUROR: I don't know her last name.

3 THE COURT: All right. And you've seen her in
4 the---

5 PROSPECTIVE JUROR: In the shop.

6 THE COURT: In the shop. How long has she been
7 cutting your hair?

8 PROSPECTIVE JUROR: A long time.

9 THE COURT: What do you call a long time? A long
10 time's probably not as long to you as it is to me.

11 PROSPECTIVE JUROR: Five or seven years,
12 something like that.

13 THE COURT: The fact that Ms. Hutto cuts your
14 hair and has done so for that period of time, could you
15 still be a fair and impartial juror in the trial of this
16 case for both the State and the defense?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Thank you. Thank you very much. You
19 may be seated.

20 (The juror leaves the bench, and a bench
21 conference with the next juror is reported as follows.)

22 THE COURT: All right. Yes, sir?

23 BAILIFF: Juror 143, Your Honor.

24 THE COURT: This is Mr. Sandy?

25 PROSPECTIVE JUROR: Yes, sir.

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

2 PROSPECTIVE JUROR: I know several of them, sir.
3 Ms. Tommi, my wife picks her grandkids up and takes them to
4 school, things of that nature.

5 THE COURT: How long have you known Ms. Tommi.

6 PROSPECTIVE JUROR: I've known her for a long
7 time, known of her, but mainly just this year.

8 THE COURT: The fact that you have known of her
9 for a while and you have known her this year, could you
10 still be a fair and impartial juror in the trial of this
11 case for both the State and the defense?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: I'm going to set you aside for the
14 trial of this case. You may return to your seat. Please
15 do not say anything to your fellow jurors.

16 PROSPECTIVE JUROR: Yes, sir.

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

18 (The bench conference is concluded.)

19 THE COURT: All right. The next five names:
20 Edward E. Hutto, Adam Boozer, Rebecca Jones, Michael
21 Cooper. This is Mr. Cooper to my front right. Thank you.
22 And Linda Cooper. And Ms. Cooper to my front right. Thank
23 you, Ms. Cooper. Is any member of the jury panel related
24 by blood or marriage or close personal friends or have any
25 business or professional relationship with any of those

1 individuals whose names I just called and/or who stood
2 before you? If so, please stand.

3 (There is no response.)

4 THE COURT: The next five names: Dr. Susan
5 Luberoff, L-U-B-E-R-O-F-F, Palmetto Richland, Columbia; Dr.
6 David Ford, Palmetto Richland, Columbia; Dr. Matthew
7 Garber, G-A-R-B-E-R, Palmetto Richland, Columbia; Dr. Bruce
8 Cope, Sandhills Pediatrics; Sarah C. Leaphart, R.N.,
9 Palmetto Richland, Columbia. Is any member of the jury
10 panel related by blood or marriage or close personal
11 friends with any of those individuals or have any business
12 or professional relationship with any of those individuals
13 whose names I just called? If so, please stand.

14 (Jurors stand.)

15 THE COURT: Yes, your number and name, please?

16 PROSPECTIVE JUROR: One sixty-five, Brian
17 Teusink.

18 THE COURT: All right. Would you step up here
19 for me, sir?

20 (The following bench conference with the Court,
21 counsel and the juror is reported.)

22 THE COURT: All right. Yes, sir. Tell me your
23 name again.

24 PROSPECTIVE JUROR: Brian Teusink.

25 THE COURT: I wasn't going to pronounce it. I

1 apologize. But tell me your situation.

2 PROSPECTIVE JUROR: The company I work for is
3 a health-care risk management company. We provide the
4 medical malpractice insurance for Palmetto Health and all
5 of its employees. So there may be a relationship. I
6 recognize none of the names.

7 THE COURT: Okay. So you don't even recognize
8 those names. Is that correct?

9 PROSPECTIVE JUROR: No, I don't.

10 THE COURT: All right. The fact that you have
11 that business, that professional relationship with Palmetto
12 Richland, could you still be, could you be a fair and
13 impartial juror in trial of this case for both the State
14 and the defense?

15 PROSPECTIVE JUROR: Yes, Your Honor.

16 THE COURT: All right. Thank you. You may
17 return to your seat. Thank you.

18 (The juror leaves the bench, and a bench
19 conference with the next juror is reported as follows.)

20 THE COURT: There is another one out there.

21 BAILIFF: Juror Number 43, Your Honor.

22 THE COURT: Yes, sir, tell me your name, please.

23 PROSPECTIVE JUROR: Robert Cottrill.

24 THE COURT: I'm sorry?

25 PROSPECTIVE JUROR: Robert Cottrill.

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

3 PROSPECTIVE JUROR: I'm not a hundred percent
4 sure, but my daughter--- I'm not sure which doctor, but my
5 daughter goes to Sandhills Pediatrics.

6 THE COURT: Okay. All right. Well, let's assume
7 your daughter does go to Sandhills Pediatrics.

8 PROSPECTIVE JUROR: I know she goes there. I
9 don't know which doctor.

10 THE COURT: Okay. So she does go to Sandhills
11 Pediatrics. You just don't know if she goes to the
12 particular doctor whose name I called. Let's assume she
13 goes to that doctor. Okay? Given that fact--- How old is
14 your daughter?

15 PROSPECTIVE JUROR: Five.

16 THE COURT: Five. Would she have been going to
17 that same practice her entire life?

18 PROSPECTIVE JUROR: Yes. My older daughter also
19 goes there too.

20 THE COURT: Could you still be a fair and
21 impartial juror in the trial of this case for both the
22 State and the defense?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: All right. Thank you very much. You
25 may be seated. Any others?

1 (Juror stands.)

2 BAILIFF: Juror Number 20, Your Honor.

3 THE COURT: All right. Yes, sir, tell me your
4 name, sir.

5 PROSPECTIVE JUROR: Mark Bordeaux.

6 THE COURT: I couldn't quite hear you.

7 PROSPECTIVE JUROR: Mark Bordeaux.

8 THE COURT: Bordeaux? All right. And tell me
9 your situation.

10 PROSPECTIVE JUROR: My daughters go to Dr. Cope
11 at Sandhills Pediatrics.

12 THE COURT: How old is your daughter?

13 PROSPECTIVE JUROR: I have two, ten and seven.

14 THE COURT: Both of them go there?

15 PROSPECTIVE JUROR: Uh-huh (indicating
16 affirmative response).

17 THE COURT: Have they been patients of Dr. Cope
18 their entire life?

19 PROSPECTIVE JUROR: I think new doctors have come
20 in during the time.

21 THE COURT: All right. Given the fact that they
22 go to Sandhills Pediatrics and Dr. Cope, could you still be
23 a fair and impartial juror in the trial of this case for
24 both the State and the defense?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: Thank you. You may be seated. Any
2 others?

3 (There is no response.)

4 THE COURT: The next five names, ladies and
5 gentlemen: Marlana Clary, C-L-A-R-Y, R.N., Palmetto
6 Richland, Columbia; Adrienne Riley, State Law Enforcement
7 Division, Columbia; Mildred Moore, DSS, Lexington;
8 Detective Eddie Prestigiaco, Lexington County Sheriff's
9 Department; Shelby Derrick, Lexington County Sheriff's
10 Department. This is Detective Prestigiaco--I apologize--
11 that stood before you. Is any member of the jury panel
12 related by blood or marriage or close personal friends with
13 any of those individuals whose names I just called? If so,
14 please stand.

15 (Juror stands.)

16 THE COURT: All right. Mr. Derrick, would you
17 step down here for me, please?

18 (The following bench conference with the Court,
19 counsel and the juror is reported.)

20 THE COURT: Number 48, I believe, Mr. Derrick.

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: All right. And tell me who you may
23 be related to, sir.

24 PROSPECTIVE JUROR: Shelby Derrick.

25 THE COURT: That's your daughter?

1 PROSPECTIVE JUROR: Yes, sir, and she probably
2 investigated part of it.

3 THE COURT: I'm going to set you aside for the
4 trial of this case, Mr. Derrick. Please do not discuss
5 this with any of your fellow jurors. Thank you. Thank you
6 very much. You may return to your seat. The next five
7 names, all of whom indicate Lexington County Sheriff's
8 Department: Beth Harmon, Candy Kyzer, Deputy B. Marthers,
9 M-A-R-T-H-E-R-S, Erica Owens, Detective Shawn Grant. Is
10 any member of the jury panel related by blood or marriage
11 or have any business or professional relationships with any
12 of those individuals whose names I just called? If so,
13 please stand.

14 (There is no response.)

15 THE COURT: The next two names are also with the
16 Lexington County Sheriff's Department, Sergeant Palkowski,
17 P-A-L-K-O-W-S-K-I, and Troy Crump, C-R-U-M-P. The next is
18 the business records custodian.

19 (Juror stands.)

20 THE COURT: Oh, yes. Let's see. This is Ms.
21 Bird?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Is that right?

24 PROSPECTIVE JUROR: Troy Crump, Your Honor---

25 THE COURT: Step up here for me please.

1 (The following bench conference with the Court,
2 counsel and the juror is reported.)

3 THE COURT: And tell me your name and number,
4 please.

5 PROSPECTIVE JUROR: Lisa Bird, Juror 17.

6 THE COURT: All right.

7 PROSPECTIVE JUROR: Troy Crump and I are close
8 personal friends. We attend church together, and my
9 children--- He's actually their deacon and minister; he
10 teaches them Sunday school.

11 THE COURT: The fact that you're close personal
12 friends of Mr. Crump, attend church together and that other
13 capacity you're referring to, could you still be a fair and
14 impartial juror in the trial of this case for both the
15 State and the defense?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you. You may be seated. Any
18 others?

19 (There is no response.)

20 MR. SNELL: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 (Whereupon, there was a bench conference off the
23 record in the presence of the jury panel but out of the
24 hearing of the jury panel.)

25 THE COURT: The next list includes a potential

1 witness that is unnamed but the business records custodian
2 at Sandhills Pediatrics; Cindy Hurley, H-U-R-L-E-Y; and
3 Selman Watson. Is any member of the jury panel related by
4 blood or marriage or close personal friends with any of
5 those individuals whose names I just called and/or whose
6 position I just indicated? If so, please stand.

7 (There is no response.)

8 THE COURT: Finally, ladies and gentlemen, does
9 any member of the jury panel know any reason whatsoever why
10 you feel like you could not be a fair and impartial juror
11 in the trial of this case for both the State and the
12 defense? If so, please stand.

13 (There is no response.)

14 THE COURT: Thank you. Thank you very much. I
15 find our panel is qualified with the exception of those I
16 have set aside. If you will give us a panel, Madame Clerk.
17 Strikes, Solicitor?

18 MS. MAYES: Ten and five, Your Honor.

19 THE COURT: Is that correct, Mr. Snell?

20 MR. SNELL: Yes, Your Honor.

21 THE COURT: All right.

22 CLERK: Okay, ladies and gentlemen, it'll be
23 the same procedures we had Monday. I'll call your name.
24 Come down and stand in front of the podium here and face
25 back out toward the audience. Make sure you bring your

1 purse, umbrella, whatever you have, with you. Proceed,
2 Your Honor?

3 THE COURT: Yes, ma'am, please. Thank you.

4 CLERK: Number 20, Mark Bordeaux.

5 (The juror, a white male, comes forward.)

6 CLERK: What say you for the State?

7 MS. MAYES: Please present the juror.

8 CLERK: What say you for the defense?

9 MR. SNELL: Please strike this juror.

10 CLERK: Return to your seat, please, sir. Number
11 165, Brian Teusink.

12 (The juror, a white male, comes forward.)

13 CLERK: What say you for the State?

14 MS. MAYES: Beg the Court's indulgence. Please
15 present the juror.

16 CLERK: What say you for the defense?

17 MR. SNELL: Please excuse this juror.

18 CLERK: Return to your seat, please, sir. Number
19 181, Kelly Wilson.

20 (The juror, a white female, comes forward.)

21 CLERK: What say you for the State?

22 MS. MAYES: Please present the juror.

23 CLERK: What say you for the defense?

24 MR. SNELL: Please swear this juror.

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

1 Number 162, Suzanne Switzer.

2 (The juror, a white female, comes forward.)

3 CLERK: What say you for the State?

4 MS. MAYES: Please excuse the juror from the
5 trial of this case.

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

7 Number 109, Jonathon Mitchell.

8 (The juror, a black male, comes forward.)

9 CLERK: What say you for the State?

10 MS. MAYES: Please present the juror.

11 CLERK: What say you for the defense?

12 MR. SNELL: Please swear this juror.

13 CLERK: Have a seat in the jury box, sir. Number
14 170, Jo Ann Veronee.

15 (The juror, a white female, comes forward.)

16 CLERK: What say you for the State?

17 MS. MAYES: What was that number again, Madame
18 Clerk?

19 CLERK: Number 170.

20 MS. MAYES: Please present the juror.

21 CLERK: What say you for the defense?

22 MR. SNELL: Please swear this juror.

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

24 Number 33, Chatmond Byas.

25 (The juror, a black male, comes forward.)

1 CLERK: What say you for the State?

2 MS. MAYES: Please present the juror.

3 CLERK: What say you for the defense?

4 MR. SNELL: Please swear this juror.

5 CLERK: Have a seat in the jury box, sir. Number
6 161, Angela Swann.

7 (The juror, a white female, comes forward.)

8 CLERK: What say you for the State?

9 MS. MAYES: Please present the juror.

10 CLERK: What say you for the defense?

11 MR. SNELL: Please swear this juror.

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

13 Number two, Jeffrey Archie.

14 (The juror, a black male, comes forward.)

15 CLERK: What say you for the State?

16 MS. MAYES: Please present the juror.

17 CLERK: What say you for the defense?

18 MR. SNELL: Please swear this juror.

19 CLERK: Have a seat in the jury box, sir. Number
20 112, William Mounfield.

21 (The juror, a white male, comes forward.)

22 CLERK: What say you for the State?

23 MS. MAYES: Please present the juror.

24 CLERK: What say you for the defense?

25 MR. SNELL: Please excuse this juror.

1 CLERK: Return to your seat, please, sir. Number
2 134, Helen Workman.

3 (The juror, a white female, comes forward.)

4 CLERK: What say you for the State?

5 MS. MAYES: Please present the juror.

6 CLERK: What say you for the defense?

7 MR. SNELL: Please excuse this juror.

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

9 Number 63, Michelle Godfrey.

10 (The juror, a white female, comes forward.)

11 CLERK: What say you for the State?

12 MS. MAYES: Please present the juror.

13 CLERK: What say you for the defense?

14 MR. SNELL: Please swear this juror.

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

16 Number 10, Tiffany Baldwin.

17 (The juror, a white female, comes forward.)

18 CLERK: What say you for the State?

19 MS. MAYES: Please present the juror.

20 CLERK: What say you for the defense?

21 MR. SNELL: Please swear this juror.

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

23 Number 62, James Givens.

24 (The juror, a white male, comes forward.)

25 CLERK: What say you for the State?

1 MS. MAYES: Please present the juror.

2 CLERK: What say you for the defense?

3 MR. SNELL: Please excuse this juror.

4 CLERK: Return to your seat, please, sir. Number
5 75, Terri Highsmith.

6 (The juror, a white female, comes forward.)

7 CLERK: What say you for the State?

8 MS. MAYES: Please present the juror.

9 CLERK: What say you for the defense?

10 MR. SNELL: Please swear this juror.

11 CLERK: Have a seat in the jury box, ma'am.
12 Number one, Annamarie Agnew.

13 (The juror, a white female, comes forward.)

14 CLERK: What say you for the State?

15 MS. MAYES: Please present the juror.

16 CLERK: What say you for the defense?

17 MR. SNELL: Please excuse this juror.

18 CLERK: Return to your seat, please, ma'am.
19 Number 43, Robert Cottrill.

20 (The juror, a white male, comes forward.)

21 CLERK: What say you for the State?

22 MS. MAYES: Please present the juror.

23 CLERK: What say you for the defense?

24 MR. SNELL: Please excuse this juror.

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

1 12, Patricia Banco.

2 (The juror, a white female, comes forward.)

3 CLERK: What say you for the State?

4 MS. MAYES: Please present the juror.

5 CLERK: What say you for the defense?

6 MR. SNELL: Please excuse this juror.

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

8 Number 66, Charles Greer.

9 (The juror, a white male, comes forward.)

10 CLERK: What say you for the State?

11 MS. MAYES: Please present the juror.

12 CLERK: What say you for the defense?

13 MR. SNELL: Please swear this juror.

14 CLERK: Have a seat in the jury box, sir. Number
15 149, Sarah Sharpe.

16 (The juror, a white female, comes forward.)

17 CLERK: What say you for the State?

18 MS. MAYES: Please present the juror.

19 CLERK: What say you for the defense?

20 MR. SNELL: Please excuse this juror.

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

22 Number 85, Harvey Kimble.

23 (The juror, a white male, comes forward.)

24 CLERK: What say you for the State?

25 MS. MAYES: Please excuse the juror from the

1 trial of this case.

2 CLERK: Return to your seat, please, sir. Number
3 110, Jennifer Moore.

4 (The juror, a white female, comes forward.)

5 CLERK: What say you for the State?

6 MS. MAYES: Please present the juror.

7 CLERK: What say you for the defense?

8 MR. SNELL: Please swear this juror.

9 CLERK: Have a seat in the jury box, ma'am.
10 Number 83, Walter Kennerly.

11 (The juror, a black male, comes forward.)

12 CLERK: What say you for the State?

13 MS. MAYES: Please present the juror.

14 CLERK: What say you for the defense?

15 MR. SNELL: Please swear this juror.

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

17 Alternates, Your Honor?

18 THE COURT: One alternate. Strikes are one and
19 two.

20 CLERK: One forty-six, Kathy Saye.

21 (The juror, a white female, comes forward.)

22 CLERK: What say you for the State?

23 MS. MAYES: Please present the juror.

24 CLERK: What say you for the defense?

25 MR. SNELL: Please excuse this juror.

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

2 Number 13, Mary Barnett.

3 (The juror, a white female, comes forward.)

4 CLERK: What say you for the State?

5 MS. MAYES: Please present the juror.

6 CLERK: What say you for the defense?

7 MR. SNELL: Please excuse this juror.

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

9 Number 51, Ellen Ellsworth.

10 (The juror, a white female, comes forward.)

11 CLERK: What say you for the State?

12 MS. MAYES: Please present the juror.

13 CLERK: What say you for the defense?

14 MR. SNELL: Please swear the juror.

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

16 That's our alternate, Your Honor.

17 THE COURT: Any motions regarding the jury
18 selection process from the State?

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

20 THE COURT: From the defense?

21 MR. SNELL: None from the defense, Your Honor.

22 THE COURT: Thank you.

23 (The jury is impaneled at 12:57.)

24 THE COURT: Ladies and gentlemen selected for
25 this jury panel, I'm going to momentarily ask you to go

1 with your bailiff to your jury room so I can give some
2 further instructions to your colleagues that were not
3 selected as jurors in the trial of this case. During this
4 brief recess, I would advise you, you may not discuss this
5 case with anyone including your fellow jurors or anyone
6 else. If anyone tries to talk with you about the case,
7 please let me know immediately. You would not be
8 authorized to discuss the case until you've heard all the
9 evidence, all the testimony, the closing arguments by the
10 attorneys, instruction on the law by the Court and then
11 directed by the Court to begin your deliberations with your
12 fellow jurors in your jury room. I will give you further
13 instructions upon your return to the courtroom. As I say,
14 I need to give some instructions to your colleagues that
15 were not selected. Also, another jury panel that is out
16 has a question, so it may be a few minutes. It may be
17 about 20 minutes. I'll try to get you back in by that
18 time. With that being said, if you will please now go with
19 your bailiff to your new temporary home, your jury room.
20 Thank you. Thank you very much.

21 (The jury retires to the jury room.)

22 THE COURT: All right. Solicitor and Mr. Snell,
23 Mr. Floyd, y'all can step aside for a few minutes. I have
24 some questions from this other jury panel. I hope I can
25 get them resolved in about 15 minutes, and then you'll

1 be--- When y'all come back, I'll probably release y'all's
2 jury for lunch with the proper instructions and bring them
3 back at the appropriate time.

4 (Whereupon, a recess is taken.)

5 THE COURT: All right. Solicitor, what I intend
6 to do is bring the--and Mr. Snell, Mr. Floyd--I intend to
7 bring the jury into the courtroom and instruct them
8 concerning their responsibilities during the breaks and
9 during the recesses and then bring them back after their
10 luncheon recess. It's my understanding that you would have
11 one pretrial matter of a *Jackson v. Denno* hearing. Is that
12 correct, Solicitor?

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

14 THE COURT: And, Mr. Snell and Mr. Floyd, do
15 y'all have any pretrial matters in addition to that?

16 MR. SNELL: Your Honor, we may have two other I
17 expect short pretrial matters.

18 THE COURT: All right. Well, can y'all give me
19 an idea about how long the pretrial matters will take so I
20 can get an idea of when I want to bring the jury back?

21 MS. MAYES: Yes, sir, Your Honor. I would expect
22 that the *Jackson v. Denno* should not take more than 30
23 minutes.

24 MR. SNELL: And I need an additional 10 to 15.

25 THE COURT: And then your additional motions, how

1 long do you think that would take?

2 MR. SNELL: An additional 10 to 15 minutes, Your
3 Honor.

4 THE COURT: All right. So about 45 minutes?

5 MR. SNELL: Yes, Your Honor.

6 THE COURT: All right. Bring us our panel from
7 downstairs, please.

8 (The jury panel returns at 1:20 p.m.)

9 THE COURT: All right. Our jury is back present
10 in the courtroom. Let's see. Our alternate I believe was
11 Ms. Ellsworth. All right. Well, you may maintain that
12 seat for the proceedings right now. I'm going to release
13 y'all for your luncheon recess momentarily. But, when you
14 return, I'm going to ask you if you'll sit on the back row
15 in this chair over here. I have to keep up with my
16 alternate. No, you don't have to move now at all, sir; no,
17 sir, you don't have to move at all. I have to keep up with
18 my alternate and my foreperson and then just numbers. But
19 the bailiff will instruct you on that upon your return.
20 But you're fine in place right now. I just want to make
21 sure I didn't lose my alternate during the break. I want
22 to make sure nobody escaped during the break. Ladies and
23 gentlemen, I'm going to release you momentarily for your
24 luncheon recess. I must advise you of certain duties and
25 responsibilities you have during your jury service. You

1 may not discuss this case with anyone including your fellow
2 jurors, your lunch mates, your family, friends or anyone
3 else during any break, luncheon recess, evening recess,
4 until such time as you've heard all the evidence, all the
5 testimony in the case, the closing arguments by the
6 attorneys and directed by the Court to begin your
7 deliberations with your fellow jurors in your jury room.
8 You may not read, listen to or watch any news reports about
9 the case should there be any. You may not use your
10 computer, cellular phone or other electronic device with
11 communication capabilities while in attendance at trial or
12 during jury deliberations. These devices, of course, may
13 be used during your luncheon breaks and over the evening
14 hours obviously but may not be used to obtain or disclose
15 certain information which is prohibited below. And I'm
16 going to explain that information to you. Information
17 which is prohibited includes, but is not limited to, the
18 following: Any information about any party, witness,
19 attorney or court officer, any news accounts about the case
20 either current or in the past, should there have been any,
21 any information through your own research on any topics
22 raised or testimony offered by any witness or any
23 information collected through your own research on any
24 other topic that you might think would be helpful in
25 deciding the case. You decide the case, again, based on

1 the evidence and the testimony that you hear from the
2 witnesses testifying under oath from this witness stand and
3 any exhibits that may be introduced into evidence and the
4 law as I tell you the law is. So you can't go out and do
5 any research. You can't go out and do any investigation on
6 the internet or on your own. I used to tell juries up
7 until about this time last year--I guess it was about last
8 March--I said, you know, I've never had that occur in
9 Lexington County. I'd read about it in the paper where it
10 may have occurred in, you know, some other state; but I
11 never had it occur in Lexington County. Well, it did occur
12 in Lexington County about a year or so ago I would think.
13 And, of course, that ended up subjecting that particular
14 juror, rightfully so, to contempt of court charges and such
15 as that because you're not following your oath. I know
16 each and every one of you will follow your oath. You were
17 selected as fair and impartial jurors by both the State and
18 the defense. So do not do any independent investigation on
19 the internet or on your own. Remember to keep an open
20 mind. Do not decide any issue in the case until you've
21 heard all the evidence, all the testimony, the closing
22 arguments by the attorneys and the charge on the law by the
23 Court and directed by the Court to begin your
24 deliberations. I'm going to release you and ask you to
25 please be back in your jury room, your new temporary home,

1 at about 3:00 o'clock. The reason an hour and a half,
2 there are certain pretrial matters that I must address
3 which is more the rule than the exception in most cases.
4 Hopefully, I can get those matters resolved in a timely
5 manner, and that will make the trial proceed in a more
6 efficient manner. Your time is very important to me, and I
7 will manage it as best I can. Many jurors, when they're
8 leaving, say, well, I found out two things about South
9 Carolina trial judges, they have no concept of time, or at
10 least our time, and they have no personalities. That's
11 kind of a common trait that we all share I think. Your
12 time is very valuable to me, and I will do my best to run
13 the court efficiently and allow the parties, of course, to
14 try their case according to the rules of evidence and the
15 rules of law. With that being said, you're excused for
16 your luncheon recess. Please follow my instructions. I
17 will ask you about that from time to time during the trial.
18 And please be back in your jury room promptly at 3:00
19 o'clock. If you'll please be back promptly at 3:00
20 o'clock, you're now excused for lunch. Thank you very
21 much.

22 (The jury is excused at 1:30 p.m.)

23 THE COURT: Any exceptions to anything I've told
24 the jury from the State?

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

1 THE COURT: Defense?

2 MR. SNELL: None from the Defendant, Your Honor.

3 THE COURT: All right. We'll be in recess until
4 2:15. Court will be in recess until 2:15. Thank you.
5 Thank you very much.

6 (Whereupon, there is a luncheon recess.)

7 THE COURT: All right. Solicitor, you had a
8 motion. Is that correct?

9 MS. MAYES: I believe we just need to take care
10 of the *Jackson v. Denno* issue, Your Honor.

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

13 MS. MAYES: The State calls Detective Ed
14 Prestigiacomo.

15 THE COURT: All right. If you'll come around,
16 please, and be sworn.

17 WHEREUPON, ED PRESTIGIACOMO, being
18 first duly sworn, testifies as follows:

19 CLERK: State your name on the record and spell
20 your last, please.

21 THE WITNESS: Ed Prestigiacomo, P-R-E-S-T-I-G-I-
22 A-C-O-M-O.

23 DIRECT EXAMINATION BY MS. MAYES:

24 Q Detective, could you give us some information
25 concerning where you are employed and in what

1 capacity?

2 A I work at the Lexington County Sheriff's Department,
3 and I am a major crimes detective.

4 Q All right. And, prior to this particular date, had
5 you had the opportunity to investigate other cases
6 that involved child abuse or physical assault?

7 A Yes, I did.

8 Q And how long have you been with the Lexington County
9 Sheriff's Department?

10 A Roughly 16 years.

11 Q And how many of those years have you been an
12 investigator?

13 A About 8, 8 or 9 years.

14 Q All right. How did you become involved in the
15 investigation concerning injuries to a child by the
16 name of [Victim] [REDACTED]

17 A On that particular date, April 16th, I was notified by
18 my supervisor, Sergeant Jeff Palkowski, to respond to
19 Richland Palmetto, Palmetto Richland Hospital in
20 reference to child abuse.

21 Q All right. And tell us a little bit about your
22 initial involvement in this case. What actions were
23 taken?

24 A I responded to the hospital and located where the
25 victim was, [Victim] [REDACTED] a one-year-old female, met

1 with our victim assistant, Erica, and our crime scene
2 investigator who was there to document pictures and
3 evidence.

4 Q What was your understanding of what type of injuries
5 this one-year-old child had sustained?

6 A I was told briefly on the way there, and then later on
7 when I got there, that she had bruises on her body,
8 several locations, neck, arms, privates, her vagina,
9 and on her forehead and ears.

10 Q All right. And did you also have the opportunity to
11 speak with medical personnel once you arrived?

12 A Yes, I did.

13 Q Was there an indication based on those communications
14 as to whether or not **Victim** may have been a victim
15 of child abuse?

16 A Yes.

17 Q When there is an indication of child abuse, what steps
18 are taken by yourself as an investigator to try and
19 narrow down a timeframe and persons who might have had
20 access to the child?

21 A I immediately develop a timeframe of where this child
22 was last and work backwards to everybody who had
23 physically, their hands physically on that child at
24 some point. What I mean by hands physically on her,
25 watching her, in her presence and what have you,

1 whether it's family members, friends or what.

2 Q All right.

3 A And that's what I started to do at the hospital.

4 Q And, in regards to [Victim] [REDACTED] what was your
5 understanding as to whether one person had had contact
6 with her in the last 24 hours or multiple people?

7 A Several people.

8 Q All right. Tell us what you mean by that?

9 A Her mom, Brittany. There was a friend where this
10 incident took place, LeeAnn Harvey. And Brittany's
11 boyfriend at the time, Lance Williams.

12 Q What was your understanding of the living arrangements
13 where the child was residing back in April of 2010
14 when this incident occurred?

15 A My initial understanding was she lived with her mom,
16 and Brittany had a boyfriend who is Mr. Williams and,
17 on occasion, he would stay with her at her residence
18 along with [Victim] [REDACTED]

19 Q All right. So, to clarify, the Defendant in this
20 case, Lance Williams, was the boyfriend or paramour of
21 the mother, Brittany [B] [REDACTED]

22 A That is correct.

23 Q And was it--- Is it your understanding that, based on
24 that relationship, he sometimes had access to

25 [Victim] [REDACTED]

1 A Yes.

2 Q All right. And, when we talk about the date in
3 question, what does your--- What did your
4 investigation reveal as the possible timeframe in
5 which Victim had been injured?

6 A Well, sometime the day before according to the doctors
7 and some nurses. They were freshly committed bruises;
8 so I was looking at going back a day and try to figure
9 out what happened to her.

10 Q What date and time did you first arrive at the
11 hospital?

12 A April 16th, 2010.

13 Q All right. And do you recall approximately what time
14 of day or night?

15 A I could tell you. Let me look at my report here. I
16 arrived at Palmetto Richland Hospital at 12:30 p.m. on
17 April 16th.

18 Q All right. And do you have an understanding as to
19 whether or not Victim had been hospitalized
20 overnight?

21 A Yes.

22 Q And, upon your arrival, what steps are taken to speak
23 with caretakers and try to pinpoint who might or how
24 many people might be responsible for inflicting child
25 abuse injuries on Victim

1 A Well, I try to generally start with who is at the
2 hospital to include her immediate family, Brittany and
3 Brittany's father--I spoke with him briefly as well--
4 to find out where she was the day before and the time
5 period before those injuries were first observed,
6 which my understanding was the evening prior, on the
7 15th, April 15th, the evening of the 15th.

8 Q All right. So, after speaking with the mother,
9 Brittany [B] and other family members, what steps
10 did you take next to speak with other individuals who
11 might have knowledge of what might have happened to
12 [Victim] [REDACTED]

13 A I spoke with several individuals at the hospital, and
14 later on I reached out to Lance Williams. I was under
15 the understanding that he was watching her during the
16 day on the 15th. I reached out to him and tried to
17 make arrangements to speak with him.

18 Q All right. And, just to clarify, [Victim] [REDACTED] was
19 15 months of age. Was she able to contribute any
20 information at all in regards to what had occurred?

21 A No, she was not.

22 Q All right. And tell us about how you went about
23 making contact with the Defendant once you got a
24 message to him.

25 A I spoke with him on the phone upon leaving the

1 hospital, and he advised me he was on his way to--I
2 forgot the city now in South Carolina--to pick up his
3 daughter. And I explained to him I needed to speak to
4 him about what had happened to **Victim** and he told
5 me he wanted to come and talk to me to clear this up
6 tonight or that night because he had a wedding to go
7 to in Alabama and he wanted to clear it up. So we
8 made an arrangement for him to come and meet me at the
9 Lexington County Sheriff's Department.

10 Q All right. And how did he arrive at the Sheriff's
11 Department if you know?

12 A He--- I've got the time up here. He arrived around
13 7:00 p.m. along with his mother and his two-year-old
14 daughter.

15 Q All right. And would that have been in his own
16 vehicle?

17 A I don't know the answer.

18 Q Or a vehicle of a family member?

19 A It was either his vehicle or his mother's vehicle. I
20 don't know.

21 Q A non-law enforcement vehicle.

22 A Correct.

23 Q Was he placed into custody upon his arrival?

24 A No.

25 Q Tell us what happened next.

1 A Well, I spoke with him, and he knew why he was there.
2 I took him into one of the interview rooms and talked,
3 got his background. He told me where he was born and
4 how long he had lived in Swansea. And we were joined
5 by Sergeant Palkowski who assisted me with the
6 interview, and then we went into what happened to

7 **Victim**

8 Q All right. And, at this point, was his participation
9 in the interview voluntary based on your observations?

10 A Yes.

11 Q Did he appear to be intoxicated by alcohol or other
12 drugs?

13 A No.

14 Q Did he respond to your questions when you spoke to
15 him?

16 A Yes, he did.

17 Q Did he appear to understand and have coherent
18 language?

19 A Yes.

20 Q At any point, did he stop and ask for an attorney?

21 A No.

22 Q At any point, did he say he did not wish to
23 communicate or participate in the interview?

24 A No.

25 Q Did you threaten him or coerce him, in any way, in

1 order to participate in the interview?

2 A No.

3 Q And what happened next?

4 A We went into what happened to **Victim** and he, the
5 best I can recall--I could read through the report--
6 but he initially said that she had fallen. And I went
7 on to explain to him that she had bruises on various
8 parts of her body that needed to be explained or I
9 needed an answer. And then I started to show him some
10 pictures, and I started out by showing him pictures of
11 fingerprints on her arms.

12 Q Did he continue to offer explanations as to possible
13 sources of the injuries?

14 A That's part of that. I mean, we went into---

15 Q If you could, please refer to your report---

16 A Sure.

17 Q ---so that you can put on the record his responses to
18 your inquiries.

19 A Okay. I started out showing him pictures of
20 **Victim** s arms. And it was evident to me, in my
21 experience, that they were finger marks, circular
22 bruises, on each arm. I think one had three on each
23 one, and there was a faded one or a fourth one on the
24 other arm. He looked at the picture and explained to
25 me that sometimes that's how he picks up his daughter,

1 that his mother even complained that, you know, you
2 shouldn't do that and, you know, that's not a good way
3 to pick up a child, just by their arms. Mr. Williams
4 made it a point to tell us a story about how he was in
5 military school at this point and that he had an
6 injury or an accident. The way he described it was
7 that a shard of glass had went into his hand, his
8 right hand, and that that injury caused his hand to be
9 numb because of severed nerves in his hand and
10 sometimes he's heavy handed. And then he offered to
11 shake my hand to show me how much of a big grip he
12 had, and he squeezed my hand, and I, you know, let him
13 do that. And, from there, we went to the next set of
14 pictures. I showed him pictures of **Victim** ears
15 that had visible bruising on the rim of the ear and
16 behind it, you know, which is common when somebody is
17 slapped or punched in the ear, it will bruise behind
18 the ear. He told me that she had misbehaved and that
19 these injuries occurred during two occurrences. And
20 the way he described them was that, one, she threw a
21 temperature tantrum--you know, I wrote those down as
22 he was saying it--and that he slapped her twice in one
23 ear, on one side from behind, and then, the second
24 time, she threw her bottle down and that caused him to
25 get angry and slap her on the other side twice.

1 Q Did he continue to make any spontaneous statements
2 during that portion of the interview?

3 A No. He said it was for discipline, and that's how he
4 described it. And then he demonstrated on himself; he
5 slapped himself in the ear to show me how hard he did
6 it with saying that his hand is numb and he doesn't
7 know his own strength. Then we went into the third
8 picture which was her forehead that had several
9 circular bruises and the exterior of her, the outside
10 of her vagina. And he said that she had fallen,
11 that's how her head got injured; and he said that the
12 bruise on her vagina was from eczema and cream that he
13 had to put on and, because of his numb hand, he didn't
14 realize how hard he was pressing. And, the best I can
15 recall, it was at this juncture that I stopped and I
16 pulled out a Lexington County statement form because,
17 in my mind, he was getting arrested.

18 Q Up until that point, had there been enough information
19 gathered to pinpoint him as the sole perpetrator for
20 the injuries to Victim

21 A Yes.

22 Q Prior to his participation in the interview with you
23 though.

24 A Prior to when he came in, he--- The conversation we
25 had before he came in, he said he didn't hurt

1 Victim she fell. So I was getting his story and
2 his explanation, and he made incriminating statements.

3 Q All right. And, at the point that the incriminating
4 statements were made, what action did you take?

5 A I advised him of his *Miranda*.

6 Q And do you have with you the form in which you used to
7 advise him of his *Miranda* rights?

8 A Yes, I do.

9 Q And what form is that?

10 A It's a Lexington County Sheriff's Department statement
11 form that, on the top portion of it, has *Miranda*
12 warnings that are typed out.

13 Q All right. And do you have with you a copy of Lance
14 Williams' statement?

15 A Yes, I do.

16 Q And how do you recognize it?

17 A I recognize it by the top portion I filled out with my
18 handwriting, his handwriting and my signature at the
19 bottom.

20 Q All right. Could you please state on the record the
21 rights exactly as they were---

22 MS. MAYES: Beg the Court's indulgence.

23 Q The statement that you just identified as Lance
24 Williams' statement with your signature, do you have
25 that with you?

1 A Yes.

2 Q And what is the date on that document?

3 A April 16th, 2010.

4 (State's Exhibit Number 1 is marked for
5 identification purposes.)

6 COURT REPORTER: It's marked as State's 1 for
7 identification, Your Honor.

8 THE COURT: Thank you.

9 MS. MAYES: Your Honor, actually, at this time,
10 we would offer this as the Court's exhibit. He has
11 identified the document.

12 THE COURT: All right. Any objection as to it
13 being a Court's exhibit?

14 MR. SNELL: Not as a Court exhibit, Your Honor.

15 THE COURT: All right.

16 COURT REPORTER: I need to change it, Judge. I'm
17 sorry.

18 (Court's Exhibit Number 1 is marked for purposes
19 of the record.)

20 Q And do you have with you a fair and accurate copy or
21 representation of that same statement that's been
22 marked as a Court's exhibit?

23 A Yes, I do.

24 Q All right. And was this signed by Lance Williams in
25 your presence?

1 A Yes.

2 Q All right. Could you please start at the beginning of
3 the document and state exactly which rights were read
4 to Lance Williams?

5 A Okay. Right number one, I have a right to remain
6 silent. I read this to him; and I had him, at the end
7 of each right when he understood it and wished to
8 waive it, to place his initials. And I went to the
9 next one, anything I say can and will be used against
10 me in a court of law. Number three, I have a right to
11 talk to a lawyer for advice before answering any
12 questions and to have him or her present with me
13 during questioning. Number four, if I have no money
14 for lawyer's fees, the Court will appoint one to
15 represent me without cost if I wish. Number five, if
16 I decide to answer questions now without a lawyer
17 present, I still have the right to stop answering
18 questions at any time. I also have the right to stop
19 answering questions at any time until I talk with a
20 lawyer. I have read this statement of my rights, and
21 I understand what my rights are. And I wish to make,
22 I make the following statement.

23 Q All right. And, at that point in time, based upon
24 your observations, did he appear to understand the
25 rights which you advised him of?

1 A Yes, he did.

2 Q And, at this point in time, had you threatened or
3 coerced him or made any promises in exchange for him
4 waiving his *Miranda* rights?

5 A No, I did not.

6 Q Did he agree to, in fact, make a statement?

7 A Yes, he did. He--- After we were done with *Miranda*,
8 he looked at me and asked me if he was getting
9 arrested. I told him, yes; and he wrote a statement.

10 Q All right. Could you please start at the beginning of
11 the statement and read into the record the statement
12 as it was prepared by Lance Williams?

13 A I'll do the best I can. On 8/15/2010, **Victim** **[REDACTED]**
14 was in my car, in my care. She has two bruised ears
15 which is the result of two slaps to each ear, one for
16 discipline because she was throwing toys everywhere,
17 the other ear due to her throwing her cup around. The
18 bruises on her head are from falling outside on rough
19 terrain while playing. The bruises on her arms are
20 due to lifting her by her elbows. The bruise on her
21 neck occurred sometime while playing outside. I might
22 have grabbed her shirt collar to catch her and bring
23 her back. The bruising around her privates is from
24 the cream I applied for her dry skin as I applied too
25 much force due to the lack of feeling in my hand. I

1 gave her a bath around afternoon due to her sweating
2 in her sleep. And then--- And that's the end of his
3 written statement. And then I wrote out several
4 direct questions to ask him.

5 Q All right. And, on that first page where you refer to
6 the end of the written statement, whose signature is
7 contained on that particular document?

8 A To the left is mine as a witness and Lance Williams'
9 on the right.

10 Q All right. And what are the dates acknowledging these
11 signatures?

12 A March 16th, 2010.

13 Q Say that again?

14 A Oh, excuse me. Oh, April 16th, 2010. I'm sorry.

15 Q All right. In the earlier portion, I believe you had
16 referred to August 15th, 2010. Would that be August
17 or could that be April?

18 A April 15th, 2010.

19 Q All right. What happened next?

20 A With the statement?

21 Q Yes.

22 A Okay. On the second page, I wrote several direct
23 questions that I wanted to get answers to.

24 Q At this point in time, was Mr. Williams still
25 voluntarily participating in the interview and

1 providing a statement?

2 A Yes.

3 Q At any point, had he asked that questioning stop?

4 A No.

5 Q Please continue.

6 A Okay. Question number one, I wrote, how many diapers
7 did you change yesterday? He said, five. What kind
8 of cream did you rub on her vagina? He wrote, Aveeno
9 lotion. Where did the blood come from? He wrote,
10 butt. Do you spank **Victim** Mr. Williams wrote,
11 yes. Do you have an anger problem? Mr. Williams
12 wrote, yes. And the last question, what happened to
13 **Victim**'s vagina? And, in quotations, I said
14 bruises. And he wrote, was angry that poop got in
15 between her and used excessive force to clean and wipe
16 her. Poop got in between her lips and used excessive
17 force to clean her.

18 Q All right. And whose signature is on this document?

19 A Mine and Mr. Lance Williams'.

20 Q All right. And what is the date of this document?

21 A April 16th, 2010.

22 Q Was this second portion of the statement a part and
23 parcel of the first statement after his waiver of
24 *Miranda*?

25 A Yes, ma'am.

1 Q Now, you mentioned that, on the second page, he gave a
2 different response as to the vaginal bruises than on
3 the original statement.

4 A Originally, before the written statement, he mentioned
5 that he was putting cream on her. And, when the
6 written statement was completed, he mentioned it was a
7 poop diaper that caused what had happened for the
8 injuries.

9 Q All right. And, based upon your observations
10 throughout this proceeding where you were interviewing
11 Mr. Williams, did his waiver of *Miranda* rights appear
12 to be free and voluntary?

13 A Yes.

14 Q Did his participation in the interview appear to be
15 free and voluntary?

16 A Yes.

17 Q Did his participation in supplying a written statement
18 appear to be free and voluntary?

19 A Yes.

20 Q And did his participation in answering the additional
21 questions on the second page appear to be freely and
22 voluntarily given?

23 A Yes.

24 Q At any time, did he refuse to answer further questions
25 or refuse to do so without an attorney being present?

1 A No.

2 MS. MAYES: Beg the Court's indulgence. Nothing
3 further at this time.

4 THE COURT: Thank you, Solicitor. Mr. Snell, Mr.
5 Floyd? Mr. Floyd?

6 MR. FLOYD: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION BY MR. FLOYD:

9 Q Detective, if I heard you correctly, you began
10 investigating this case around 2:00 o'clock in the
11 afternoon of the 16th. Am I correct on that?

12 A Yes, sir.

13 Q And you first spoke with Mr. Williams by telephone--
14 did I get that right--around 7:00 or something like
15 that? Or was it before that?

16 A I can give you the exact--- I can give you the time
17 when I spoke with him. It was about approximately
18 4:25 p.m.---

19 Q 4:25 p.m.?

20 A ---that I spoke with Mr. Williams.

21 Q That's the phone call?

22 A Yes, sir.

23 Q And that was--- Pursuant to that phone call, you set
24 up him coming to meet you at the Sheriff's Department.
25 Is that correct?

1 A Yes.

2 Q Now, before you spoke to him by phone, who all had you
3 spoken to concerning this matter?

4 A In between--- I want to say after the phone call I
5 interviewed, if I got it correctly, Brittany's father
6 and I obtained a statement from LeeAnn Harvey.

7 Q Now, isn't it true that, before you spoke with him at
8 the jail or at the Sheriff's Department, he was your
9 prime suspect, was he not?

10 A He was number one on the list.

11 Q He was the only suspect, wasn't he?

12 A Well, he denied it; and, during the phone call, he
13 said she had fallen and explained something, you know,
14 on her head. But I had no explanation on the other
15 bruises, and other people did have contact with her.
16 So he was on the top of a list of several people.

17 Q Well, were there any other suspects at that time?

18 A Yes, sir.

19 Q There were?

20 A LeeAnn Harvey and Brittany.

21 Q But you had taken their statement.

22 COURT REPORTER: I'm sorry. You had what?

23 MR. FLOYD: Taken their statement.

24 A I briefly talked to Brittany at the hospital, and she
25 had an episode at the hospital that I couldn't get a

1 full statement from her.

2 Q At the time he arrived at the Sheriff's Department,
3 and am I correct, about 7:00 p.m.?

4 A Yes, sir.

5 Q Had you spoken anymore to Brittany and LeeAnn?

6 A I don't recall. I don't believe I did.

7 Q Now, you had been told, of course, that he's the one
8 that delivered the child to the grandparents in the
9 shape it was in. Is that correct?

10 A Yes.

11 Q You had been told, had you not, that, when the mother,
12 Brittany, had last seen the child, she did not have
13 those bruises?

14 A The best I can recall, yes.

15 Q And that, when LeeAnn had seen the child, she had not
16 seen the bruises.

17 A That is what I was told, yes.

18 Q So there was nobody else other than Mr. Williams,
19 pursuant to your investigation at that point, that
20 could have been the perpetrator of the bruises. Is
21 that correct?

22 A He was on top of the list of those people, and he
23 didn't--- He wasn't aware--- He told me he wasn't
24 aware of those bruises either until I brought it to
25 his attention by pictures.

1 Q And did you believe that?

2 A I was suspicious of it.

3 Q So, when---

4 A I mean---

5 Q I'm sorry. I didn't mean to cut you off.

6 A I was suspicious of that, yes.

7 Q So, when he arrived at the Sheriff's Department, can
8 you tell us where this interview was conducted?

9 A It was conducted in interview room number one which is
10 one of the interview rooms set up at the Sheriff's
11 Office.

12 Q And you have to have a key to get down that hallway
13 don't you?

14 A A code.

15 Q A code. Is this a locked door?

16 A Yes, sir.

17 Q It's a locked door. And so he was in the Sheriff's
18 Department behind a locked door. Is that correct?

19 A Yes.

20 Q And were you the only officer present at that time or
21 was Detective Palkowski with you at that time?

22 A Initially when I sat down with Mr. Williams, I was
23 getting his background waiting on Sergeant Palkowski,
24 and we had a five-minute conversation about where he
25 was born, where he had lived and when he came back to

1 Swansea and things of that nature. Then we were met
2 by Sergeant Palkowski.

3 Q So five minutes alone with you and then, from then on,
4 the two of y'all.

5 A Yes.

6 Q And did your interview begin with Mr. Williams at
7 7:00 o'clock or your talking to him began at 7:00
8 o'clock?

9 A We talked at 7:00, about roughly 7:00 p.m. When he
10 arrived, we met in the front lobby. His daughter was
11 there, his mother. And we went to the back for me to
12 get a statement.

13 Q Well, you didn't take his daughter and his mother back
14 there, did you?

15 A No, sir.

16 Q And you've introduced a Court's Exhibit Number 1. And
17 what is the date down there for the time? I'm sorry.

18 A The time is 20:25.

19 Q That's 8:25?

20 A 8:25 p.m.

21 Q Okay. So he had been with you for this, quote,
22 interview for an hour and 25 minutes.

23 A Roughly.

24 Q And it was only after an hour and 25 minutes that you
25 informed him of his *Miranda* rights.

1 A I don't understand that question.

2 Q Well, I mean, the time on the *Miranda* form is 8:25.

3 A That's the time when the statement is completed.

4 That's how I do my statements. I write--- The upper

5 right-hand has, of that statement, particular

6 statement, has got the time a statement will start.

7 And, when I sign it, when it's completed, I will write

8 the date and time of when it's completed. And that

9 was when it was completed.

10 Q When did you--- At what time did you inform him of his
11 rights?

12 A I don't--- Let's see. I don't have a specific time of
13 that.

14 Q But it was after you discussed with him the
15 fingerprints on the arms, after you discussed with him
16 the bruising on the ears?

17 A Yes.

18 Q After you discussed with him the bruising on the
19 forehead?

20 A Yes.

21 Q After you discussed with him the bruising on the
22 vagina and the eczema and the cream?

23 A Yes.

24 Q That's when you stopped and informed him of his
25 rights. Is that what you said earlier?

1 A That is correct.

2 Q But you can't tell us what timeframe that was.

3 A I can estimate. This took a matter of--- This
4 interview, I jumped into it quickly; and I would say
5 my recollection is within 15, 20 minutes of taking out
6 those pictures and him making those statements. And
7 when I knew he was getting arrested is when I stopped
8 and gave him *Miranda*.

9 Q And then the questioning continued for an hour after
10 that?

11 A Well, if you take 7:00 p.m. and then add 20 and do the
12 math, I guess roughly, yes, sir.

13 Q Now, this statement is only one page. Is that
14 correct?

15 A Yes.

16 Q Take what? Five minutes?

17 A It was a slow process for him to write that.

18 Q Before you spoke to Lance, did you speak to Rebecca
19 Jones?

20 THE COURT: To who?

21 MR. FLOYD: Rebecca Jones.

22 A You stumped me, sir. I don't--- I don't know who
23 Rebecca Jones is.

24 Q How about Katie Cooper?

25 A No.

1 MR. FLOYD: No further questions, Your Honor.

2 THE COURT: Redirect, Solicitor?

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

4 REDIRECT EXAMINATION BY MS. MAYES:

5 Q When you mentioned previously that there were other
6 suspects and initially in this investigation there
7 were multiple suspects, why is that?

8 A Seeing her bruises and where they were placed at, I
9 didn't know how they occurred. Initially, you know,
10 you can make assumptions. But we had to go based upon
11 who had their hands on this child, and that's how I
12 proceeded and, starting with number one, was mom.
13 And, again, I was limited on the statement I could get
14 from her at the hospital. And LeeAnn Harvey was
15 another one and, of course, Lance Williams who was
16 keeping her the day before.

17 Q All right. And, based upon your experiences as an
18 investigator, do you sometimes have multiple
19 perpetrators?

20 A Sometimes.

21 Q And may those perpetrators sometimes accuse one
22 another?

23 A Yes.

24 Q And so, in this instance, the fact that some other
25 adults were indicating that Lance Williams was the

1 sole suspect, was that information 100 percent
2 reliable up until you had spoken with Lance Williams?

3 A No information was reliable as far as I was concerned
4 until I figured out how she received the bruises.

5 Q And, when we talk about his custody status, when he
6 arrived there, was he in custody?

7 A No, ma'am.

8 Q And, during the initial portions of the interview
9 prior to being advised of his *Miranda* rights, was he
10 in custody?

11 A No.

12 Q And, when we talk about the statement, the handwritten
13 statement of Lance Williams that he prepared himself,
14 how do you go about allowing someone the time or
15 freedom to prepare a statement? Do you put time
16 constraints on it?

17 A No, and we--- I make it a point to prepare them with
18 the statement, give them the statement form and write
19 down--- My only instruction to him was, write down
20 what you told me and your story. And we give them the
21 statement form, and I make it a point not to interrupt
22 them until they're done. And this was a slow process
23 for him to get through it, and we got through it.

24 Q Thank you. Nothing further?

25 THE COURT: Recross, Mr. Floyd?

1 MR. FLOYD: Just a couple of questions.

2 THE COURT: Certainly.

3 CROSS EXAMINATION BY MR. FLOYD:

4 Q Was Mr. Williams free to leave?

5 A At the beginning, I'd say yes; when he made
6 incriminating statements, absolutely not.

7 Q So, as soon as he made one incriminating statement, he
8 was no longer free to leave.

9 A When I felt like he was getting arrested, he was not
10 free to leave. And that's when I gave him his
11 *Miranda*.

12 Q And did you ever tell him he was free to leave?

13 A I don't recall if I specifically said that to him.

14 Q And there were two of you in the room, were there not?

15 A Yes, sir.

16 Q Both of you were seasoned, experienced detectives. Is
17 that correct?

18 A Yes.

19 Q And he's a young man, is he not?

20 A He's young.

21 Q Now, did you record his interview?

22 A No, sir.

23 Q And I assume it was not videoed either.

24 A No, sir.

25 Q But no question that it took place behind locked

1 doors.

2 A I'm sorry?

3 Q No question that it took place behind locked doors.

4 A Yes.

5 Q And Mr. Williams did not have the key to that door,
6 did he?

7 A No, he did not.

8 Q Nor did he know the combination to the lock.

9 A That is correct.

10 MR. FLOYD: No further questions, Your Honor.

11 THE COURT: Thank you, Detective. You may step
12 down. Solicitor, you may call your next witness.

13 MS. MAYES: That is the only witness on this
14 matter, Your Honor.

15 THE COURT: All right. Thank you. Mr. Floyd,
16 Mr. Snell, do y'all have any testimony y'all are going to
17 offer in this regard?

18 MR. FLOYD: No testimony to offer. Argument, but
19 no testimony.

20 THE COURT: All right. Thank you. Solicitor,
21 I'll be glad to hear from you.

22 MS. MAYES: Yes, sir, Your Honor. It has been
23 established through this detective's testimony that, in
24 this particular case, Mr. Williams arrived voluntarily at
25 the law enforcement center after speaking with him on the

1 telephone and knowing that he would be questioned regarding
2 injuries which were alleged to have occurred to Victim
3 and he voluntarily arrived without being brought in by law
4 enforcement. He--- I believe the testimony was with other
5 family members. He voluntarily agreed to participate in
6 the interview; and, during the course of the interview, he
7 provided several explanations of accidental means to
8 account for Victim's injuries and he continued to provide
9 such explanations. And then, as the detective followed up,
10 again during the course of the voluntary interview, he
11 acknowledged striking the child along the ears which he
12 said he did for disciplinary reasons. And then he was
13 shown the photograph of bruises to the child's vagina; and,
14 at that time, he told a story about having a numb hand and
15 putting cream on her vagina and then pushing or pressing
16 too hard into her vagina. And, as the detective indicated,
17 at that point, he stopped and advised him of his *Miranda*
18 rights, him having not been in custody up to that point and
19 having freely and voluntarily agreed to participate in the
20 interview. As testified to, he appeared to understand
21 those rights, willingly and voluntarily waived those rights
22 and then continued to participate in the interview to the
23 point of providing the written statement to law enforcement
24 and the follow-up questions to law enforcement. By all
25 indications, Your Honor, the full text of each statement

1 was freely and voluntarily given.

2 THE COURT: Thank you, Solicitor. Mr. Floyd?

3 MR. FLOYD: Your Honor, I think the evidence is
4 clear that, even by the admission of the detective, Mr.
5 Williams was the prime suspect, and we would speculate the
6 only real suspect, that he had in this case when he
7 conducted this interview. The interview was conducted
8 behind closed doors, behind locked doors, in the presence
9 of two experienced detectives and this young man. Your
10 Honor, it's our position that, before this interview began
11 behind those locked doors, they admitted--- Well, there's a
12 question about when he was able to leave; but there is no
13 question that he was behind locked doors and, at that point
14 in time, was in the Sheriff's Department behind locked
15 doors. So his freedom is restrained. They should have
16 given him his *Miranda* warnings at that time before they
17 began questioning him. Your Honor, it's our position that,
18 when they began this questioning without giving him any of
19 his *Miranda* warnings, they planted the seed to
20 the poisonous tree there from. He said they didn't need
21 to give it to him then, which we submit they did. He
22 admitted--- What he said was, as soon as I had him
23 admitting the crime, I gave him the *Miranda* warnings. I'll
24 get to whether or not that cures anything in a moment. But
25 he first said that Mr. Williams admitted that he put the

1 bruises on the child's arms. He's got possible criminal
2 activity right then. He admitted secondly that he put the
3 bruises on the ears, both ears, on two different occasions
4 striking the child, a 15-month-old child. That's a crime
5 right there, Your Honor; but he didn't stop and give him
6 the *Miranda* warnings then. He kept going, talking about
7 the bruises on the forehead, kept going, talking about the
8 bruises on the vagina. Then he gives him the *Miranda*
9 warnings. Your Honor, we don't think you can cure the
10 poisonous tree by later giving the *Miranda* warnings. Once
11 they started the questioning in violation of the *Miranda*
12 warnings, anything that happened thereafter, it would be
13 the fruit of that poisonous tree. And you can't cure that;
14 you can't cleanse that by stopping and giving him the
15 *Miranda* warnings. And we would move that all statements be
16 suppressed.

17 THE COURT: Thank you. Thank you, Mr. Floyd.
18 All right. Well, in analyzing the statements, first
19 starting with the oral statement, the question becomes
20 whether or not Mr. Williams was in custody at the time the
21 oral statement was given that would trigger the
22 requirements of *Miranda* warnings. I looked back to the
23 cases that have been decided in South Carolina, citing the
24 United States Supreme Court precedent. I first looked at
25 *State v. Evans*, 582 S.E.2d 407. Law enforcement

1 must state the *Miranda* warnings after a person has been
2 taken into custody or otherwise deprived of his freedom of
3 action in any way. It states that, in order to determine
4 whether a suspect is in custody, the trial court must
5 examine the totality of the circumstances, which include
6 factors such as the place, the purpose, and the length of
7 interrogation, as well as whether the suspect was free to
8 leave the place of questioning. The custodial
9 determination is an objective analysis based on whether a
10 reasonable person would have concluded that he was in
11 police custody. In *Evans*, in the appellate decision
12 authored by Chief Justice Toal, the facts are that Evans,
13 who was accused of setting a mobile home on fire and
14 burning it to the ground killing her three children, two
15 officers, a SLED lieutenant and another officer,
16 interviewed her at the local Sheriff's Department. I
17 believe that was in Chesterfield County. In that
18 interview, she gave several reasons as to how the fire may
19 have started, a faulty electrical outlet, dogs under the
20 trailer disrupting the electrical wire, a heating stove.
21 They also requested a third officer. The two officers that
22 were interviewing her originally requested a third officer,
23 the head of SLED Child Fatality Division, attempt to talk
24 with Evans who was shaking, sobbing, very nervous. That
25 officer attempted to sympathize with Evans by discussing

1 religion, saying that her children must be in Heaven. He
2 also discussed Evans' dead mother and the female problems
3 that Evans had experienced in the birth of her three
4 children. Evans kept asking for help, and Edwards told her
5 she would get her some help. The Court, in that case, in
6 reviewing the objective standard, took into account that,
7 at that time, Evans was in her mid-20's, mildly retarded,
8 no evidence of any record, so no real evidence of exposure.
9 He further found that Evans was not free to leave, that,
10 when she went to the restroom, she was accompanied at all
11 times by an agent who waited outside the restroom. They
12 also would not permit her cousin to go back to the
13 interview room. They further placed her in a back office
14 in the police station. They further noted--- The judge
15 noted that the interview was lengthy, as it lasted three
16 hours and the judge was most concerned with the agent's
17 purpose. The judge suppressed the statement under *Evans*
18 finding there was custodial interrogation, that she was in
19 custody and should have been advised of *Miranda*. That
20 decision was upheld by the Supreme Court upon the State's
21 appeal. Then I look at *State v. Navy*, both the Court of
22 Appeals' case, 635 S.E.2d 549--that's the Court of Appeals'
23 decision--and *State v. Navy*, the Supreme Court of South
24 Carolina, 688 S.E.2d 838. Again, the standard is the same.
25 In the Court of Appeals' case, the Court of Appeals

1 reversed the finding that Navy was not in custody at the
2 time he gave his oral statement to officers of the Richland
3 County Sheriff's Department. The trial judge in that case,
4 Judge Cooper, ruled that Navy was not in custody. He
5 looked at the *Evans* case and compared it to *Evans* and said
6 he was concerned with the, quote, bullying atmosphere in
7 *Evans*. The facts are very instructive in *Navy*. In *Navy*,
8 two officers, experienced officers of the Richland County
9 Sheriff's Department, drove to Navy's home on the day of
10 the victim's, the child's, funeral visitation and asked
11 Navy if he would be willing to accompany them to the police
12 station for more questioning. Navy inquired as to whether
13 the questioning could wait until after the funeral. He was
14 informed that it could not wait. He was not placed under
15 arrest but agreed to ride with the officers in their car to
16 the police station. He was not given his *Miranda* warnings,
17 and he gave a statement at 9:50 a.m. describing the events
18 on the day the victim died. He gave varying statements.
19 The victim died of suffocation I believe in that case. The
20 Court of Appeals reversed the trial judge's finding that
21 Navy was not in custody at the time that oral statement was
22 given. It was then appealed to the South Carolina Supreme
23 Court. The South Carolina Supreme Court reversed the Court
24 of Appeals and found that Navy was not in custody at the
25 time he gave that statement, therefore, the finding by the

1 circuit court judge was correct. Would a reasonable person
2 have believed he was in custody? I would further point out
3 that the Supreme Court in that case cites *State v. Evans*,
4 the first case that I have cited today. So we look at the
5 totality of the circumstances from an objective standard.
6 There is a phone call at 4:25 from the officer to Mr.
7 Williams requesting that he come to the Sheriff's
8 Department. Thereafter, two hours and 35 minutes later
9 approximately, the Defendant arrives by a private vehicle
10 voluntarily. He then accompanies the detective, only
11 Detective Prestigiacomo initially, to interview room number
12 one at the Lexington County Sheriff's Department. I take
13 into account that there is a code to the hallway and that
14 there is a locked door in that location as the officer
15 testified to, as Mr. Floyd points out. The officer states
16 that Mr. Williams is the prime suspect, however, not the
17 only suspect, and that the suspect in the phone
18 conversation said he wanted to get this straightened out
19 because he had a wedding to go to in South Carolina, in
20 Alabama. The officer begins questioning him as the--- At
21 some point in time, another officer arrives. I note from
22 the initial statement form prior to the advisement of
23 rights that the Defendant indicates that he completed the
24 12th grade in school, that he had can read and write, his
25 initials appear in that location. So he is not in the

1 mildly-retarded category as Ms. Evans nor does it appear,
2 from any of the testimony heard by this Court, that there
3 is any emotional outbreak by the Defendant during this
4 questioning. The entire length of the questioning goes
5 from 7:00 to 8:25 p.m. as noted on the form, so the length
6 of the detention is one hour and 25 minutes in total,
7 approximately the first 25 to 30 minutes pre-Miranda.
8 Given the method of arrival, the voluntary arrival, the
9 agreement to participate, the accidental explanations, the
10 officer's testimony that the Defendant was free to leave, I
11 would find that the oral statement is admissible, that Mr.
12 Williams was not in custody at that time, therefore, it
13 would not require the *Miranda* warnings. I would further
14 find that those were voluntary statements under the
15 totality of the circumstances. As to the written
16 statement, I would find--- And I make that based on an
17 objective standard. I do not take into account only and
18 solely the officer's subjective testimony that he was free
19 to leave. It's the Court's view that a reasonable person
20 arriving voluntarily in a private vehicle, never requests
21 any help, not under the influence, cooperating with the
22 officers, wanting to clear it up, that a reasonable person
23 would believe they were free to leave. Thereafter, he
24 appears to be advised of his rights as the officer
25 testified. Once he had made the decision that he was going

1 to place him under arrest, it appears he was appropriately
2 advised of his *Miranda* warnings and that that statement was
3 freely and voluntarily and knowingly given, that he waived
4 those rights and that the written statement is also
5 admissible, Court's Exhibit Number 1. All right. Any
6 other motions from the State, Solicitor?

7 MS. MAYES: Nothing at this time, Your Honor.

8 THE COURT: All right. Mr. Snell, I believe you
9 stated--- Did you want to put anything else on the record
10 in that regard, Mr. Floyd? I wasn't going to cut you off.

11 MR. FLOYD: No, not on that point, Your Honor.

12 THE COURT: All right. Thank you. Did you--- I
13 believe you had indicated you had other motions, Mr. Snell?

14 MR. SNELL: Yes, Your Honor. Your Honor, the
15 first--- The first matter has to do with the indictments in
16 the case, specifically the indictment for unlawful neglect
17 of a child.

18 THE COURT: All right. Let me see if I still
19 have it up here, Mr. Snell. I do. All right. That's
20 indictment 2010-GS-32-1860. All right. Yes, sir?

21 MR. SNELL: Your Honor, this indictment is styled
22 unlawful neglect of a child, referencing Code section 20-7-
23 50. That Code section was repealed I believe on June 16th,
24 2008. This case arose from circumstances occurring on
25 April 15th, 2010. So, Your Honor, with regards to this

1 indictment, on the front and the back it references a Code
2 section which doesn't exist. That whole section was moved,
3 I think rearranged and made its own title.

4 THE COURT: All right. And what's your motion?

5 MR. SNELL: Your Honor, at this point, I would
6 make a motion to quash this indictment because it's
7 procedurally defective enough that it's---

8 THE COURT: All right. Solicitor?

9 MS. MAYES: Yes, sir, Your Honor. It's not only
10 this indictment, but one thing that I have found is that
11 all of the Solicitor's indictments under this particular
12 statute are captioned incorrectly. Apparently, that had
13 something to do with the CDR Code. In the body of the
14 indictment which sets forth the allegation, it does allege
15 the correct statute, and that statute is Title 63-7--I'm
16 sorry--63-5-70. That is the violation there for unlawful
17 conduct towards a child, and it is set forth in the body of
18 the indictment. The caption is in error; however, I do
19 want to point out to the Court that, when they recodified
20 this--I believe that took place in 2008--they did not
21 change the statute, they did not change any elements or add
22 anything at all. They took the same exact statute that had
23 been 20-7-50 and just recodified it under the, recodified
24 the Children's Code into Title 63. So the statute itself
25 was not altered in any way. There is case law supporting

1 the fact that the caption of the indictment is not the
2 allegation, it's the body of the indictment that sets forth
3 the allegation that is material; and, in this case, the
4 correct statute is alleged within the timeframe that this
5 offense occurred. And I believe that date, Your Honor,
6 where the statute was changed, I believe that occurred June
7 16th, 2008. But, again, that was just recodifying the
8 actual statute number, not any of the specific allegations
9 or elements that make up the offense. It does not affect
10 the sentence or any other aspect of that legislation.

11 THE COURT: All right. Thank you, Solicitor.
12 Anything further, Mr. Snell?

13 MR. SNELL: Your Honor, I'm not--- I'm not aware
14 of any case law indicating that the caption is irrelevant.
15 And this is the single charging instrument that gives the
16 Court jurisdiction. And I would just ask, if it's been an
17 ongoing problem that the Solicitor's Office knows about
18 prior to this time--and they have had a whole year to
19 represent the case to the Grand Jury---

20 COURT REPORTER: I'm sorry. They had a whole
21 year to---

22 MR. SNELL: To represent the case or make any
23 other necessary adjustments. That hasn't been done. So,
24 at this point, Your Honor, I would just ask that you quash
25 this indictment.

1 THE COURT: All right. Thank you very much. I
2 think there are clearly cases directly on point concerning
3 the caption. I don't know if it's *State v. Gentry* or *State*
4 *v. Smalls* as I sit right here, but nobody has presented me
5 a case one way or the other. Title 17-19-20 states, every
6 indictment shall be deemed and judged sufficient and good
7 in law which, in addition to the allegations as to time and
8 place, as required by law, charges the crime substantially
9 in the language of the common law or of the statute
10 prohibiting the crime or so plainly that the nature of the
11 offense charged may be easily understood and, if the
12 offense be a statutory offense, that the offense be alleged
13 to be contrary to the statute in such case made and
14 provided. The body of this indictment states that it is
15 defined in section 63-7-20 and in violation of 63-5-70.
16 Those laws were renumbered which, as you all know, was the
17 Family Court Code and the Children's Code in that regard.
18 So I would deny the motion to quash the indictment. Do you
19 have another motion, Mr. Snell?

20 MR. SNELL: Your Honor, we do. I make this in
21 the form of a motion *in limine*. Your Honor, in reviewing
22 the discovery materials provided in anticipation of the
23 prospective testimony and medical evidence that may be
24 presented, there are references to the child in this case
25 being the recipient or victim of a sexual assault; and that

1 would come in, I believe, in the form of expert opinion
2 that would ordinarily come in pursuant to Rule 702. It's
3 our position, Your Honor, looking at, specifically at the
4 statute for criminal sexual conduct with a minor in the
5 first degree, sexual battery is specifically defined to
6 include intercourse, different types of acts or the
7 intrusion except for medically recognized or diagnostic
8 purposes. Your Honor, I believe that, while the doctors
9 and the other providers may be competent to testify as to
10 their factual findings and opinions as to, that would stem
11 from the act, whether or not this was a sexual assault or a
12 physical assault which would go to the mental state of the
13 Defendant or the alleged perpetrator would be beyond the
14 scope as permitted by Rule 704. We also believe it would
15 be excludable under Rule 403 as being prejudicial. I also
16 submit to Your Honor that I believe referring to it as a
17 sexual assault or her being the victim of a sexual assault
18 may also be testimony or opinion on a matter of law which
19 is not permissible pursuant to the case of, South Carolina
20 Supreme Court case of *Dawkins v. Fields*. I have a copy
21 that I can hand up, Your Honor.

22 THE COURT: Dawkins?

23 MS. SNELL: Dawkins.

24 THE COURT: D-A-W-K-I-N-S?

25 MR. SNELL: Yes, sir.

1 THE COURT: A Richland County case?

2 MR. SNELL: It's a South Carolina Supreme Court
3 case. It looks like it's--- I'm not sure what county it
4 originated from, Your Honor, but it's 354 S.C. 58.

5 THE COURT: All right.

6 MR. SNELL: And, Your Honor, specifically, I
7 think what we would be objecting to is the reference of
8 witnesses or expert witnesses testifying or offering
9 evidence that there was a sexual assault because, under
10 South Carolina's criminal sexual conduct statute which
11 makes it unlawful sexual battery, the sexual battery
12 doesn't have to be sexual. And, under these standards, we
13 think that testimony or that offer would be beyond the
14 scope of what's permitted, and we would ask the Court to
15 place that restriction.

16 THE COURT: Well, I'm not sure what you're asking
17 me to rule on. You don't want any witness to testify
18 sexual assault?

19 MR. SNELL: Yes, Your Honor. And, if there are
20 written documents they intend on being submitted that
21 reference sexual assault, that that would be a question of
22 law that those witnesses wouldn't be competent to testify
23 to and would not be permissible opinion testimony pursuant
24 to Rule 702.

25 THE COURT: Now, 3--- Did you cite 354 S.C. 58?

1 MR. SNELL: Yes, Your Honor, and that's for the
2 proposition that an expert cannot testify on matters of
3 law.

4 THE COURT: This is that a shareholder's expert
5 could not be part of a summary judgment record. That's the
6 shareholder's case?

7 MR. SNELL: Yes, Your Honor. It's a civil case.

8 THE COURT: What about *Alice, State v. Alice*
9 *Postell Wilkins* where our Supreme Court said that an expert
10 could give an opinion as to the ultimate issue of whether
11 or not an individual was a victim of battered person
12 syndrome or, at that time, battered spouse syndrome?

13 MR. SNELL: Your Honor, it's our opinion that
14 this type of testimony in this case would be beyond the
15 scope of Rule 704 which, that allows for expert opinions on
16 the ultimate issue before the Court.

17 THE COURT: Rule 7--- I'm sorry. I didn't mean
18 to interrupt you.

19 MR. SNELL: Rule 704 because, again, whether or
20 not there was a sexual assault is not the ultimate issue
21 and, additionally, it is--- Basically, Your Honor, they
22 would need simply the medical folks summarizing this. We
23 typically refer to any time there is an injury or contact
24 with the child's genital area as a sexual assault. In this
25 case, the evidence, as I understand it, that led to these

1 charges was not a sexual assault but was physical injuries
2 that Mr. Williams, that the statements say were incidental
3 or ancillary to the diaper change. So, when the medical
4 staff, using their standard medical terminology, medical
5 lingo, sexual assault being any time there is a mark or
6 injury to a child's genital area, I believe, first of all,
7 that's going to confuse the jury; it's prejudicial. It
8 would be guessing as to his mental state without ever
9 having met him or interacted with him or doing anything,
10 examining him or doing anything. I know that medical staff
11 can certainly competently testify to their findings, their
12 objective findings; they can testify to potential causes as
13 far as physical acts. But, when you get into the mental
14 state of the Defendant or the alleged perpetrator, that
15 would be something that's, one, beyond the scope of
16 anything permissible under the rules of evidence. And we
17 would just ask to have any of that redacted or taken out of
18 the testimony or submissions.

19 THE COURT: All right. Solicitor?

20 MS. MAYES: Yes, sir, Your Honor. The State
21 would oppose any limitation in that regard. This is a
22 situation where a one-year-old child was physically
23 assaulted; and then, in addition to that, there will be
24 testimony presented by Dr. Luberoff that she was vaginally
25 penetrated and the degree of penetration is extreme in what

1 is normally seen in child abuse cases. There are many,
2 many child abuse cases which are sexual assaults which
3 don't result in any medical findings at all. Those
4 children have normal medical exams. There are other types
5 of sexual assaults against children which can only be seen
6 microscopically by the use of a culpascope during the
7 course of a sexual assault exam. This case is unique in
8 that Victim injuries were severe enough that she had
9 bruising around the vaginal opening and up through and
10 beyond the vaginal opening and she bled for a substantial
11 period of time as a result of the vaginal penetration. She
12 had been left alone with Mr. Williams for several hours
13 that day. The testimony will be that he gave two different
14 explanations as to the vaginal penetration when he spoke
15 with law enforcement. The State's position is that neither
16 one of those explanations are forthcoming or credible. We
17 will present evidence which discounts both of the
18 explanations provided by Mr. Williams. Now, there was a
19 rape kit collection that was done on Victim and that was
20 negative for semen. But, beyond that, I don't think anyone
21 can fully appreciate what his intentions were; and that's
22 part of what the presentation of our case is about. I
23 believe that the circumstances create a scenario where his
24 intent may be inferred by several of his actions throughout
25 that day. There will be testimony from a witness that,

1 when she tried to enter the home, the door was locked and
2 that, when she later entered, she found Victim undressed
3 or in a different state of dress than she had been in
4 earlier that day. There is also going to be testimony that
5 the Defendant acknowledged giving the child a bath that day
6 apparently after the time period in which the State alleges
7 she may have suffered or endured the vaginal penetration.
8 So where we're going with this, Your Honor, is that she
9 was, by all accounts, physically assaulted and there was a
10 severe penetrating assault of her sexual organ. And I
11 don't know any other way to put that other than to call it
12 a sexual assault. And, ultimately, under this statute, the
13 State is not required to prove that this was a crime for
14 sexual gratification. It's distinguished from other
15 offenses such as lewd act on a child where we would have to
16 establish lewd and lascivious intent. Here, the crime is
17 limited to the vaginal intrusion, however slight, the act
18 of sexual battery. But we do think it's important, as part
19 of the *res gestae* of the crime, for the jury to get a full
20 picture and understand all the different aspects of this.
21 And there may be a reference to this as a sexual assault by
22 various people along the way because I don't really know
23 any other way to term it when a child's vaginal opening is
24 intentionally penetrated. Whether that is done for sexual
25 gratification or for sadistic reasons or in the form of

1 physical torture or punishment, it is still an assault
2 against a child in the form of a sexual crime. It's in the
3 form of a sexual assault regardless of whether he is
4 receiving sexual gratification or some other form of
5 gratification from that act.

6 THE COURT: Thank you, Solicitor. I'm going to
7 deny the motion as to the expert witnesses' ability to
8 testify provided there is a proper foundation laid. I
9 don't know that lay witnesses could give that opinion in
10 any case. Lay witnesses can give certain opinions; they
11 can certainly testify to observations and personal, based
12 on personal knowledge. I'm not exactly clear how that
13 would arise. I'm going to look at this *Dawkins v. Fields*
14 case. I had down--- I misunderstood. I thought it was a
15 *Dawkins* case that was a PCR case over in Richland County.
16 The *Dawkins* case is a summary judgment issue in which
17 Professor Freeman gave an affidavit in support of a summary
18 judgment motion before the circuit judge and the judge
19 refused to consider the affidavit. The Court talks about
20 the affidavit. It was based on personal knowledge, but it
21 was basically in the nature of an oral argument to the
22 trial court at the summary judgment hearing. The only
23 criminal case they cite is *Green v. State* where a criminal
24 defense attorney presented an affidavit from another
25 criminal defense attorney at Green's PCR alleging that

1 Green's trial counsel was ineffective. The Court did not
2 consider that because the expert offered no factual
3 evidence. He proffered his opinion assuming certain facts.
4 As I say--- And that testimony falls outside of Rule 702.
5 So, as to the expert witnesses, I would deny that motion in
6 that regard. They're not giving opinions as to the
7 Defendant's state of mind; they can't even state who the
8 suspect or defendant is. We all know that law. Any other
9 motions, Mr. Snell, Mr. Floyd?

10 MR. FLOYD: Your Honor, there was a matter that I
11 meant to address--

12 THE COURT: Yes, sir, certainly.

13 MR. FLOYD: ---in chambers, and Ms. Mayes has
14 mentioned it and it jogged our memory. We understand there
15 was a rape kit done, and we have been told that it was
16 negative, but we never received a report.

17 THE COURT: All right.

18 MR. FLOYD: And I think we have a right to that
19 report. There may be something that we could use if the
20 witness would be called. We still don't have it, and we
21 need it for trial.

22 THE COURT: All right. What about that, Ms
23 Mayes?

24 MS. MAYES: Yes, sir, Your Honor. I did inform
25 defense counsel of the results of that rape kit, I believe

1 in a timely manner, upon us learning of those results. As
2 far as I know, the report has not physically been
3 generated. We do have that witness available to testify
4 whether for us--she's under subpoena--or she can be
5 available to them. We've let them know that. This is one
6 of those cases where apparently a rape kit was initially
7 sent to SLED but, because suspect standards were not sent
8 contemporaneously with it, it kind of sat there for a while
9 and then they returned it to law enforcement, and he had
10 been in jail I believe about a year. I received some
11 correspondence once this case was transferred to me, from
12 Mr. Snell, requesting that he be added to the roster; and,
13 at that point in time, we started working the case up and I
14 learned that apparently the rape kit had still not been
15 analyzed. We made arrangements to get it to SLED. She
16 analyzed it or screened it immediately for the presence of
17 semen, and it was determined to be negative; and we advised
18 them of that. I believe generating the report is kind of
19 the hold-up because it has to get approval by a supervisor
20 and there is a backlog. We can do whatever it takes to try
21 and see if a report can be generated.

22 THE COURT: All right. If you will do that,
23 Solicitor. Anything further you want me to do in that
24 regard, Mr. Snell, Mr. Floyd?

25 MR. SNELL: And, Your Honor, just for purposes of

1 the record, I think the correspondence was the second
2 criminal bond motion and asking to have the bond hearing
3 scheduled; and the response was having the case added to
4 the trial roster. We also have--- We have a witness,
5 defense witness, who---

6 THE COURT: I haven't even finished with this
7 motion.

8 MR. SNELL: Oh, I'm sorry, Your Honor.

9 THE COURT: Is there anything further you want
10 me to do in regard to the report motion, Mr. Floyd? The
11 Solicitor says she's going to try to get a report
12 generated. Is there anything more you want me do? She's
13 also, as an officer of the Court, told the Court that those
14 witnesses would be available.

15 MR. FLOYD: Well, we appreciate all that, Your
16 Honor; but we still feel like we should have the report
17 before the trial starts.

18 THE COURT: Well, you know, there's that case--I
19 can't call the name of it right now--that Judge Westbrook
20 ordered an expert to prepare a report and the Supreme Court
21 said you can't do that. I can't make them prepare a
22 report. Normally, you get reports. I would like to have a
23 report but--- And, Solicitor, if you would follow that up
24 with SLED. All right. Mr. Snell?

25 MR. SNELL: Thank you so much, Your Honor.

1 THE COURT: Yes, sir.

2 MR. SNELL: Just one other matter. We've got a
3 defense witness that's asked for protection for any time
4 after 12:00 o'clock on Friday; and we certainly could, if
5 appropriate, call them. But we have no control of the
6 schedule at that point. That witness is Selman Watson.

7 THE COURT: Well, I'm not going to guarantee
8 that. You know, I'll certainly try to work with any of
9 your witnesses in that regard. If we have to call that
10 individual out of order, I'll certainly work with you on
11 that.

12 MR. SNELL: Thank you so much, Your Honor.

13 THE COURT: All right. Yes, sir.

14 MR. SNELL: And then, Your Honor, we do have a
15 lot of witnesses that are present in the courtroom.
16 Before--- Your Honor, we make a motion to have those
17 witnesses sequestered.

18 THE COURT: And why? Why do you want them
19 sequestered?

20 MR. SNELL: Well, Your Honor, we have a lot of
21 lay witnesses. They're all going to be--- There's going to
22 be a lot of discussion involving timelines, when different
23 events happened, who spoke to who, when and what did they
24 say.

25 THE COURT: Well, that's not admissible anyway.

1 That's hearsay, isn't it?

2 MR. SNELL: Well, Your Honor, it's going to be---
3 I think there are going to be some witnesses that say, we
4 spoke to this person at this time, we learned this fact at
5 this time, just with regard to--- I think there's a
6 potential that the stories could converge and merge. I
7 think that could be avoided with having the witnesses
8 sequestered. I'm not aware of any prejudice to the State
9 in that regard.

10 THE COURT: Solicitor?

11 MS. MAYES: Yes, sir, Your Honor. None of the
12 witnesses that are going to be offered by the State are
13 eyewitnesses to these events. The only witnesses were the
14 Defendant and the child who was a toddler and was non-
15 verbal. So it's a situation where the only testimony to be
16 offered by the other family members are simply about how
17 they learned that the child had been injured.

18 THE COURT: Have they given written statements?

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

20 THE COURT: What is that recent case of Judge
21 Goode out of Fairfield County? Do you know the name of
22 that case?

23 MS. MAYES: I do not, Your Honor.

24 THE COURT: All right. Well, give me just a
25 moment. Any other motions?

1 MR. SNELL: Your Honor, I see two witnesses on
2 the witness list that we don't have written statements for,
3 and I understand---

4 THE COURT: And who is that?

5 MR. SNELL: Tommi Hutto and Edward Hutto.

6 THE COURT: All right.

7 MS. MAYES: That's correct, Your Honor.

8 THE COURT: Any other motions, Mr. Snell?

9 MR. SNELL: Beg the Court's indulgence, Your
10 Honor. (Pause.) And, Your Honor, there are two additional
11 witnesses who didn't write their statements, their
12 statements were written for them by their daughter; and
13 that is Michael Cooper and Linda Cooper.

14 THE COURT: Did they sign the statements?

15 MR. SNELL: There is a signature, Your Honor.

16 THE COURT: Excuse me?

17 MR. SNELL: There is a signature, Your Honor,
18 purporting to be the witness' signature at the end of both
19 of those statements. And, additionally, there's another
20 witness, Rebecca Jones, too. I don't believe there is any
21 statement from her.

22 MS. MAYES: That witness is not present, Your
23 Honor.

24 THE COURT: All right. The case I was referring
25 to is *State v. Carmack*, C-A-R-M-A-C-K, 694 S.E.2d 224,

1 enlightening us, or enlightening me at least, on Rule 615
2 which is the sequestration rule. In that case, it
3 indicates the trial court is under no obligation to
4 sequester witnesses. I'm ruling that witnesses who have
5 not previously given written statements need to be
6 sequestered; other witnesses may remain in the courtroom.
7 It further says that the mere opportunity for the State's
8 witnesses to compare testimony is insufficient to compel
9 sequestration. The Defendant will have the opportunity to
10 impeach any witnesses who alter their accounts by way of
11 their previous written statements. So, in that regard, in
12 my discretion, I will grant the motion as to witnesses that
13 have not given written statements. Any other motions, Mr.
14 Snell?

15 MR. SNELL: No, Your Honor.

16 THE COURT: Solicitor?

17 MS. MAYES: Your Honor, we would also ask that
18 the chief investigating officer be exempt from
19 sequestration.

20 THE COURT: Well, I--- And I'll allow that. Mr.
21 Snell's motion went to witnesses with the timelines, and I
22 take it the officers won't know, wouldn't have personal
23 knowledge of timelines anyway as far as the event is
24 concerned. Is that correct, Mr. Snell?

25 MR. SNELL: That is correct, Your Honor.

1 THE COURT: All right. Court will be in recess
2 ten minutes.

3 (Whereupon, there is a recess.)

4 THE COURT: Anything from the State before we
5 bring in our jury?

6 MS. MAYES: Nothing further, Your Honor.

7 THE COURT: From the defense, Mr. Snell?

8 MR. SNELL: Your Honor, may I have a couple of
9 minutes to see if I can find co-counsel, Mr. Floyd?

10 THE COURT: Certainly, yes, sir.

11 (Pause.)

12 THE COURT: Just for the enlightenment of those
13 in the courtroom--the attorneys, of course, know this from
14 trying cases or being in my courtroom before--the jury has
15 a hard enough task on any case, but particularly in a case
16 such as this, and emotions can run high, or low perhaps, on
17 both sides of the courtroom from time to time. This Court
18 will not tolerate any head shaking or agreement or
19 disagreement or shrugging or anything of that nature. I
20 consider that contempt; I consider it ramping up the
21 serious task unnecessarily that the jury has facing it
22 anyway. So please keep that in mind. Demeanor is very
23 important. Jurors watch everything in the courtroom.
24 Those agreements can many times work against a person as
25 opposed to for a person. But, be that as it may, that is

1 contemptuous conduct. Please keep that in mind. And,
2 sheriff, if I don't notice it--I work; I try to stay
3 focused; a lot of times, I may be doing some research--
4 please bring it to my attention. All right. Bring us our
5 jury, please.

6 (The jury returns to the courtroom at 4:20 p.m.)

7 THE COURT: All right. Our jury is present in
8 the courtroom. Madame Clerk, would you place our jury
9 under oath, please?

10 (The jury is duly sworn).

11 THE COURT: All right. Well, I imagine I've
12 spent adequate time to convince you of my first prong, that
13 time gets away from me. I assure you it had nothing to do
14 with any of the parties in this case. They were on time.
15 They were working very diligently the entire time. They
16 probably had less than a 30-minute break since they began
17 the jury selection today. I know you will not hold that
18 against either of the parties, either against or for either
19 of the parties. Ladies and gentlemen of the jury, the case
20 we're about to try is the case of the State v. Lance Austin
21 Williams, the Defendant. What I now say is intended to
22 serve as an introduction to the trial of this case. These
23 remarks are not an instruction or a charge on the law. I
24 will instruct you on the law that applies to this case at
25 the end of the trial. This is merely an explanation of the

1 procedure that we will follow in this trial so that you may
2 better understand what may be happening. Lance Austin
3 Williams, the Defendant, is charged by two indictments
4 filed with this Court with the crime of unlawful neglect of
5 a child and criminal sexual conduct with a minor, the
6 elements of which will be explained to you later. Again,
7 ladies and gentlemen, these indictments are simply the
8 charges by which the case is brought into court. These are
9 the formal charging documents that place an individual on
10 notice of the charges that have been brought against him or
11 her; and they're not, in any sense, evidence of any of the
12 allegations contained therein. The Defendant has pled not
13 guilty to these indictments. The State, therefore, has the
14 burden of proving each and every element of each indictment
15 beyond a reasonable doubt; and it will be your duty, ladies
16 and gentlemen, to decide whether the State meets its burden
17 of proof. Your purpose as jurors is to find and determine
18 the facts. You are the sole judges of the facts of this
19 case. If, at any time, I make any comment regarding the
20 facts, you must disregard it. You are to determine the
21 facts from the testimony that you hear from the witnesses
22 testifying under oath before you from this witness stand
23 and any other evidence, documentary evidence or anything of
24 that nature, that may be introduced into court. It will be
25 up to you to determine the inferences which you feel may

1 properly be drawn from the evidence. It is especially
2 important that you perform your duty of determining the
3 facts diligently and conscientiously because, ordinarily,
4 there is no way to correct an erroneous determination of
5 the facts by a jury. On the other hand, and with equal
6 emphasis, the same law that makes you the judges of the
7 facts makes me the judge of the law. The law as given by
8 the Court is the only law you may consider. You must
9 accept it and follow it even though you may disagree with
10 it. I cannot tell you what the facts are, and you cannot
11 disagree with me about what the law is or should be. Your
12 job is to take the law as I give it to you and to apply it
13 to the facts as you find them from the testimony of the
14 witnesses and any other evidence that is introduced. After
15 doing that, you will render your verdicts, true and just
16 verdicts, under the solemn oath that you have just taken as
17 jurors. It is important, ladies and gentlemen, that you
18 keep an open mind and not decide any issue in this case
19 until you've heard all the evidence, the parties have made
20 their closing arguments and I have instructed you on the
21 law in this case. It is your solemn responsibility to
22 determine the guilt or the innocence of the Defendant, and
23 your verdict must be based solely on the evidence as it is
24 presented to you in this trial and on the law as I instruct
25 you during and at the close of this trial. In just a

1 moment, the Solicitor will make what is called an opening
2 statement in which the Solicitor will explain to you the
3 issues in the case or at least what the Solicitor thinks
4 the issues are in the case. Mr. Snell or Mr. Floyd, one of
5 the attorneys for the Defendant, may also make an opening
6 statement although they are not required to do so. A
7 criminal defendant in South Carolina is presumed to be
8 innocent regardless of the seriousness of the charges.
9 That is not just a mere legal theory; it is not just a
10 legal phrase. It accompanies the Defendant and is with the
11 Defendant unless and until you are satisfied by evidence
12 beyond a reasonable doubt that the State has met its burden
13 of proof. Now, what the attorneys tell you during their
14 opening statements is not evidence in the case; it's only
15 their contention as to what the issues are. It is the same
16 with questions or closing arguments. Questions are the
17 framework by which the responses are given, by which the
18 evidence comes to the jury. So the question's not
19 evidence; it's the framework from which the evidence comes,
20 the responses to the questions by the sworn witnesses under
21 oath. Additionally, there could be exhibits offered and
22 introduced into evidence. From time to time during the
23 trial, you may hear one of the attorneys say something
24 like, Your Honor, I believe we have a question of law or a
25 matter of law to discuss with you, or, Your Honor, may we

1 approach the Bench, or sometimes I myself might find it
2 necessary to excuse you from the courtroom for a short
3 while so that the attorneys and I can discuss a matter of
4 law. The reasons for this are because you are the judges
5 of the facts in this case and, sometimes when I'm
6 discussing matters of law with the attorneys, it may be
7 necessary for me to make some comment as to the facts in
8 ruling whether a particular law applies or not. I'm not
9 supposed to tell you what I think the facts are. I do not
10 have an opinion and cannot have an opinion about the facts
11 of the case. So I will excuse you from the courtroom while
12 these discussions take place so that, in no way, will you
13 be influenced by anything that I might say or do in
14 connection with the facts. In determining what the true
15 facts are in this case, you must decide whether or not the
16 testimony of the witnesses is believable. It will be
17 your--- It will be my responsibility to rule as a matter of
18 law as to whether certain testimony is admissible at all or
19 not; but, once the testimony is admitted, whether or not
20 you believe it is solely for you to determine. In deciding
21 whether to believe a witness, you have the right to
22 consider the interest of any witness, the bias of any
23 witness, the prejudice of any witness, the opportunity for
24 the witness to have seen the matters and things about which
25 the witness may testify and the way the witness acts on the

1 witness stand known in the law as the demeanor of the
2 witness. You have the right to consider anything that is
3 in the record that will help you evaluate the testimony of
4 the witnesses. That means it will be your duty to pay
5 close attention to the witnesses, to observe the witnesses,
6 to listen to the witnesses, to pay close attention to the
7 attorneys and to the Court. Don't let your thoughts wander
8 but give strict attention to the testimony in this case so
9 that, at the end of the testimony and after the closing
10 arguments and the instruction on the law by the Court, you
11 will then be in that position to determine what the true
12 facts are and to apply the law to those facts and, thus,
13 render a true and just verdict. Your sole duty is to
14 search out and to find the truth from whatever source it
15 may derive in this courtroom. Ladies and gentlemen, just a
16 couple of administrative issues. There is a speaker system
17 in the courtroom; however, if a witness is testifying and
18 you cannot hear a particular witness, particularly those of
19 you farther away from the witness stand, just please get my
20 attention or the attention of one of our fine bailiffs and
21 we will have the witnesses speak up. I don't know what
22 evidence may be offered or admitted into evidence. Many
23 times there could be some documentary evidence or the like.
24 It will be handed to the jury while you're out here in the
25 jury box and passed among you while you're in the

1 courtroom. You may look at those items all you wish to
2 look at them in the courtroom. Keep in mind, if I allow a
3 document into evidence, a photograph, anything of that
4 nature, it will also be with you in your jury room at the
5 time of your deliberations. Basically, that won't be the
6 only opportunity you will get to look at it, the only time.
7 Again, look at it all you wish to look at it in your jury
8 box keeping in mind you will also have it with you in the
9 jury room at the time of your deliberations. From time to
10 time--- A juror actually pointed this out to me. From time
11 to time, you may see me on the computer. I don't e-mail; I
12 don't play games; I don't read the news. I stay focused on
13 the case. A legal issue may come into my mind that I may
14 think is coming down the pipe, and I will do some legal
15 research at that time. My law clerk does the heavy
16 lifting, legal research, for me; but I assure you it's not
17 something non-related to the trial of the case. If it's
18 annoying to you, write me a note and tell me, and I'll shut
19 it. I mean, there's no problem there. I don't want to
20 annoy any of y'all in any way. Also, breaks. I tell
21 people that's basically what I'm in charge of around here.
22 When we want to take--- When I want to take a break, we
23 take a break. It's just that simple. Well, this is not
24 some type of judicial marathon. If you sit out here too
25 long, your thoughts get to wandering, you won't be able to

1 determine what the true facts are. If you need a break,
2 please raise your hand. Y'all will take y'all's break; we
3 will take our break. Again, it's not some type of marathon
4 in any sense. Any time any of you need a break, please
5 raise your hand, let me know, and we'll take a break. If
6 you have any questions or concerns during the course of the
7 trial, write me out a note, knock on the door and get it to
8 the bailiff. I may work a little late tonight depending on
9 how many witnesses may be available for this late afternoon
10 hour. Does anyone have any childcare issues that they have
11 to pick up children by a certain time or any prior
12 commitments?

13 JUROR: I just need to make a phone call.

14 THE COURT: All right. You need to make a phone
15 call? By what time?

16 JUROR: About 5:00 o'clock.

17 THE COURT: Say that again.

18 JUROR: About 5:00 o'clock.

19 THE COURT: About 5:00 o'clock. All right.

20 Well, maybe--- We'll see if we can do openings by that
21 time; if not, I'll break and let you make a phone call.
22 Any others have any issues?

23 (There is no response.)

24 THE COURT: All right. Thank you very much. Any
25 objections to anything I've told the jury from the State,

1 Solicitor?

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

3 THE COURT: Mr. Snell?

4 MR. SNELL: Nothing from the Defendant, Your
5 Honor.

6 THE COURT: Thank you very much. Solicitor, you
7 may address the jury.

8 MS. MAYES: May it please the Court.

9 THE COURT: Yes, ma'am.

10 MS. MAYES: What this case is really about is
11 broken trust because, in this case, a child's trust was
12 betrayed by someone that she should have been able to rely
13 upon to protect her and care for her. And that person is
14 this Defendant, Lance Williams. Lance Williams was the
15 boyfriend of [Victim] mother. Her name is Brittany
16 [B] Little [Victim] was 15 months of age at the time
17 that this crime occurred. You'll hear testimony about
18 exactly what happened on April 15th, 2010, in the Swansea
19 area of Lexington County when [Victim] was left in the care
20 of Lance Williams. The testimony in this case at times
21 might be hard to listen to; it might at times be hard to
22 look at; but we ask you to keep in mind that it is
23 absolutely necessary for the trial of this case and for the
24 proof of the charges before you to present the evidence
25 exactly as it happened and exactly as it was documented.

1 And, in that regard, the charges before you are two. They
2 are unlawful conduct towards a child, and the second count
3 is criminal sexual conduct with a minor in the first
4 degree. And, at the close of all the evidence, the Judge
5 is going to charge you in much more detail than I'm going
6 to go into now about exactly what the law is. But I submit
7 that the law on these charges is actually pretty simple.
8 When we talk about unlawful conduct towards a child, we are
9 talking about conduct that causes bodily harm, in this
10 particular case to a child that Lance Williams was
11 responsible for her welfare during that time period, and
12 that was as a result of his relationship with Victim
13 mother, Brittany B. The legal term is paramour. But
14 they were dating and had been dating for several months;
15 and, as a result, he had taken on several different roles
16 and responsibilities that normally a parent would take on,
17 or stepparent, such as not just caring for her and watching
18 her when her mom's away but bathing her and helping change
19 her clothes, changing diapers. And, as a result of him
20 assuming that role as a stepfather or boyfriend that she
21 felt she could trust, she had left Victim in Lance
22 Williams' care on this particular day. And the testimony
23 that you're going to hear is that Victim was injured on
24 multiple parts of her body. She suffered bruises to her
25 head, to her neck, to her arms, to her legs and even in the

1 backs of her ears and along the insides of her ears,
2 evidence that is highly specific for child physical abuse.
3 The second charge before you is the charge that we call
4 criminal sexual conduct with a minor in the first degree.
5 And what that means by first degree is that it's committed
6 against a child who is under the age of 11 years old. And,
7 in this case, **Victim** was an infant; she was just one.
8 When we talk about criminal sexual conduct with a minor,
9 that can be any type of sexual conduct that involves
10 penetration of the vagina. Now, it does not mean that we
11 have to prove to you that there was intercourse; it does
12 not mean that we have to prove to you that he was acting
13 out with some specific need for sexual gratification. What
14 the law makes illegal is that it's unlawful to commit an
15 act of sexual battery or intrusion into the vaginal opening
16 of a child. Whether that is a crime of sexual abuse, a
17 crime of physical abuse or a crime of physical torture the
18 law does not distinguish because it is illegal and
19 absolutely unlawful under South Carolina law to commit any
20 act of that nature against a child's sexual organs. And
21 you will hear testimony in this case that **Victim**
22 was vaginally penetrated and that, when she was discovered
23 by other family members after having been in the care of
24 Lance Williams, not only was she covered in bruises
25 externally to multiple areas of her body but that, when her

1 diaper was removed, it was discovered that she had, in
2 fact, been penetrated. You will hear testimony from a
3 medical expert in this regard, Dr. Susan Luberoff, who has
4 spent years treating children of abuse, children who have
5 been subjected to abuse, a physician who is highly, I
6 submit, respected across the State for her knowledge in
7 regards to child abuse injuries. You will hear testimony
8 that Victim was still bleeding vaginally and continued to
9 bleed for some period of time after this assault and,
10 ultimately, Victim was hospitalized at Palmetto Hospital,
11 Palmetto Richland Hospital, for about four days because of
12 these injuries she received by Lance Williams. When we
13 talk about crimes of this nature, it's really hard to
14 establish what causes someone to do a crime like this; but,
15 ultimately, I submit, it's a crime of silence and it's a
16 crime that causes deep shame for victims and, in this
17 particular case, a victim who is not even old enough to
18 speak on her own behalf. But, in this case, that silence
19 has been broken by his own actions. And you'll hear
20 testimony from law enforcement, from the Lexington County
21 Sheriff's Department, that Lance Williams was interviewed,
22 that he waived his *Miranda* rights and agreed to speak
23 voluntarily with law enforcement and that, ultimately, he
24 acknowledged striking Victim on the day in question,
25 delivering blows to both sides of her head, to her ears.

1 And you'll hear that he offered several different
2 explanations as to why he penetrated her vagina with his
3 finger or fingers. But, ultimately, I submit that that
4 statement of Lance Williams and that explanation does not
5 explain the full extent of her injuries and it is not
6 forthcoming. He has been hiding something from law
7 enforcement; he's been hiding something this entire time.
8 He was hiding something, I submit, from Brittany [REDACTED] and
9 her family. And that something is what has brought us here
10 today because the acts he committed against [REDACTED] are
11 absolutely unacceptable in this State and in Lexington
12 County. Thank you.

13 THE COURT: Thank you, Solicitor. Mr. Snell?

14 MR. SNELL: Yes, sir, Your Honor. Ladies and
15 gentlemen of the jury, my name is James Snell, and I'm
16 the attorney for the Defendant in this case, Lance
17 Williams.

18 JUROR: Excuse me. Speak up just a little more.

19 MR. SNELL: I certainly will.

20 THE COURT: Thank you. Thank you very much,
21 Madame Juror. Thank you, Mr. Snell. You may continue.

22 MR. SNELL: Ladies and gentlemen, my name is
23 James Snell, and I'm the attorney for the Defendant in this
24 case, Mr. Lance Williams. Seated at the table with me is
25 my co-counsel, Wayne Floyd, wearing the gray suit. Next to

1 him is Lance Williams, and then next to Mr. Williams is my
2 assistant, Brittany Ashline. We're accompanied here today
3 by members of Lance's family seated behind us, including
4 his mother, Lynn Williams, his grandmother, his mother's
5 friend, Mark Rosenberg, the mother of his own child,
6 Heather Rogers, and other friends. Now, I've been
7 representing Lance since April of 2010, and I can tell you
8 this is an exceptionally serious trial and the State is
9 making exceptionally serious allegations. We realize that
10 this a difficult trial for everyone because of the issues
11 involved and raised and because it involves a child. My
12 job here is the most important that any lawyer ever can
13 have, and that's to ensure that their client isn't unjustly
14 or overly convicted in a very serious case. I'm sure, when
15 the judge read the indictments, many of you had strong
16 reactions; and that's understandable. What's important
17 though is that there not be a rush to judgment or a
18 disregard of the process. I want to stop here for a minute
19 and tell you that there are many things in this case that
20 are not in dispute. Mr. Williams dated Brittany [REDACTED] he
21 had known the family since approximately 2004, 2005; and he
22 began dating Brittany about four months or, well, in
23 December of 2009. On April 15th, well, on April 14th, which
24 was a Wednesday, 2010, there had been some discussions
25 between Brittany and Lance that he would stay and babysit

1 Victim That's her daughter by another man. This was to
2 take place at a friend's mobile home. That original
3 purpose was so Brittany could go and spend time with her
4 father, Kevin B It ended up turning into an all-day
5 commitment where the plans were that Lance would deliver
6 Victim who was 15 months old at this time, to the
7 paternal grandparents, the Coopers, in Pelion. Now, after
8 the Coopers picked her up--and that would have been
9 approximately 6:00 o'clock--they noticed a bruise on her
10 forehead that was described to them as being from a fall.
11 Lance had actually told Brittany about that bruise before,
12 earlier in the day. But, when they got her to the ball
13 field several hours later, they noticed some more bruising
14 coming up on her arms and her head. Katie Cooper, who is
15 an aunt on the father's side of Victim looked at her and
16 found some more bruises. After calling a licensed
17 practical nurse aunt, the decision was made to take the
18 child to the hospital. Now, once the child got to the
19 hospital with these bruises, she was medically and
20 physically examined and law enforcement was called. That's
21 the investigation that started, and this was on late
22 Thursday, the 15th. Well, as that continued the next day,
23 on April 16th, which was Friday, the detective,
24 Prestigiacomo seated over here, had called at approximately
25 4:30 and reached Lance by telephone as he was in southern

1 Spartanburg County to pick up his child for visitation and
2 asked him to come down and discuss the case and the
3 allegations. Lance agreed, drove back from Spartanburg
4 County to the Sheriff's Department here on Gibson Road,
5 brought his own child and, there at the Sheriff's
6 Department, he met his mother, Lynn Williams. Lance went
7 back and, after an interview, provided truthful statements
8 to the detective about the facts and circumstances. In his
9 truthful statement, he accepted responsibility for many of
10 her bruises, but he vigorously denied any type of sexual
11 conduct or touching of Victim [REDACTED] Now, as a result of this,
12 Lance, as the Solicitor has mentioned, is facing two very
13 serious charges. The first is unlawful neglect of a child.
14 In the trial of this case, the State has to prove beyond a
15 reasonable doubt that Lance did do or cause to be done
16 unlawfully or maliciously any bodily harm to the child so
17 that the life or health of the child is endangered or
18 likely to be endangered. The second charge that Lance is
19 facing is criminal sexual conduct with a minor in the first
20 degree. This requires that the State prove beyond a
21 reasonable doubt that a sexual battery was committed upon
22 Victim [REDACTED] A sexual battery, as will be explained to
23 you in the context of this trial, what the law in South
24 Carolina is, is sexual intercourse, cunnilingus, fellatio,
25 anal intercourse or any intrusion, however slight, of any

1 part of a person's body or of any object into the genital
2 or anal openings of another person's body except when such
3 intrusion is accomplished for medically recognized
4 treatment or diagnostic purposes. Now, these events of
5 April 15th and this trial have unfortunately become a
6 central event in everyone's affected lives. It is very
7 important that everyone involved though, and most
8 especially you, ladies and gentlemen of the jury, do your
9 part to ensure that a just and fair verdict is reached.
10 I'm not going to submit here or stand here today and submit
11 to you that Lance Williams is not without fault for his
12 actions. What I am going to submit to you is that the
13 evidence is going to show there was a significant rush to
14 judgment made at the onset of this case that has been
15 carried through today. The worse possible conclusions were
16 drawn as to the motivation and intent of Mr. Williams.
17 Now, the evidence is not going to show that Lance Williams
18 has any sort of attraction or unnatural desire for small
19 children. The prosecutor's job in this trial is to
20 present, by legal evidence and not by emotional standards,
21 that Mr. Williams is guilty beyond a reasonable doubt of
22 all the elements of the charges. You are the sole judges
23 of the facts in the case. No one is going to question or
24 call or challenge your judgment. Just like the Judge is
25 the judge of the law, provides the law, y'all provide the

1 facts and tell the Court what happened. Now, proof beyond
2 a reasonable doubt is the highest burden in the law, and
3 the Court will instruct you later that it is not absolute
4 proof positive but it is the type of doubt that would make
5 a person hesitate before they act. As things are, there's
6 only--- The Court is not a witness, and y'all are not a
7 witness to the facts or circumstances. You only know from
8 the evidence what happened based on the testimony and other
9 evidence presented here to you. We are probably, and I
10 think we are, the only country in the world that has this
11 system of justice; and we have this very high burden of
12 proof that applies even in serious cases because we, as a
13 society, recognize the inequity of a wrongful conviction.
14 The more serious the allegations, the more important that
15 burden becomes. Now, what I'm asking you is that y'all
16 carefully listen to the evidence presented, use your
17 collective life experiences, your background, your
18 understanding of human nature; and, when the time comes for
19 you to deliberate, you need to apply this. And I am
20 confident that you will reach a just and fair verdict in
21 this case. Thank you very much.

22 THE COURT: Thank you. Thank you very much, Mr.
23 Snell. Before we get started, I'm going to ask y'all to
24 step to your jury room. We'll take about 10 minutes. And
25 allow this juror to make a phone call, please, that

1 requested to do so. And then we'll get started back in 10
2 minutes. Thank you very much. Do not discuss the case
3 during this brief recess.

4 (The jury retires to the jury room.)

5 THE COURT: All right. I'm going to be in recess
6 ten minutes. When I come back in here, I'm going to send
7 for the jury, so y'all need to be on time. Court waits on
8 no man or woman. Thank you very much. Let me know when
9 the jury's in, Mr. Corley.

10 (Whereupon, there is a recess.)

11 BAILIFF: We have them all now, Judge. Are you
12 ready for them to come in?

13 THE COURT: Yes, sir. Thank you.

14 (The jury returns to the courtroom.)

15 THE COURT: All right. Our jury is back present
16 in the courtroom. Solicitor, you may call your first
17 witness.

18 MS. MAYES: The State calls Katie Cooper.

19 THE COURT: All right. Ms. Cooper, if you would
20 come forward and be sworn, please.

21 WHEREUPON, KATIE COOPER, being first
22 duly sworn, testifies as follows:

23 CLERK: Have a seat, please, ma'am. Once you're
24 seated, I need you to speak up loud and clear stating your
25 name on the record.

1 THE WITNESS: I'm Katie Cooper.

2 THE COURT: All right. Solicitor?

3 DIRECT EXAMINATION BY MS. MAYES:

4 Q Katie, could you tell us a little about yourself?

5 A I'm Katie Cooper. [Victim] is my niece. My
6 brother, Adam, is her father. And I also have a
7 7-year-old son named Paxton as well.

8 Q All right. And where does your family reside?

9 A [Victim]'s?

10 Q Your family.

11 A Oh, my family? We reside around Springfield.

12 Q All right. And where did you go to high school?

13 A Wagener-Salley.

14 Q All right. And where did your brother, Adam Cooper,
15 go to school?

16 A Wagener-Salley.

17 Q All right. And where did Brittany [B] go to school
18 if you know?

19 A Airport.

20 Q All right. And where do you currently work?

21 A I work at Aiken Surgical Associates in Aiken, South
22 Carolina.

23 Q All right. Now, you mentioned that you are related to

24 [Victim] How are you related to her?

25 A My brother, Adam Cooper, is my or is her father.

1 Q All right. And, if we could, I just want to get a
2 little bit of clarification about that. And last
3 year, on or about April of 2010, how old was Victim

4 A She was about 14 months--no, no--15 months old.

5 Q All right. And, when we talk about Victim her
6 mother's name is?

7 A Brittany B

8 Q And her father's name?

9 A Adam Cooper.

10 Q And I believe you testified previously that you're
11 Adam Cooper's sister. Correct?

12 A Yes, ma'am.

13 Q All right. So that makes you Victim's paternal
14 aunt. Correct?

15 A Yes, ma'am.

16 Q Now, who, back in this point in time, April of 2010,
17 who did Victim live with most of the time?

18 A With Brittany.

19 Q All right. And what arrangements were made for when
20 she sees your brother, Adam, and your family?

21 A We arranged that, back then, we would get her every
22 other weekend; and then holidays and stuff were
23 discussed with Brittany as to how long we would keep
24 her as far as Christmas and things like that.

25 Q All right. And, since Victim's birth, can you tell

1 us whether or not you had the occasion to be involved
2 with her?

3 A Yes. From the day Brittany was pregnant, I was
4 involved.

5 Q And did that allow you--- Can you tell us whether or
6 not that allowed you to know her usual behaviors or
7 unusual behaviors at that point in time when she was a
8 toddler, about 15 months?

9 A Yes, ma'am. From the beginning, I would pick Victim
10 up from Brittany and take her back home. I'm very
11 close with my niece.

12 Q Now, did you know the Defendant in this case, Lance
13 Williams?

14 A I vaguely knew him. I saw him just a few times when
15 I would take Victim back home or to meet Brittany.
16 I would--- He would sometimes be with her.

17 Q All right. And what is your understanding of the
18 living arrangements for Brittany and Victim on or
19 about the time period of April, 2010?

20 MR. FLOYD: We have an objection, Your Honor.
21 That would have to be hearsay.

22 THE COURT: Are you going to cross examine her?

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: I will sustain the objection at this
25 point, Madame Solicitor.

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

2 Q Did you have personal knowledge as to where Victim
3 was living at that point in time?

4 A Yes.

5 Q And what--- How did you have knowledge of that?

6 A By Brittany.

7 Q All right. Now, tell us about what, if anything,
8 occurred in April of 2010, specifically the time
9 period of April 15th, 2010, that was unusual in
10 regards to Victim

11 A I got off of work that Thursday. My son had a
12 baseball game in Pelion at 6:00, and I went straight
13 from Aiken to Pelion. And my parents were meeting
14 Lance in Pelion to pick her up. So, around 6:20 or
15 6:30, I saw them pull up, and Victim --- They were
16 walking to the, to where I was. And they put Victim
17 down on the ground to let her walk. And she usually
18 would run to me and open her arms. Well, she wasn't
19 doing anything whenever I first got to her.

20 Q All right. I'm going to ask you specifically in more
21 detail about that date that you observed these
22 actions, and that would be the date of April 15th,
23 2010. And what time would you estimate it was when
24 you came into contact with Victim

25 A Approximately around 6:20, 6:30, somewhere like that.

1 Q And how do you know that it was approximately that
2 time of day or evening?

3 A I got there--- Well, I got to the ball field about
4 6:00, and Paxton's game had only been playing for
5 about 15, 20 minutes. And my parents, I called them;
6 and they said they were on the way to the ball field.

7 Q So we're talking about the time period of after 6:00
8 p.m.?

9 A Yes, ma'am.

10 Q Did you work that day?

11 A Yes, ma'am.

12 Q All right. And can you tell us whether or not this
13 would've been after your work shift?

14 A It was. I got off at 5:00, and I left from Aiken and
15 came straight to Pelion.

16 Q All right. And tell us a little bit about the ball
17 field that you were at?

18 A It's in Pelion. It's on--- It's Cooper's Park ball
19 field. My son plays ball for Pelion. My parents got
20 there, like I said, about 6:30 with Victim

21 Q All right. And, in addition to anything that you
22 noticed about her demeanor, what, if anything, did you
23 notice about Victim physically?

24 A Well, when I saw her, I picked her up. She was--- I
25 mean, I told my parents she looked like a zombie. I

1 took her to the bleachers where I was sitting at, and
2 I went and bought her some French fries because she
3 likes French fries. She maybe ate two or three of
4 them. She wasn't talking or--- Well, she couldn't
5 really talk then; she could say a few things. But she
6 wasn't doing anything. I noticed she had three finger
7 marks, fingerprints, on the side of her right check.
8 I noticed marks and bruises on her neck. I noticed
9 bruising in her ears, around her ears, behind her
10 ears. I noticed bruising on her head, the back of her
11 head. I noticed fingerprints on her arms. I noticed
12 the bruise on her forehead. And that was it for now.
13 That's what all I noticed then.

14 Q All right. And you mentioned previously that your
15 parents had brought her to the ballpark.

16 A Yes, ma'am.

17 Q And, when you arrived at the ballpark, what, if
18 anything, was different about the area or atmosphere
19 where you were able to observe these injuries?

20 A It was pretty quiet. People were mainly focused on
21 the ball game. I didn't make a big scene out of it
22 from what I saw. When I saw the bruises, I
23 immediately called Brittany and asked her where they
24 came from or if she knew about them.

25 Q What, if anything, was significant about the lighting

1 at the ball field?

2 A I mean, it was--- It was sunny that day. The weather
3 was nice. I mean, everything was fine as far as the
4 day goes. Everything was fine.

5 Q All right. And you mentioned that you observed these
6 bruises and you made contact with her mother. How did
7 you go about making contact with her mother, Brittany?

8 A I called her on her phone from my cell phone.

9 Q And where were you at when you made that phone call?

10 A I was at the ballpark. I was sitting on the
11 bleachers. Victim was sitting to my left.

12 Q All right. And what was the purpose of your call to
13 Brittany B?

14 A I was very concerned about the bruises that I saw on
15 her, especially the fact that it looked like she had
16 been slapped in the face because there were visible
17 fingerprints on the right side of her cheek.

18 Q You can't tell us what anyone said to you in response
19 to that phone call; but, based on the conversation
20 that you had with Brittany, what action was taken by
21 the two of you next?

22 A I sent a picture--- I took a picture of the bruise on
23 her, or the mark on her face; and I sent it to
24 Brittany so that she could see it herself. After
25 that, I called her back and told her that, when we

1 took her home, took her back to my parent's house,
2 that I would call her then.

3 Q And, when you say you sent the picture, in what format
4 did you send it?

5 A I sent it by cell phone.

6 Q Okay. And what happened once you left the ball field?

7 A When I left the ball field, I followed my parents home
8 with **Victim**. We got her home, and I was just really
9 worried about the marks on her. So I got--- I got her
10 there, and I told my mom I was going to check her
11 bottom.

12 Q And, up until this point in time from when you had
13 contact with **Victim** at the ball field up until this
14 point where you have her at the house, what, if
15 anything, was unusual about her demeanor, her
16 behavior?

17 A She was just really quiet. She's a very outgoing,
18 energetic, happy little girl. She was very quiet that
19 day. You know, like I said before, me and **Victim**
20 are really close and she would always want me to hold
21 her or, you know, play with her. And she would not
22 let anybody touch her that day.

23 Q What do you mean by that, that she would not let
24 anybody touch her?

25 A She didn't want anybody holding her. She was very

1 quiet. She's usually very loving when she gets with
2 us, and she wasn't any of that.

3 Q Okay. And you said earlier that, when you got her
4 home and you were in the couch area, you decided to
5 check her bottom. What do you mean by that?

6 A I took her diaper off, and I saw bruising and swelling
7 down there.

8 Q And you're referring to what part?

9 A To her vagina.

10 Q And what did you do next?

11 A I called my aunt. She's a nurse practitioner. My
12 mother came over there and looked at it as well. My
13 aunt came because I wanted her to look at it just from
14 her perspective because she's in the medical field.
15 She came straight to our house. She lives in
16 Springfield. She looked at it and told us to take her
17 to the---

18 MR. FLOYD: Objection, Your Honor. That would be
19 hearsay.

20 THE COURT: That would be hearsay. I would
21 sustain the objection, Mr. Floyd.

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

23 Q You can't say what she said to you. What is the name
24 of your aunt that is the nurse?

25 A Oh, Rebecca Jones is my aunt.

1 Q All right. And, as a result of her also looking at
2 [Victim] vaginal area, what steps were taken next?

3 A I called Brittany and told her that me and my mother,
4 Linda, were going to take her to the ER, Richland
5 Memorial. We met Brittany first in Swansea. On the
6 way there, [Victim] was just irritable, crying. As
7 soon as we met at the BP in Swansea, I got [Victim]
8 out of the car and took her to Brittany so that
9 Brittany could see the marks on her as well.

10 Q And you say this was at the BP in Swansea?

11 A Yes, ma'am.

12 Q You're referring to the BP service station?

13 A Yes, ma'am.

14 Q And that's where you met up with Brittany [B]

15 A Yes, ma'am.

16 Q What did you observe to be Brittany [B]'s reaction
17 or response to observing the marks on [Victim]

18 A She immediately broke down into tears.

19 Q All right. And what happened next?

20 A We got in my car, and we went straight to the
21 emergency room.

22 Q All right. And so that's from Swansea to Columbia to
23 the emergency room of Palmetto Richland?

24 A Yes, ma'am.

25 Q And, throughout that time, what, if anything, can you

1 tell us about Victim behavior or demeanor?

2 A She was still really irritable and crying. Brittany
3 was in the back seat of my car trying to calm her and
4 comfort her. The whole way there, Victim was just
5 very irritable.

6 Q All right. And, ultimately, can you tell us was
7 Victim admitted to the hospital?

8 A Yes, ma'am.

9 Q And can you estimate how long Victim stayed there as
10 a patient at Palmetto Richland?

11 A She was in there for four days.

12 Q And did you have the opportunity to see her there, to
13 visit her there?

14 A I stayed there. That night when I took her there, I
15 was there until 5:00 that morning with my mother; and
16 then we left and went home and came back that day. We
17 were there every day.

18 Q All right. And you testified previously that, prior
19 to this day, you'd had regular contact or visitation
20 with Victim

21 A Yes, ma'am.

22 Q Had there ever been injuries like this to Victim
23 that you had observed prior?

24 A Not like this, no, ma'am.

25 Q I'm going to show you some photographs, Ms. Cooper,

1 and ask you whether or not you recognize the person in
2 the photographs.

3 MR. FLOYD: Your Honor, we'd, of course, like to
4 review the photographs at some point---

5 THE COURT: All right. Certainly.

6 MR. FLOYD: ---before they're introduced.

7 (Pause.)

8 (Whereupon, there is a bench conference off the
9 record in the presence of the jury but out of the
10 hearing of the jury.)

11 THE COURT: Have it marked.

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

13 COURT REPORTER: One moment, Your Honor.

14 THE COURT: Yes, ma'am.

15 COURT REPORTER: Judge, I'm assuming you wanted
16 me to mark these for ID only at this time?

17 THE COURT: There's one marked for ID only.

18 COURT REPORTER: Okay. Is that the first one you
19 gave me?

20 THE COURT: The Solicitor would have to point
21 that one out.

22 COURT REPORTER: Okay. And then the rest of
23 them---

24 THE COURT: And the others I'm allowing into
25 evidence subject to Mr. Floyd's objection. Is that

1 correct, Mr. Floyd?

2 MR. FLOYD: That's correct.

3 THE COURT: All right. And you can state those
4 objections on the record when the jury retires for the
5 evening.

6 COURT REPORTER: Judge, if I've done this right,
7 I've got State's 1 for ID and then 2 through 7.

8 THE COURT: Correct.

9 (State's Exhibit 1 is marked for identification
10 purposes; State's Exhibits 2 through 7 are marked for
11 purposes of the record.)

12 THE COURT: All right, Solicitor, you may
13 continue.

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

15 Q Ms. Cooper, I'm going to show you some exhibits that
16 are marked as State's Exhibit 7, State's Exhibit 6,
17 State's Exhibit 5, State's Exhibit 4, State's Exhibit
18 3 and State's Exhibit 2 and ask you to review those
19 momentarily.

20 A (Pause.)

21 Q Who is shown in these photographs?

22 A Victim

23 Q All right. Can you tell us whether or not the marks
24 and bruises that are noted in the photographs are a
25 fair and accurate representation of the marks and

1 bruises that you previously described observing on
2 Victim at the ball field on April 15th, 2010?

3 A Those are the exact same marks that I saw.

4 COURT: And, so the record's clear, State's 2
5 through 7 are in evidence subject to previous objections at
6 the Bench. Thank you, Solicitor. You may continue.

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

8 Q Now, I'm also going to show you another exhibit which
9 is unmarked. This unmarked exhibit, can you tell us
10 who is seen in this photograph?

11 A Victim

12 Q All right.

13 MR. FLOYD: Your Honor, I object to the showing
14 of photographs without us seeing them.

15 THE COURT: All right. Well, she hasn't
16 published them to jury. She's asking--- She's laying a
17 foundation. But I'll certainly allow you to review it
18 before I rule on it, Mr. Floyd.

19 MR. FLOYD: Thank you.

20 Q And can you tell us whether or not the injury that you
21 previously described is a fair and accurate
22 representation of what is seen in this photograph?

23 A Yes.

24 Q This photograph fairly and accurately describes that?

25 A Yes. It's the same mark that I saw. That was

1 probably one of the, probably maybe the second mark or
2 third mark I saw on her when I started looking at her.
3 I actually took a picture of that mark, that same
4 mark, with my own camera.

5 Q All right.

6 MS. MAYES: Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 (Attorneys confer.)

9 THE COURT: Now, has that been marked?

10 MS. MAYES: No, sir, Your Honor.

11 THE COURT: I'm sorry. And this will be

12 State's 8?

13 MS. MAYES: Yes, sir.

14 THE COURT: And as to State's 8, Mr. Floyd?

15 MR. FLOYD: I'm sorry?

16 THE COURT: As to State's 8, your position?

17 MR. FLOYD: We don't have any objection.

18 THE COURT: All right. State's 8 is then in
19 evidence without objection.

20 (State's Exhibit 8 is marked for purposes of the
21 record.)

22 Q Ms. Cooper, I'm going to show you now what is
23 State's Exhibit 8. It's the photograph that I just
24 momentarily showed you. And you had indicated that
25 this was one of the injuries that you had

1 photographed. Where in this photograph is the injury
2 that you are describing?

3 A It's on her neck.

4 Q And, in this particular exhibit which is State's
5 Exhibit 2, where is the injury or mark that you noted
6 to be unusual for Victim [REDACTED]

7 A It's on her arm.

8 Q And, in this particular photograph, State's Exhibit 4,
9 looking at the lower extremities below, below the
10 diaper, where is the unusual mark or marks?

11 A That was on her knee.

12 Q And, in this photograph, State's Exhibit 6, which
13 would be the right ear, where is any mark or marks
14 which appear to be unusual?

15 A In the top picture, there is a fingerprint right below
16 her, well, to the, almost to her cheek. The bottom is
17 bruising or redness to her ear, and you can kind of
18 see the fingerprint just a tad bit better at the
19 bottom picture as well.

20 Q And, in this particular photograph, State's Exhibit 7,
21 which is the left ear area of her head---

22 A Yes, ma'am.

23 Q ---what, if anything, appears to be unusual?

24 A Her ears are bruised and red, and behind her ears are
25 bruised and red as well.

1 Q In this particular photograph, State's Exhibit 3,
2 what, if anything, appears unusual?

3 A There's a fingerprint on her cheek. One is kind of
4 right beside her ear.

5 Q You're referring to this location (indicating)?

6 A Yes.

7 MS. MAYES: Beg the Court's indulgence.

8 THE COURT: Yes, ma'am.

9 MS. MAYES: Nothing further of the witness at
10 this time, Your Honor.

11 THE COURT: Thank you. Thank you very much,
12 Solicitor. Mr. Floyd?

13 MR. FLOYD: Thank you, Your Honor.

14 CROSS EXAMINATION BY MR. FLOYD:

15 Q Ms. Cooper, you first saw Victim at about 6:15?

16 A About 6:20, 6:30, somewhere around there.

17 Q Around 6:20 or 6:30?

18 A Yes, sir.

19 Q And then what time did y'all leave the ballpark?

20 A My son's game is about an hour and a half. I would
21 say around 7:30 we left the ball field.

22 Q So you certainly didn't see anything at that time that
23 would cause you to leave the ball field and take her
24 to get medical attention, did you?

25 A Huh uh (indicating negative response). Not then.

1 Q Because you gave a statement in this case early on,
2 did you not?

3 A Yes.

4 Q And, in that statement, you didn't say anything about
5 fingerprints on the cheek, did you?

6 A I'm not sure.

7 Q Would you like for me to refresh or hand it to you to
8 look at?

9 A Yeah.

10 Q (Hands to witness.)

11 A (Pause.) There's nothing in here about the
12 fingerprints.

13 Q Thank you. Now, you mentioned you'd never seen
14 bruising like this on her. You've certainly seen
15 bruising on her before, haven't you?

16 A Just little---

17 Q Every child gets bruises, don't they?

18 A Yeah, especially on their knees or their shins.

19 Q And how long has she been walking?

20 A She started walking when she was--- It was before she
21 was one. I would say 10, 11 months old, somewhere
22 around there maybe.

23 Q Okay. And did she ever fall down?

24 A Of course.

25 Q And you saw nothing that would make you leave the

1 ballgame early, did you?

2 A I'm sorry. What?

3 Q You didn't see anything about Victim condition
4 that would make you leave the ballgame early, did you?

5 A Well, we had about an hour left, and I called Brittany
6 in between then. So we left as soon as the ballgame
7 was over.

8 Q I understand.

9 A Yes.

10 Q But, if you would've seen something you considered
11 very threatening, you would have left immediately,
12 wouldn't you?

13 A Yes, which I didn't check her bottom until after I got
14 home.

15 Q Thank you, Ms. Cooper. I have no further questions.

16 THE COURT: Redirect, Solicitor?

17 MS. MAYES: No, sir, Your Honor.

18 THE COURT: Thank you. Thank you very much,
19 ma'am. You may step down. Solicitor, you may call your
20 next witness.

21 MS. MAYES: The State calls Brittany B

22 THE COURT: All right. If you'd come around,
23 please, and be sworn, Ms. B

24 WHEREUPON, BRITTANY B being first
25 duly sworn, testifies as follows:

1 CLERK: Have a seat, please, ma'am. Once you're
2 seated, I need you to speak up loud and clear stating your
3 name on the record.

4 THE WITNESS: My name is Brittany B

5 DIRECT EXAMINATION BY MS. MAYES:

6 Q Brittany, how old are you?

7 A Twenty-one.

8 Q All right. And I believe previously it's been
9 testified to, but go ahead and tell us how it is that
10 you are related to the victim in this case, Victim

11 ?

12 A I'm Victim mother.

13 THE COURT: You might have to speak up just a
14 little bit, at least for me, Ms. B I'm not sure
15 about---

16 A I'm Victim mother.

17 Q All right. And, if you can, speak up loud enough so
18 that even this last juror can hear you. Brittany, I
19 want to go back in time a little bit and ask you about
20 earlier in your life. Who is Victim's father?

21 A Adam Cooper.

22 Q All right. And when or approximately how old were you
23 when you met Adam Cooper?

24 A I met him when I was a freshman in high school.

25 Q All right. And, as a result of your relationship with

1 Victim daddy, Adam Cooper, when was Victim born?

2 A [REDACTED] [REDACTED] [REDACTED]

3 Q All right. And, after she was born, did there come a
4 time after she was approximately one year old or
5 around that time that she would've turned one that you
6 began a new relationship?

7 A Yes, ma'am.

8 Q And who was that relationship with?

9 A Lance Williams.

10 Q All right. I'm going to ask you a little bit about
11 that. How is it that you knew Lance Williams?

12 A He was a friend to my brother.

13 Q And is that an older brother or a younger brother?

14 A Yes. My brother's 24.

15 Q All right. And your family--- Who were you living
16 with at that point in time when you first met Lance
17 Williams and started dating him?

18 A My dad.

19 Q All right. So Lance had been a friend of your older
20 brother.

21 A Yes, ma'am.

22 Q And, if you could estimate, how much time had gone by
23 or how much, how many months prior to this event
24 occurring in April of 2010 was it that you and Lance
25 weren't just friends anymore but had started dating or

1 having a romantic relationship?

2 A We started dating December, 2009.

3 Q Now, once you started dating, how frequently would you
4 see Lance?

5 A Usually before he went to work or after he went to
6 work.

7 Q And where was he working at the time?

8 A He was working at Mesa Airlines at the Metropolitan
9 Airport.

10 Q All right. So that would be located---

11 A In Columbia.

12 Q And where were you working or going to school at the
13 time?

14 A I wasn't.

15 Q All right. And what kind of business does your dad
16 have?

17 A A towing company.

18 Q All right. And how is it that you sometimes help out
19 your dad?

20 A I usually take care of the secretarial work.

21 Q All right. When you and Mr. Williams first started a
22 romantic relationship--I believe you described that
23 would have been around December of 2009--who were you
24 living with?

25 A My father.

1 Q All right. And what is his name?

2 A Kevin B

3 Q And where does he reside?

4 A In Lexington.

5 Q And, when you're living with your dad, where does

6 Victim live?

7 A With me.

8 Q All right. How often or frequently would Lance

9 Williams stay over when you were living with your dad?

10 A About three or four days a week.

11 Q All right. And, by stay over, what I mean by that

12 would be spend the night---

13 A Yes, ma'am.

14 Q ---with you and Victim

15 A Yes.

16 Q And, after that period of time on up until April 15th

17 of 2010, did there come a point where you weren't

18 living with your dad anymore and you were living with

19 someone else?

20 A Yes, I had moved in with LeeAnn.

21 Q All right. I'm going to ask you about that. When you

22 say LeeAnn, who are you referring to?

23 A LeeAnn Harvey.

24 Q Okay. And how is it that you know LeeAnn?

25 A She is the mother of my nieces.

1 Q Okay. Now, just to kind of backtrack, you mentioned
2 before that you have an older brother. What is his
3 name?

4 A Chris B

5 Q Okay. And when you say that LeeAnn is the mother of
6 your nieces, are you referring to Chris' children?

7 A Yes. She's my brother's ex.

8 Q Okay. So, just to get that straight, she would sort
9 of be like your sister-in-law except they were not
10 married. Correct?

11 A Yes.

12 Q Okay. And how many children did LeeAnn and your
13 brother, Chris, have together?

14 A Two.

15 Q And what are their ages?

16 A Kaylee is four, and Carlisle is three.

17 Q Okay. And, when you say that you and, you went to
18 live with LeeAnn, what about Victim

19 A She came with me also.

20 Q Okay. So that was you and LeeAnn and then the three
21 girls. Correct?

22 A Right, and her son. She has a son with someone else.

23 Q Okay. In addition to your family unit living there
24 with LeeAnn, what other family members are close or
25 nearby or adjacent to LeeAnn's residence?

1 A It's a four-acre piece of property; and, on the same
2 piece of property, her mom and her husband live there
3 also---

4 Q All right.

5 A ---in a different house.

6 Q And what is her mom's name, LeeAnn's mom's name?

7 A Tommi Hutto.

8 Q So Tommi Hutto would be the grandmother of your nieces
9 that you talked about?

10 A Right.

11 Q Okay. Carlie and Kaylee. Correct?

12 A Yes.

13 Q Now, once you and Victim were living there with
14 LeeAnn, can you tell us how often or frequently Lance
15 Williams would stay over?

16 A About two or three days a week.

17 Q And, by stay over, I mean stay all night.

18 A Yes, ma'am.

19 Q At this point in time, had you and Lance talked about
20 the future?

21 A A little bit. We talked about, after I finished
22 school, like getting a house and everything.

23 Q Okay. And, specifically, did he mention any plans for
24 the future?

25 A Just getting a house after I finished school.

1 Q All right. And, when you say that about getting a
2 house, what are you referring to?

3 A Us moving in together.

4 Q All right. And you two moving in together, can you
5 tell us whether or not those plans would include

6 Victim

7 A Yes, they would include Victim and his daughter.

8 Q Okay. And is Victim your only child?

9 A Yes.

10 Q Now, you mentioned his daughter. Whose daughter are
11 you referring to?

12 A Lance Williams'.

13 Q So the Defendant also has a daughter of his own?

14 A Yes.

15 Q And what is her name?

16 A Aubrey.

17 Q And, back in this point in time, April 15th of 2010,
18 approximately how old was Aubrey based on your memory?

19 A Two and a half I think.

20 Q Was she older than your daughter, Victim

21 A Yes.

22 Q She was older?

23 A Yes.

24 Q And was he the full-time or primary caregiver to his
25 daughter, Aubrey?

1 A No. He would see her every other weekend.

2 Q All right. And who did Aubrey primarily live with?

3 A Her mother, Heather.

4 Q Okay. Now, in addition to your relationship with Mr.
5 Williams and the conversations you had about moving,
6 potentially moving in together, what, if any, actions
7 did Mr. Williams make in assuming the role or
8 responsibility of a stepdad or a caregiver to

9 Victim in the role like a parent or stepparent may
10 have?

11 A He, I guess, basically wanted to be a stepdad to

12 Victim

13 Q And what things did you see him do or allow him to do
14 for Victim in that role?

15 A If she was doing something wrong, I would ask him to
16 tell her to stop, not raise his voice or spank her or
17 anything like that, just tell her to stop if she
18 didn't listen to me.

19 Q All right. And did he do that sometimes, give her a
20 verbal advice---

21 A Yes, ma'am.

22 Q ---and instruct her verbally?

23 A Yes.

24 Q Had there ever been a conversation with Mr. Williams
25 about whether or not he was allowed to physically

1 discipline Victim

2 A He was never allowed to physically discipline her.

3 Q All right. And, when we talk about that, about a
4 child who is 15 months of age, was corporal punishment
5 or spanking such as with an object or a belt or
6 anything of that nature done with Victim

7 A No, ma'am.

8 Q And why or why not?

9 A I don't believe in that.

10 Q All right. Had there ever been a conversation where
11 Mr. Williams would have been led to believe that he
12 could physically discipline Victim

13 A No, ma'am.

14 Q Now, in addition to him providing any type of verbal
15 advice, what, if anything, did you observe him do or
16 allow him to do in terms of just her daily care?

17 A If I was cooking dinner, he would help me get her
18 ready for bed and play with her toys with her while I
19 was cooking dinner so she wouldn't be in the kitchen
20 around me.

21 Q All right. And can you tell us whether or not this
22 included nights that he stayed over in your residence
23 there with Victim

24 A Yes.

25 Q All right. And can you tell us whether or not he had

1 dressed Victim before?

2 A He has.

3 Q All right. And can you tell us whether or not he had
4 bathed Victim before?

5 A He has with my parental--- I was there watching him.

6 Q All right. And can you tell us whether or not he had
7 changed Victim's diapers before to your knowledge?

8 A No.

9 Q Can you tell us whether or not there had been a past
10 occasion or occasions in which you had entrusted
11 Victim in his care prior to April 15th?

12 A He hadn't watched her by himself prior to that.

13 Q All right. Had there ever been an occasion when you
14 went to the store or anything like that?

15 A Yes, but my father was at the house with them if I had
16 to run to the store to get something.

17 Q All right. Okay. So, in other words, there might
18 be--- There might be someone else present, but she had
19 been in his care before. Is that correct?

20 A Yes, ma'am.

21 Q Now, on this particular day, what led to Mr. Williams
22 taking on the responsibility of her welfare?

23 A I was going to help my dad put up a fence at his
24 house. And Lance didn't have to work that day, and he
25 volunteered to watch Victim while I did that.

- 1 Q Okay. And where were you going to work on the fence?
- 2 A My dad's house in Lexington.
- 3 Q And approximately what time did that have you leaving?
- 4 A I left at 8:00 o'clock that morning.
- 5 Q Okay. So 8:00 in the morning.
- 6 A Yes. Everybody was still asleep whenever I left.
- 7 Q All right. Let's go back and cover that a little bit.
- 8 You had mentioned before that you were living with
- 9 LeeAnn at the time.
- 10 A Yes, ma'am.
- 11 Q And that also included the three children, Victim
- 12 and then her two cousins, Carlie and Kaylee. Correct?
- 13 A And Braydon which is LeeAnn's little boy.
- 14 Q All right. And then, in addition to that, had Lance
- 15 Williams stayed over, as he often did, on that night
- 16 before?
- 17 A Yes.
- 18 Q And that day before, did Victim have any unusual
- 19 marks or bruises on her?
- 20 A No, ma'am.
- 21 Q How often do you, as mom, change Victim's diaper?
- 22 A Many times a day.
- 23 Q Okay. And, on that particular night, before that 24-
- 24 hour period of time preceding these events, when
- 25 changing her diaper, had you ever seen anything

1 unusual about her vaginal area?

2 A No, ma'am.

3 Q Had she been bleeding from the vagina?

4 A No, ma'am.

5 Q So that night before, I think your testimony was that
6 Lance Williams stayed over. Do you recall who gave
7 Victim a bath?

8 A Lance gave Victim a bath along with Kaylee and
9 Carlie.

10 Q Okay. So he took on that responsibility the night
11 before.

12 A Yes, because me and LeeAnn were preparing dinner.

13 Q All right. And was that usual or unusual for him to
14 help out with Victim if you were working on
15 dinner or anything else around the house?

16 A It was usual. He helped me out.

17 Q Okay. Was there ever a time when he indicated to you
18 that he was not willing to help out or to take on the
19 responsibility of her welfare?

20 A No, ma'am.

21 Q So where did Victim sleep that night?

22 A She slept in Braydon's crib.

23 Q All right. And when did you next see her?

24 A Whenever I met Katie at the gas station in Swansea.

25 Q All right. When you put her to bed that night, did

1 Victim have any unusual marks or bruises on her
2 face?

3 A No, ma'am.

4 Q Her neck?

5 A No, ma'am.

6 Q Her torso?

7 A No, ma'am.

8 Q Her arms or knees?

9 A No, ma'am.

10 Q Or her ears?

11 A No, ma'am.

12 Q And you left the home around 8:00 a.m. Is that
13 correct?

14 A Yes, ma'am.

15 Q And, when you left the home, who was present at the
16 residence?

17 A It was Lance, LeeAnn, Carlie, Braydon and Victim

18 Q What do you recall being significant later on that day
19 after you went to help your dad with the fence?

20 A I called to check on Victim once, and he had said
21 that she fell playing outside.

22 Q All right. I want to ask you about that in a little
23 more detail. When you say you called to check on

24 Victim do you know approximately what time that
25 would have been?

1 A It was around lunchtime, 12:00 o'clock.

2 Q All right. And you had called to check, and who
3 answered the phone?

4 A Lance.

5 Q All right. You called his phone?

6 A Uh huh (indicating affirmative response).

7 Q And what specifically did he say to you?

8 A I asked him, I said, what's Victim doing. And he
9 said, she's taking a nap, but she fell outside and
10 bumped her head and she has a bruise on her forehead
11 now.

12 Q All right. So, at that point in time, he informed you
13 that she had the forehead bruise.

14 A Yes, ma'am.

15 Q Did he inform you of any other marks or bruises on
16 Victim

17 A No, ma'am.

18 Q And what happened next?

19 A I asked him to send me a picture of the bruise on her
20 forehead; and he said, I will do that whenever she
21 wakes up from her nap.

22 Q Okay. And, ultimately, did you receive the picture?

23 A I did.

24 Q Now, how long did you stay with your father helping
25 him out?

1 A From like 8:00 o'clock that morning till around 3:00.

2 Q Your estimate would be around 3:00, sometime---

3 A Around 2:30 or 3:00 because me and LeeAnn had
4 something to do that afternoon.

5 Q All right. What happened next after you spoke with
6 Lance, when you called to check on her around lunch
7 time?

8 A I continued helping my dad work on the fence.

9 Q And what happened next?

10 A I don't really remember.

11 Q I mean, what, if anything, was significant? Who did
12 you hear from next?

13 A LeeAnn.

14 Q All right. Did there come a point in time later that
15 afternoon when you received a phone call from Katie
16 Cooper, Katie Cooper who just testified in this case?

17 A Yes.

18 Q And what did you do in response to getting that phone
19 call from Katie Cooper?

20 A I asked her what did she mean by the bruises that she
21 was telling me about. And she said, well, I'll send
22 you a picture, I think it looks like somebody has hit
23 her. I said, okay. And she sent me the pictures.

24 Q All right. And, when she sent you the pictures, did
25 you recognize any of the marks or bruises that you saw

- 1 at that time?
- 2 A Yes.
- 3 Q What do you mean by that?
- 4 A Did I recognize them from previous, before?
- 5 Q Right.
- 6 A No, I haven't.
- 7 Q And she sent you a picture, and what did you do?
- 8 A I immediately asked her to meet me so I could see
- 9 Victim
- 10 Q All right. And where did you decide to meet?
- 11 A The BP gas station in Swansea.
- 12 Q All right. What happened when you arrived at the BP
- 13 gas station?
- 14 A They were parked at the gas pump, and I got out. And
- 15 Katie had gotten Victim out, and I automatically
- 16 knew that wasn't my child.
- 17 Q What do you mean by that?
- 18 A She didn't look like herself at all.
- 19 Q Did she behave like herself?
- 20 A No. She was really fussy and whiny. She didn't want
- 21 to go to nobody. She acted like she was scared of
- 22 everybody.
- 23 Q Okay. What, if anything, did you observe about
- 24 Victim that caused you concern?
- 25 A Could you repeat that please?

1 Q What, if anything, did you see yourself about Victim
2 that caused you concern?

3 A For one, she didn't look like her normal self, and I
4 noticed the bruising once I got closer to her.

5 Q All right. At any point after your initial
6 conversation with Katie Cooper when she had called you
7 from the ball field to inform you of these bruises, at
8 any point, did you have contact or confront the
9 Defendant, Lance Williams?

10 A Before I saw Victim

11 Q Right..

12 A I had called him on my way to Swansea to see if he
13 would answer the phone, and he did.

14 Q All right. And what happened when you spoke with him?

15 A I was being really short, and I had an attitude. And
16 he said, what's wrong with you. And I said,
17 something's wrong with Victim And he actually
18 said, I didn't do anything to her, she didn't get hurt
19 under my care.

20 Q And what happened next?

21 A I hung up the phone, and I met Katie.

22 Q All right. So, when you said something's wrong with
23 Victim he said, I didn't do anything to her?

24 A Yes.

25 Q And did you see him, physically see him, at any point

1 after that conversation?

2 A No, ma'am.

3 Q All right. And that was on your way to meet Katie
4 Cooper and Victim at the BP station in Swansea?

5 A Yes.

6 Q Once you were there and you saw Victim with your own
7 eyes, what action did you take?

8 A I immediately started crying and told Katie and Linda
9 that we needed to take her to Richland.

10 Q All right. Who is Linda?

11 A Adam Cooper's mom which is Victim grandma.

12 Q Okay. How did y'all arrive at Palmetto Richland
13 Hospital?

14 A I left my truck at the BP in Swansea, and I rode
15 with Katie and Linda to take Victim to the Richland
16 Hospital.

17 Q Okay. On the way there, can you tell us whether or
18 not Victim what, if anything, was unusual about her
19 demeanor?

20 A She wasn't herself. She was crying, didn't want
21 anybody to touch her. I tried to comfort her and give
22 her a hug. She didn't want any of that.

23 Q And, when you arrived at Palmetto Richland, did you
24 have the opportunity to see your daughter without
25 clothes on, in just a diaper?

1 A Yes.

2 Q I'm going to show you some photographs which are
3 already in evidence--State's Exhibit 8, State's
4 Exhibit 2, State's Exhibit 4, State's Exhibit 6,
5 State's Exhibit 7, State's Exhibit 5 and State's
6 Exhibit 3--and ask you if you would just look at those
7 momentarily.

8 A (Pause.)

9 Q Those marks that are noted in those particular
10 photographs, had you observed those on Victim at any
11 point in time prior to seeing her at the BP station in
12 Swansea?

13 A No, ma'am.

14 Q Had you noticed any bleeding around her mouth or lips
15 the day before or leading up to that point in time?

16 A No, ma'am.

17 Q Now, where did your daughter normally go see a
18 pediatrician?

19 A Sandhills Pediatrics.

20 Q Okay. And for what purposes would she normally visit
21 the doctor's office?

22 A For her immunization, checkup and just a well checkup
23 visit.

24 Q All right. Can you tell us whether or not she had a
25 visit at Sandhills Pediatrics around January of 2010,

1 roughly three and a half months before this incident?

2 A She did have an appointment.

3 Q All right. And what was the purpose of that
4 appointment?

5 A She had a rash on her face and on her arms---

6 Q All right.

7 A ---and I made the appointment. And they told me that
8 she had eczema.

9 Q Okay. And, when you say a rash on her face, do you
10 remember what part of her face it was?

11 A On her cheeks.

12 Q Okay. And her arm?

13 A Yes, it was mainly down here and up here (indicating).

14 Q All right. And you used the word eczema. Was that
15 the word the physician used?

16 A Yes, ma'am.

17 Q All right. What is your understanding of what eczema
18 was?

19 A It's a dry skin condition.

20 Q Okay. And what, if anything, was done or advised by
21 her physician in order to treat the dry skin on her
22 arm and cheek?

23 A She prescribed me a cream to put on Victim twice a
24 day.

25 Q Okay. So it was a prescription cream?

1 A Yes, ma'am.

2 Q Some type of ointment?

3 A Yes.

4 Q Was there ever, on any past occasion, an issue with
5 Victim having dry skin around her vaginal area?

6 A No, ma'am.

7 Q Was there ever a time that you, or anyone else to your
8 knowledge, would have put lotion or ointment on her
9 vaginal area---

10 A No.

11 Q ---for dry skin?

12 A No.

13 Q Did you ever have any conversation with Lance Williams
14 about putting, allowing him to put any type of lotion
15 or ointment on her vagina for any reason?

16 A No, ma'am.

17 Q And, on that particular day when you spoke on the
18 phone with Lance Williams, did he acknowledge anything
19 unusual or any need to have touched her vagina?

20 A No, ma'am. All he told me about was the bruise on her
21 forehead.

22 MS. MAYES: Beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 Q After you were at the hospital and you became aware of
25 Victim's condition, did you meet with someone from

1 the Department of Social Services?

2 A Yes, I did.

3 Q And what was your understanding about any future
4 contact that you would be allowed to have or that
5 [Victim] [redacted] would be allowed to have with Lance
6 Williams?

7 A No contact at all.

8 Q All right. And how or in what format was that
9 explained to you?

10 A Verbally.

11 Q Okay. And did you agree to that?

12 A Yes, ma'am.

13 Q And how did you go about agreeing to that?

14 A I haven't talked to him since all this has happened.

15 Q All right. Did you sign any paperwork acknowledging
16 that you would not have any contact with Lance
17 Williams?

18 A If I remember correctly, I did.

19 Q Okay. So your understanding was that you could not
20 have any future contact with Lance. Did you pursue
21 any future contact with Lance Williams?

22 A No, ma'am.

23 Q Did he continue to stay over at your residence that
24 you shared with LeeAnn?

25 A No, ma'am.

1 Q Did he continue to stay over at your father's
2 residence that you sometimes shared with your father?

3 A No, ma'am.

4 Q And do you see Lance Williams in this courtroom today?

5 A Yes, ma'am.

6 Q And where is he seated?

7 A To the left of you.

8 MS. MAYES: Nothing further, Your Honor.

9 THE COURT: Thank you, Solicitor. Mr. Snell?

10 MR. SNELL: Thank you, Your Honor.

11 CROSS EXAMINATION BY MR. SNELL:

12 Q Ms. B ---

13 A Yes.

14 Q ---now, Victim father is Adam Cooper. Is that
15 correct?

16 A Yes, sir.

17 Q Mr. Cooper pays you child support?

18 A Yes, sir.

19 THE COURT: And you probably need to speak up a
20 little bit for us, Mr. Snell. Thank you.

21 Q And he pays you child support?

22 A Yes, sir.

23 Q How much does he pay?

24 A One hundred dollars a week.

25 Q Now, is it true, on Wednesday night, April 14th, you

- 1 and Lance had discussions about him keeping Victim
2 the next day---
- 3 A Yes.
- 4 Q ---the next morning for you to go and help your father
5 with the fence?
- 6 A Yes.
- 7 Q Is that true?
- 8 A Uh-huh (indicating affirmative response).
- 9 Q Okay. What time were you supposed to meet your father
10 in the morning to put the fence up?
- 11 A 8:30.
- 12 Q And you left the house at 8:30 that morning, didn't
13 you?
- 14 A I left at 8:00.
- 15 Q Had you told Lance originally that you were coming
16 back around 1:00 or 2:00 o'clock?
- 17 A No.
- 18 Q What time did you make arrangements with Lance to pick
19 Victim back up?
- 20 A I didn't. He was--- I asked him to take Victim to
21 Pelion to meet her grandparents because it was her
22 father's weekend.
- 23 Q Now, after the time you left the house at 8:30, the
24 next time you saw Victim was at 9:00 o'clock that
25 night?

1 A Probably around, yes, 8:30 or 9:00 o'clock whenever I
2 took her, whenever I met Katie and them at the BP and
3 took her to Richland.

4 Q Now, how long had you been staying at LeeAnn's trailer
5 before this time?

6 A A couple of weeks, two or three weeks.

7 Q Now, the paperwork you received from the caseworker
8 with the Department of Social Services, was that, to
9 your understanding, called a high-risk safety plan?

10 A Yes.

11 Q And, now, there was no Department of Social Services
12 case, was there?

13 A She opened the case, and then she came and closed it
14 after she evaluated us.

15 Q And was it your understanding that the Department of
16 Social Services didn't continue to investigate because
17 they didn't have jurisdiction over your situation?

18 A Right.

19 Q That's because, in his capacity, Lance was a
20 babysitter.

21 A Say that again.

22 Q Is that because Lance, during this time, was a
23 babysitter?

24 MS. MAYES: I object, Your Honor, to her
25 attempting to define or give a legal assessment for the

1 Department of Social Services.

2 THE COURT: I'd overrule that objection. You may
3 answer it if you know the answer, Ms. B

4 A I'm really confused.

5 THE COURT: Restate your question, please, Mr.
6 Snell.

7 MR. SNELL: Yes, Your Honor.

8 Q Ms. B is it your understanding that the
9 Department of Social Services determined they didn't
10 have jurisdiction because Lance was a babysitter?

11 A No, I never heard that before.

12 Q Okay. Now, after--- What time was your makeup
13 appointment this afternoon?

14 A It was around 4:30 or 5:00 was the appointment.

15 Q Okay. Now, what time--- Where did you go after the
16 makeup appointment?

17 A I met Katie at the BP in Swansea.

18 Q How long did your makeup appointment last?

19 A About two and a half hours.

20 Q At any point during that time, did you cut your makeup
21 appointment--- Did you have to cut your makeup
22 appointment short?

23 A Yes, actually, yes, I did.

24 Q And which BP in Swansea did you meet at?

25 A The only BP station in Swansea.

1 Q Can you--- I'm sorry. Can you tell us where it is?

2 A It's on Highway 321 in Swansea.

3 MR. SNELL: One moment.

4 Q Now, Ms. B you testified earlier that Lance had
5 never changed Victim diaper before. Is that
6 correct?

7 A He hasn't.

8 Q And so your plan was to leave Lance with Victim all
9 day long even though he had never changed her diaper?

10 Q I knew he knew how to change a diaper because he has a
11 daughter of his own.

12 Q But he'd never actually changed your daughter's
13 before.

14 A No.

15 Q This was his first time going through that procedure.

16 A Yes.

17 MR. SNELL: No other questions.

18 THE COURT: Thank you. Thank you, Mr. Snell.

19 Redirect, Solicitor?

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

21 REDIRECT EXAMINATION BY MS. MAYES:

22 Q Can you tell us, Ms. B was your relationship with
23 Lance and his relationship with Victim more than
24 just a babysitter?

25 A Yes, ma'am. We were dating.

1 Q All right. And what was your understanding of his
2 willingness or the role that he was willing to take on
3 in terms of Victim

4 A That day he was to watch her while I went and helped
5 my dad.

6 Q Okay. And what about in the overall scheme of your
7 relationship and the living arrangements that you
8 shared and the frequency of contact that he had with
9 Victim What was your understanding of what he
10 wanted to be to Victim

11 A He said eventually he wanted to be a stepfather to
12 Victim.

13 Q And, through that point in time, had you allowed him
14 to share in the responsibilities that a stepfather
15 would have?

16 A By helping me out with her, yes.

17 Q Okay. And the safety plan that you signed or the
18 agreement that you signed, can you tell us what was
19 your understanding about whether there would be any
20 future contact between yourself, Victim and Lance
21 Williams?

22 A The statement I signed was there was to be no contact
23 between me and him and Victim He was not allowed
24 to contact me, and I wasn't allowed to contact him.

25 Q All right. And so he could have no further role or

1 responsibilities concerning her welfare.

2 A Yes, ma'am.

3 MS. MAYES: Nothing further?

4 THE COURT: Recross, Mr. Snell?

5 MR. SNELL: Yes, Your Honor.

6 RECROSS EXAMINATION BY MR. SNELL:

7 Q Ms. B but this was the first time that Lance had
8 ever been alone with Victim Is that correct?

9 A No.

10 Q You testified previously that he had been, he had had
11 other folks, when he'd watch her, he had other folks
12 present.

13 A Yeah. By himself, this was the first time, yes.

14 Q This was the first time, Wednesday, April 15th, that
15 he was with Victim by himself.

16 A Yes, sir.

17 MR. SNELL: No other questions?

18 THE COURT: Thank you. Thank you very much, Ms.

19 B You may step down. All right. Perhaps now would
20 be a good time to take our evening recess. Ladies and
21 gentlemen of the jury panel, I would remind you during this
22 recess you are not to discuss this case with anyone. That
23 includes your fellow jurors, your family, friends or anyone
24 else. If anyone talks with you about the case or tries to
25 talk with you the about the case, please let me know.

1 Remember do not read, listen to or watch any news reports
2 about the case should there be any. Do not use your
3 computer, cellular phone or other electronic device with
4 communication capabilities to obtain or disclose any
5 information about the case when you're not in court.
6 Information about the case includes, but is not limited to,
7 the following: Any information about a party, a witness,
8 an attorney or a court officer, any news accounts of the
9 case, any information collected through your own research
10 on any topics raised or testimony offered by any witness
11 and any information collected through your research on any
12 other topic that you might think would be helpful in
13 deciding the case. I'll say it again--and, of course,
14 you'll probably be able to repeat it back to me before we
15 conclude for the week--please remember you must decide the
16 case based on the evidence and the testimony that you hear
17 in this courtroom and any documents or exhibits that are
18 introduced. Remember to keep an open mind. Do not begin
19 your deliberations until you are instructed to do so by the
20 Court. You're now excused for the evening. I'd ask you to
21 be back promptly at 9:15 in the morning. If you'd please
22 be back promptly at 9:15. I would like to thank you very
23 much for your patience with the Court today and for your
24 focus and attention that you have shown to all the parties
25 throughout the trial of this case thus far. With that

1 being said, you're now excused. I hope y'all have a
2 pleasant evening. Thank you. Thank you very much.

3 (The jury is excused for the day at 6:10 p.m.)

4 THE COURT: Mr. Floyd, I believe you had
5 objections you stated at the Bench to State's 2 through 8.
6 Is that correct?

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: All right. If you want to put that
9 on the record at this time.

10 MR. FLOYD: Your Honor, of course, we objected to
11 Number 1. Do I need to put that back on the record?

12 THE COURT: Well, I haven't let that in evidence
13 yet. It's still ID only. And I understood the basis of
14 that objection was it appeared, your understanding was,
15 that **Victim** had been administered some pain medication;
16 and, therefore, I did not allow it in. I do not think the
17 proper foundation would be laid in that regard.

18 MR. FLOYD: Thank you, Your Honor. The other---
19 We objected to the other photographs which also apparently
20 were taken at the hospital because of the various
21 instruments that were visible in the photographs, and it
22 was our position that they would not accurately represent
23 the condition of the child at that time because of the
24 obvious medical intervention.

25 THE COURT: All right. Thank you, Mr. Floyd.

1 And I allowed State's 2 through 8 in evidence subject to
2 the objection. The witness, Ms. Cooper--- Is that correct?

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

4 THE COURT: Ms. Cooper testified that the
5 injuries depicted in those photographs, 2 through 8, were a
6 fair and accurate representation of the injuries she
7 observed to **Victim** on 15 April of 2010. Although they
8 were taken in the hospital, you can clearly see that it
9 appears to be medical items around, medical personnel and
10 such. So I have allowed them into evidence subject to
11 objection. I think it goes to the weight, not the
12 admissibility. All right. Anything further before we take
13 our evening recess, Solicitor?

14 MS. MAYES: Yes, sir, Your Honor. On an earlier
15 break, a call was a placed to Adrienne Riley. She is a DNA
16 analyst at the State Law Enforcement Division. She is the
17 analyst who was assigned to do the screen on the sexual
18 assault kit. She indicated that they will attempt to have
19 the report generated by tomorrow around noon. It's
20 awaiting the supervisor's signature which is apparently a
21 quality control requirement.

22 THE COURT: All right. Thank you. Thank you for
23 following up on that, Solicitor. If you'd keep the Court
24 and the defense attorneys posted in that regard. Anything
25 further, Solicitor?

1 MS. MAYES: Nothing from the State.

2 THE COURT: Mr. Snell, Mr. Floyd?

3 MR. SNELL: Nothing from the Defendant, Your
4 Honor.

5 THE COURT: All right. Now, Mr. Floyd, we have a
6 motion on another case at 9:00 o'clock in the morning.

7 MR. FLOYD: That's correct, Your Honor.

8 THE COURT: And then this case at 9:15.

9 MR. FLOYD: That's correct.

10 (Whereupon, the proceedings were concluded for
11 March 30th, 2011.)

12 (The following proceedings were reported on March
13 31st, 2011.)

14 THE COURT: All right. Solicitor, anything from
15 the State before we bring in our jury?

16 MS. MAYES: No, sir, Your Honor.

17 THE COURT: Mr. Snell, Mr. Floyd, anything from
18 the defense?

19 MR. SNELL: No, Your Honor.

20 THE COURT: All right. Bring us our jury please.

21 (The jury returns to the courtroom at 9:20 a.m.)

22 THE COURT: Good morning, ladies and gentlemen.

23 I've noticed over the years many jurors are very
24 territorial; in other words, they sit in one spot each and
25 every time. They like that spot; they like that particular

1 view of the courtroom, or they get used to it. And,
2 generally, with that, I'm able to learn people by the end
3 of the trial. But I've noticed y'all are not very
4 territorial; y'all move around a good bit. Nothing wrong
5 with either way. Nothing wrong with either way. I hope
6 y'all had a pleasant evening. As you recall, we're in the
7 State's case in chief in this trial. The State is
8 continuing to present evidence and testimony. Solicitor,
9 you may call your next witness.

10 MS. MAYES: Your Honor, the State calls LeeAnn
11 Harvey.

12 THE COURT: All right. Ms. Harvey, if you'd come
13 around and be sworn for me, please.

14 WHEREUPON, LEEANN HARVEY, being first
15 duly sworn, testifies as follows:

16 CLERK: Have a seat, please, ma'am. Once you're
17 seated, I need you to speak up loud and clear stating your
18 full name on the record, please.

19 THE WITNESS: My name is Ashley LeeAnn Harvey.

20 COURT REPORTER: All right. Now spell Ashley.

21 THE WITNESS: A-S-H-L-E-Y.

22 COURT REPORTER: Spell LeeAnn.

23 THE WITNESS: L-E-E-capital A-N-N.

24 COURT REPORTER: Is it one word?

25 THE WITNESS: Yes.

1 COURT REPORTER: Okay. Thank you, Judge.

2 THE COURT: Yes, ma'am. All right. Solicitor?

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

4 DIRECT EXAMINATION BY MS. MAYES:

5 Q And, Ms. Harvey, where do you currently reside?

6 A In Swansea, South Carolina.

7 Q All right. And who do you live with?

8 A Myself.

9 Q Okay. And are you a mom?

10 A Yes, I am.

11 Q All right. And how many children do you have?

12 A Three.

13 Q And who are they and what are their ages?

14 A I have two girls which are--- One's three and one's
15 four. And I have a little boy that's 15 months old.

16 Q All right. Now, just to clarify--- Can you see this
17 board from where you're sitting?

18 A (Witness nods indicating affirmative response.)

19 Q All right. There was testimony yesterday that

20 Victim --- Her mom is Brittany B . Correct?

21 A Yes.

22 Q And how is it that you know Brittany B Victim s
23 mom?

24 A I dated Brittany's brother for a while, and we have
25 two children together which would be Brittany's

1 nieces.

2 Q All right. And what are their names?

3 A Kaylee and Carlie.

4 Q All right. So, if I understand correctly, Brittany's
5 nieces, Kaylee and Carlie, are your children.

6 Correct?

7 A Yes.

8 Q And, as a result, Kaylee and Carlie's blood cousin is

9 **Victim** Correct?

10 A Yes.

11 Q And did there come a point in time when Brittany and

12 **Victim** came to live with you?

13 A They did.

14 Q Where did they come to live with you at?

15 A At my house where I lived when this event took place.

16 Q And where is that?

17 A You want the address?

18 Q Yes.

19 A It's .

20 Q All right.

21 COURT REPORTER: I'm sorry. what?

22 A .

23 Q And tell us about that particular, the location of
24 that residence. Who lives around that area?

25 A My mom lives there; and, at the time, I lived behind

1 her. And to the side--- It's a four-acre piece of
2 property. And to the side is where my aunt lives.
3 And then on the other side there's two other trailers
4 which are rented out.

5 Q All right. And, when you said that you lived behind
6 your mom, what's your mom's name?

7 A Tommi Hutto.

8 Q All right. And what kind of work does your mom do?

9 A She's a cosmetologist.

10 Q All right. And where is her shop where she does
11 cosmetology or does hair?

12 A There at the house.

13 Q Okay. So the home that you're referring to would have
14 been behind your mom's house and behind your mom's
15 beauty shop?

16 A Correct.

17 Q Okay. And approximately how long did Victim and
18 Brittany live there with you and your girls and your
19 little boy?

20 A It was going on a month.

21 Q Okay. And, during the time--- Well, do you know where
22 she lived just prior to that?

23 A She stayed with her dad.

24 Q All right. And, during that time that her and

25 Victim were there staying with you, did you have the

1 opportunity to come in contact with the Defendant,
2 Lance Williams?

3 A I did.

4 Q How did you first come to know him?

5 A When I was with Brittany's brother, Chris, that's when
6 I actually met Lance. They were friends.

7 Q Okay. And did you--- Did there come a point in
8 time--- Can you tell us whether or not you became
9 aware that he and Brittany became involved
10 romantically?

11 A Yes.

12 Q All right. So they were dating at the time she lived
13 with you?

14 A Yes, they were.

15 Q All right. Did you have the opportunity to see Mr.
16 Williams interact with both Brittany and Victim

17 A Yes.

18 Q What can you tell us about that?

19 A Well, they seemed very happy together; and, at times,
20 Brittany would be like, Victim stop, don't do that.
21 And then she'd look at Lance and be like, can you help
22 me. And he'd say, Victim stop, don't do that. And
23 she would stop.

24 Q Okay. And were there occasions where Lance Williams
25 stayed over or spent the night at your home when he

1 was with Brittany?

2 A Yes, there were.

3 Q Okay. Now, on this particular occasion, April 15th of
4 2010, were you staying at your home that night before?

5 A Yes.

6 Q Were your children there?

7 A Yes.

8 Q Was Brittany there?

9 A She was.

10 Q And was **Victim** there?

11 A Yes.

12 Q Who else stayed over that night before at your home?

13 A Lance.

14 Q Okay. You're referring to the Defendant, Lance
15 Williams?

16 A Lance Williams.

17 Q How often would you actually see **Victim** or have a
18 chance to observe her physically, if she had any
19 injuries or bruises?

20 A All day. She was there all day and all night. She
21 didn't go anywhere.

22 Q All right. On that evening before, which would be the
23 evening of April 14th, did you observe anything
24 unusual about **Victim** Did she have any marks or
25 bruises on her at that time?

1 A No.

2 Q And what is your understanding of the arrangements for
3 the next day? Was Brittany scheduled to be home with
4 Victim that day?

5 A No. She---

6 MR. FLOYD: Objection, Your Honor. That would
7 have to be hearsay.

8 MS. MAYES: I can lay the foundation, Your Honor.

9 THE COURT: Ma'am?

10 MS. MAYES: I can lay a foundation.

11 THE COURT: All right. I will sustain the
12 objection. You may continue, Solicitor.

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

14 Q Based on your observations--- Well, let me ask you
15 this. Were plans made for the following day?

16 A Yes.

17 MR. FLOYD: I object. That has to be hearsay.

18 MS. MAYES: If she is aware, Your Honor---

19 THE COURT: Well, I will sustain the objection.

20 Q Now, the following day, did you have an opportunity to
21 observe who was at the residence?

22 A Yes.

23 Q Was Brittany there that morning?

24 A She was.

25 Q All right. And what happened next?

1 A Brittany left to meet her dad. They had plans to put
2 up a fence.

3 MR. FLOYD: Objection, Your Honor. That's
4 hearsay.

5 THE COURT: You can't go into knowledge that you
6 may have gained from conversations with other people.

7 Q Please just answer the question as I phrase it. Was
8 Brittany there that morning, the entire morning?

9 A No.

10 Q Okay. And, once Brittany left, who was at the
11 residence?

12 A That would be myself and Lance Williams.

13 Q All right. And who else?

14 A Kaylee, I mean, no, Carlie. Carlie was there. Kaylee
15 was at school. And Victim and my son, Braydon.

16 Q Okay. At some point, did you interact with Victim
17 that morning?

18 A I did.

19 Q And tell us the circumstances in which you saw
20 Victim

21 A Carlie woke up first, and she woke Victim up. And I
22 got Victim up and changed her diaper. We then went
23 to the kitchen. I made them cereal. I put Carlie at
24 her princess table, and I was feeding Victim While
25 I was feeding Victim Carlie was hollering that she

1 wanted Lance to feed her; so he fed her her cereal. I
2 fed Victim got done. I went and got Carlie
3 dressed. While I was dressing Carlie, Lance dressed
4 Victim I then fixed both of their hair. And then
5 I myself got a shower and got dressed because I had to
6 go to town.

7 Q Okay. So I want to take you back to the beginning
8 of--- We were talking about the circumstances that
9 morning. You had the opportunity to change Victim s
10 diaper?

11 A I did.

12 Q When you changed her diaper, did you notice whether or
13 not she was bleeding vaginally?

14 A No, she wasn't.

15 Q Did you notice whether or not she appeared to be red
16 or swollen vaginally?

17 A She wasn't.

18 Q Now, you mentioned that Lance actually dressed
19 Victim that morning.

20 A Yes.

21 Q But did you have the opportunity to see her arms and
22 legs and face?

23 A Yes.

24 Q Was there anything unusual that morning about her?

25 A No.

1 Q What happened next?

2 A I had to go to town, so then I left. I took Braydon
3 and Carlie with me. And then, when I returned home, I
4 had forgotten a bottle to feed the baby. I was at the
5 beauty shop. So I went back to my house to find that
6 the door was locked, and I could hear Victim crying.

7 Q Let me stop you right there.

8 A Okay.

9 Q You mentioned going to the beauty shop. How far away
10 is the beauty shop if you had to estimate?

11 A Like a hundred feet, 200 feet, if that.

12 Q Okay. What time would you estimate it was when you
13 left the house?

14 A The first time?

15 Q Yes.

16 A It was about 11:30.

17 Q Okay. So you leave about 11:30 a.m. and you went
18 where?

19 A I had to go to the bank and to the beauty supply.

20 Q And, when you left, was your front door locked?

21 A No.

22 Q And do you normally lock your door in that area?

23 A No, I do not.

24 Q And why or why not?

25 A Because I feel safe and secure where I live.

1 Q Well, for example, do you normally carry a house key
2 on you?

3 A Most of the time, no.

4 Q And why?

5 A Because where I live and how you have to get to my
6 house, you have to go through my mom's driveway first,
7 to get to my house. So, if anybody's going to come in
8 my yard, you'd have to go through hers first, and I'm
9 sure that she would see whoever it may be.

10 Q All right. So, when you left for the bank, the door
11 was not locked.

12 A No.

13 Q What happened when you returned?

14 A When I returned back to get a bottle, the door was
15 locked.

16 Q And, when you returned for the bottle, was that before
17 or after you went to the bank?

18 A After.

19 Q Is it possible to estimate approximately what time
20 that would have been that you arrived back at your
21 residence?

22 A It was about 11:30, I mean 12:30, 1:00 o'clock,
23 because I went straight there and came straight back.

24 Q All right. So you go to the door and it's locked.
25 What happens next?

1 A I knocked and knocked for about five minutes, and
2 nobody came to the door.

3 Q Could you hear anything on the inside?

4 A I could hear Victim crying.

5 Q All right. What happened as a result of nobody coming
6 to your door?

7 A I went next door, back to the beauty shop, to get a
8 key. And I came back and unlocked the door, and then
9 Lance Williams and Victim were coming down the
10 hallway.

11 Q All right. Where did you go to get a key?

12 A The beauty shop.

13 Q And that's your mom's place about a hundred or 200
14 feet away?

15 A Yes.

16 Q All right. So you got the key and unlocked the door
17 yourself?

18 A Yes.

19 Q And, at that point, you saw the Defendant with
20 Victim

21 A Yes.

22 Q Where were they coming from?

23 A Down the hallway.

24 Q All right. Describe to us Victim s, anything that
25 you noticed unusual about Victim at that point.

1 A Her hair wasn't fixed, and she had a diaper on.

2 Q Okay. Did she have any other clothes on other than a
3 diaper?

4 A No.

5 Q What, if anything, was different about the way she
6 appeared after you unlocked the door and how she had
7 appeared when you left that morning at 11:30?

8 A When I left at 11:30, she was fully dressed and I had
9 fixed her hair. Her hair wasn't fixed when I came
10 back, and she didn't have the same clothes on. She
11 didn't have any clothes on.

12 Q What do you mean by you had fixed her hair? What are
13 you talking about?

14 A Normally, when I get my girls dressed, I'll pull their
15 hair up top so it was kind of like a--I call it a well
16 spout because their hair sticks up with a rubber
17 band--and put a bow in it.

18 Q And was the band and bow in her hair once you returned
19 back home?

20 A No.

21 Q What, if anything, did Lance Williams tell you?

22 A I said, what's wrong with her. He said, nothing, she
23 took a nap and got sweaty, so I gave her a bath.

24 Q All right. Now, at that point in time, did you have
25 an opportunity to change her diaper?

1 A No, I did not.

2 Q All right. So do you have any knowledge as to whether
3 or not she was bleeding vaginally at that time?

4 A No, I do not.

5 Q Did you observe any marks or bruises on Victim at
6 that time?

7 A No.

8 Q What happened next?

9 A I got the bottle, and I went back to the beauty shop
10 to feed the baby, and I had to leave again because I
11 had a makeup appointment.

12 Q All right. So, at this point, Victim had no marks
13 or bruises, and then you left again.

14 A Yes.

15 Q And, when you left, at that point, who was at your
16 residence?

17 A Victim and Lance Williams.

18 Q All right. Only the two of them?

19 A Yes.

20 Q At any point that day, LeeAnn, did you see or observe
21 Lance Williams outside with Victim

22 A No, I did not.

23 Q Did he state anything to you about Victim falling
24 outside?

25 A No.

- 1 Q When did you next see Victim
- 2 A I next saw Victim at the BP in Swansea.
- 3 Q All right. And why were you at the BP in Swansea?
- 4 A I was with Brittany, going to meet Katie to check on
- 5 Victim and take her to the hospital.
- 6 Q All right. And can you tell us whether or not that's
- 7 the same event that we've heard about previously
- 8 where, at that point, you left and went to the
- 9 hospital?
- 10 A Yes.
- 11 Q And did you have a chance to see Victim there at the
- 12 BP station?
- 13 A Yes, I did.
- 14 Q With your own eyes?
- 15 A Yes.
- 16 Q What, if anything, was different about how she
- 17 appeared then and how she appeared when you last saw
- 18 her when you left the residence?
- 19 A Her whole demeanor was different.
- 20 Q In what way?
- 21 A She was just like a noodle just--- She didn't want to
- 22 have anything to do with anybody.
- 23 Q What, if anything, did you observe about her
- 24 physically that was different?
- 25 A She had bruises and marks on her.

1 Q Okay. Did you also have the opportunity to go to the
2 hospital?

3 A Yes, I did.

4 Q And, when you were at the hospital, did there come a
5 point in time when you left the hospital for any
6 reason?

7 A Yes.

8 Q And why was that?

9 A I had to take my kids home and get them to bed, and I
10 went home to get diapers.

11 Q All right. Why did you go home to get diapers?

12 A The nurse at the hospital needed any diapers that were
13 in my trashcan.

14 Q All right. So let me just make this clear. And,
15 without repeating what anyone else said to you, you
16 had left the hospital in order to retrieve whose
17 diapers?

18 A Victim

19 Q All right. And that was at the request of hospital
20 personnel?

21 A Yes.

22 Q And those would be diapers from throughout that day?

23 A Yes.

24 Q When you got back home, where did you go to look for
25 her diapers?

1 A The trashcan, the kitchen trashcan.

2 Q And where do y'all normally keep the diapers?

3 A In the trashcan.

4 Q Okay. What happened when you went to the trashcan to
5 get the diapers?

6 A Well, there were about six diapers together in the
7 trashcan right on top.

8 Q All right. So the diapers that were on the top are
9 the ones that you retrieved?

10 A Yes.

11 Q Did you see any dirty diapers? By that, I mean like
12 any diapers that would have feces.

13 A No.

14 Q All right. How did you go about collecting those
15 diapers from the trashcan?

16 A I took them out one by one and placed them in a
17 plastic bag and tied it shut and took it to the
18 hospital.

19 Q All right. So you went to the hospital, and did you
20 turn over that plastic bag that you referred to once
21 you got to the hospital?

22 A Yes.

23 Q And, at that point in time, can you tell us whether or
24 not law enforcement was at the hospital? By law
25 enforcement, I mean members of the Lexington County

1 Sheriff's Department.

2 A Yes.

3 Q Okay.

4 MS. MAYES: Nothing further at this time, Your
5 Honor.

6 THE COURT: Thank you, Solicitor. Mr. Floyd?

7 MR. FLOYD: Thank you, Your Honor.

8 CROSS EXAMINATION BY MR. FLOYD:

9 Q Ms. Harvey, did you give a statement to law
10 enforcement on April 16th---

11 A I did.

12 Q ---of 2010?

13 A I did.

14 Q And, in that statement, you recounted these details
15 you're testifying to today?

16 A Yes.

17 Q Isn't it true that, in that statement, you never did
18 say that you changed Victim diaper?

19 A No, I did not.

20 Q You did not say that, did you?

21 A No.

22 Q Thank you. Now, you left one of your children with
23 Lance that morning, did you not?

24 A No, I did not.

25 Q He was never alone with them?

- 1 A No.
- 2 Q You took a shower, didn't you?
- 3 A Yes, I did.
- 4 Q And did you leave your child with Lance at that time?
- 5 A I didn't leave. I took a shower.
- 6 Q And where was your child?
- 7 A In her room.
- 8 Q And Lance was the only adult present?
- 9 A Yes.
- 10 Q Now, you didn't have central heating and air in your
11 home at that time, did you?
- 12 A No, I did not.
- 13 Q You had some window air conditioning units.
- 14 A Yes, I did.
- 15 Q And one was in your bedroom?
- 16 A Yes.
- 17 Q And one was in the living room?
- 18 A Yes.
- 19 Q There was none in Victim room, was there?
- 20 A There was a fan.
- 21 Q A fan. No air conditioning unit though.
- 22 A No.
- 23 Q And, in fact, when you left, did you cut the air
24 conditioning units off or did you leave them on?
- 25 A They were on when I left. They were on when I left.

1 Q Except there was none in Victim s room.

2 A Victim wasn't in her room when I left.

3 Q And you were told that Victim had taken a nap. Is
4 that correct?

5 A Yes.

6 Q And that would be in her room, would it not?

7 A I don't know where she took a nap.

8 Q But, if she took the nap in her room, there would be
9 no air conditioning in there, would it?

10 A No, but there should've been a fan.

11 Q Now, you left around 11:00. I don't want to put words
12 in your mouth. What time did you leave?

13 A 11:30.

14 Q 11:30. And you came back at what time?

15 A About 12:30, 1:00 o'clock.

16 Q Now, when you got back, you say you could hear her
17 crying, you could hear Victim crying.

18 A (Witness nods indicating affirmative response.)

19 THE COURT: You need to answer out loud for us.

20 A Yes.

21 THE COURT: Thank you.

22 Q You went next door and got the key?

23 A After knocking on the door.

24 Q Now, is there a bathroom down that hallway?

25 A Yes.

1 Q And so, if he was giving her a bath, it would be down
2 that hallway, would it not?

3 A Yes.

4 Q And, when you opened the door and went inside, you saw
5 Lance coming down the hallway---

6 A Yes.

7 Q ---from the bathroom.

8 A Yes.

9 Q And he told you that he had given Victim a bath
10 because she was sweating. Is that correct?

11 A Yes.

12 Q He was sweating also, wasn't he?

13 A Yes.

14 Q It was hot in there, wasn't it?

15 A Because the air was off.

16 Q Now, would you agree that, if a child is sweaty and
17 hot, it's appropriate to give them a bath?

18 A It is appropriate.

19 Q How long did you stay in the home. Once you got
20 inside with the key, how long did you stay in the home
21 before you left?

22 A I was actually right there at the doorway. Maybe five
23 minutes, if that.

24 Q And did you go inside?

25 A Right in the doorway.

1 Q Did you see any problems with Victim

2 A No, I did not.

3 Q In fact, nothing to alert you to do anything other
4 than go about your regular business. Is that correct?

5 A Exactly.

6 Q And when did you come back to your home?

7 A I came home that night after I left the hospital.

8 Q You didn't come back in in the afternoon at some point
9 in time?

10 A That was when I came back.

11 Q What time was that?

12 A 12:30, 1:00 o'clock.

13 Q Are you saying you didn't go back in there around 3:00
14 or so in the afternoon and see Victim sleeping?

15 A No. I was gone then.

16 Q You didn't go in and---

17 A I had to meet Brittany at 3:30.

18 Q So you never went inside the home and saw Victim
19 sleeping in the crib and reached down and kissed her?

20 A She wasn't asleep.

21 Q I'm going to pass you up your statement and ask you to
22 look at the second page.

23 A (Pause.)

24 Q Does it say anything in there about you leaving around
25 2:30 in the afternoon?

1 A Yes.

2 Q And what did you tell the police at that time?

3 A When I left the second time?

4 Q Yes.

5 A That I went back and told Victim - bye and that I
6 would see her Sunday.

7 Q What time did you put in there?

8 A That was at 2:30.

9 Q 2:30?

10 A (Witness nods indicating affirmative response).

11 Q And so you went inside, and you had some contact with
12 Victim --.

13 A Yes.

14 Q Did you say what kind of contact you had with her?

15 A I hugged her and kissed her and told her I loved her.

16 Q So you weren't just standing in the doorway when you
17 were coming in.

18 A No.

19 Q And that was around 2:30?

20 A Yes.

21 Q And what time had you gotten back to the house from
22 going to the bank?

23 A Going to the bank?

24 Q Yes.

25 A That was about 12:30, 1:00 o'clock.

- 1 Q So did you stay there in the home---
- 2 A No, I did not.
- 3 Q ---from 1:00 o'clock to 2:30?
- 4 A No, I did not.
- 5 Q Where did you go then?
- 6 A I was in the beauty shop.
- 7 Q Okay. You don't say anything about that in there, do
- 8 you?
- 9 A No.
- 10 Q So you're saying now that you left the home, went to
- 11 the beauty shop and came back?
- 12 A Yes.
- 13 Q And, when you went to the beauty shop, who was in the
- 14 home then, at that time?
- 15 A Lance Williams and Victim
- 16 Q How about any of your children?
- 17 A No.
- 18 Q So you saw Victim when you first got back from the
- 19 bank. And what time would that have been?
- 20 A 12:30, 1:00 o'clock.
- 21 Q And that's right after she had been given the bath.
- 22 A Yes.
- 23 Q Then you saw her again at what time?
- 24 A About 2:30.
- 25 Q And you were close enough to hug her and kiss her and

1 so forth.

2 A Uh huh (indicating affirmative response).

3 Q You saw no ill effects of anything at that time, did
4 you?

5 A No.

6 MR. FLOYD: No further questions.

7 THE COURT: Thank you, Mr. Floyd. Solicitor,
8 redirect?

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

10 REDIRECT EXAMINATION BY MS. MAYES:

11 Q Just to clarify briefly, Ms. Harvey, you had gone to
12 the bank. Is that correct?

13 A Yes.

14 Q And I believe your testimony was you returned back
15 about 12:30 or 1:00. Correct?

16 A Yes.

17 Q And then, once you returned back that time, what
18 happened right before you left to go meet Brittany
19 again or to go meet Brittany?

20 A I walked back over to tell Victim [REDACTED] bye.

21 Q Okay. And, to get a timeframe on this, when you left
22 again, where were you leaving or going to?

23 A To Kevin [REDACTED] B [REDACTED]

24 COURT REPORTER: I'm sorry?

25 A Kevin [REDACTED] B [REDACTED]

- 1 Q And who is Kevin [REDACTED] B
- 2 A Brittany [REDACTED] B father.
- 3 Q All right. And why were you going there?
- 4 A To meet Brittany.
- 5 Q For what reason?
- 6 A We had a makeup appointment.
- 7 Q Okay. So what is your estimate of when you would've
- 8 left again?
- 9 A It was about 2:30.
- 10 Q And that would be p.m. Correct?
- 11 A Yes, ma'am.
- 12 Q What time were you to meet Brittany?
- 13 A I had to meet Brittany at 3:30.
- 14 Q All right. And so, just prior to leaving again, did
- 15 you have an opportunity to see Victim [REDACTED]
- 16 A I did.
- 17 Q Okay. Where was that at?
- 18 A In her crib, in Braydon's crib.
- 19 Q All right. And how did you go about seeing her or
- 20 observing her?
- 21 A I leaned over and hugged and kissed her and told her
- 22 I'd see her Sunday.
- 23 Q All right. And why was the plan to see her Sunday?
- 24 A She was going to her daddy's.
- 25 Q All right. And you're referring to her daddy, Adam

1 Cooper?

2 A Yes.

3 Q Okay.

4 MS. MAYES: Nothing further.

5 THE COURT: Recross, Mr. Floyd?

6 MR. FLOYD: No further questions.

7 THE COURT: Thank you. Thank you very much, Ms.
8 Harvey. You may step down.

9 (Witness leaves the witness stand.)

10 THE COURT: All right. Solicitor, you may call
11 your next witness.

12 MS. MAYES: The State calls Tommi Hutto.

13 THE COURT: Come up and be sworn, please, ma'am.

14 WHEREUPON, TOMMI HUTTO, being first
15 duly sworn, testifies as follows:

16 CLERK: Have a seat, please, ma'am. Once you're
17 seated, state your full name for the record. Speak up loud
18 and clear, please.

19 THE WITNESS: Tommi Hutto.

20 COURT REPORTER: You just spell it T-O-M-M-Y?

21 THE WITNESS: I.

22 COURT REPORTER: Okay.

23 DIRECT EXAMINATION BY MS. MAYES:

24 Q All right. And, Ms. Hutto, tell us a little bit about
25 yourself. Where do you reside?

1 A I live at [REDACTED].

2 Q Okay. And what kind of work do you do?

3 A I'm a cosmetologist, and I have my own salon right
4 behind my house.

5 Q All right. I'm going to ask you a few questions about
6 that. How many children do you have?

7 A I have three children.

8 Q Okay. And what are their names?

9 A LeeAnn, Adam and Sally.

10 Q All right. Now, on this particular day which would be
11 April 15th, 2010, are you familiar with that day?

12 A I am.

13 Q How are you familiar with that?

14 A It was a Thursday, and I was working in the beauty
15 shop and busy as usual as a Thursday was; and, being
16 at home, I do have my children in and out a lot.

17 Q Okay. Now, how old are your children?

18 A LeeAnn is 24, and Adam and Sally are 13.

19 Q All right. They're twins?

20 A Yes.

21 Q Okay. And, on this particular day, were you aware
22 that Lance Williams was at your daughter's residence?

23 A Yes, I was.

24 Q How did you become aware of that?

25 A He had been there the night before and had spent the

1 night. We had planted vegetables the night before in
2 our garden; and he had come out with the girls, my
3 grandchildren and Victim and Brittany and LeeAnn.
4 And then, the next morning when I talked to my
5 daughter, LeeAnn, I asked her to run an errand for me;
6 and she said that she---

7 MR. FLOYD: Your Honor, objection to hearsay.

8 A ---that she would.

9 THE COURT: Yes. Just a minute. I would sustain
10 that objection, Solicitor.

11 MS. MAYES: All right.

12 A She said that she---

13 Q No, no. You can't say what anyone else---

14 A Okay.

15 Q ---said to you. Okay?

16 A Okay.

17 Q All right. So, going back to that night before---

18 A Uh huh (indicating affirmative response.)

19 Q ---you had the opportunity to see Lance Williams that
20 night.

21 A Yes.

22 Q And you were aware that he was staying over at your
23 daughter's residence.

24 A Yes.

25 Q All right. Now, was this the first time you had seen

1 Lance Williams or had you seen him before?

2 A No. We've known Lance for years.

3 Q All right. And did there come a point in time where
4 you became aware that he was involved or dating
5 Brittany [REDACTED] B

6 A Yes.

7 Q And how did you become aware of that?

8 A They would come to our house; they would have dinner
9 with us; they would come on Sundays, was there for
10 Easter.

11 Q All right. So you had the opportunity to observe them
12 together for family events.

13 A Yes.

14 Q And has that been one time or more than one time that
15 you observed them together?

16 A Multiple times.

17 Q And does that include your husband as well?

18 A Yes.

19 Q All right. So you had the opportunity to observe them
20 together on previous occasions.

21 A Yes, ma'am.

22 Q All right. And I'm referring to Brittany and Lance
23 Williams. Correct?

24 A Right.

25 Q Now, what about the opportunity to observe Brittany

1 and Lance with Victim

2 A Oh, yes, several times.

3 Q All right. And what--- Based on your own
4 observations--- And do you also have the opportunity
5 to communicate with Lance Williams, to have
6 conversations with him?

7 A Oh, yes.

8 Q All right. Based upon your own observations, what is
9 your understanding of his relationship or role with
10 Victim.

11 A He and Brittany were dating, and he stayed over
12 whether it was at her dad's house or at LeeAnn's when
13 they were at LeeAnn's house. And they were--- They
14 were together like as a family, as a couple, and he
15 helped take care of Victim He did things for
16 Victim he disciplined Victim You know, they
17 were like a family.

18 Q All right. When you say that he disciplined Victim
19 had you ever had any conversations with Lance or heard
20 Lance make any comments about Victim needing
21 discipline?

22 A There was this one occasion that we were all outside
23 and they were playing, and he made the comment to me
24 that Victim was a brat.

25 Q All right. Now, did you also have the opportunity to

1 observe his daughter, Aubrey, on some occasions?

2 A Yes, ma'am.

3 Q What would you observe?

4 A They were just outside playing; the four girls were
5 playing together.

6 Q Okay. And how often would his daughter, Aubrey, come
7 over?

8 A She was only over twice that I saw at LeeAnn's house,
9 and it was like two weeks apart.

10 Q Okay. And, when she would come over, who would be---
11 Who would be together? In other words, how would she
12 fit into the family?

13 A Oh, she played right in with the other girls.

14 Q Now, were you aware as to whether or not Lance had
15 ever bathed **Victim**

16 A Oh, yes, ma'am.

17 Q How did you become aware of that?

18 A One night of that same week, we were out, like I said,
19 working in our garden. We were planting tomatoes.
20 And all the girls were outside playing, digging in the
21 dirt, you know, and just having a good time; and
22 LeeAnn and Brittany were doing dinner. And he
23 gathered up all the girls. He said, oh, well, I'll
24 give them all a bath.

25 Q All right. After that occurred, do you know whether

1 or not there was occasions that he was alone with
2 **Victim**

3 A Yes.

4 Q All right. And, on that particular day, April 15th,
5 2010, were you working in your beauty shop?

6 A Yes, I was.

7 Q And what hours do you normally work there at the
8 beauty shop?

9 A I'm usually there from 8:30 in the morning until 6:00
10 to 8:00 at night.

11 Q And, when you say you're usually there during those
12 hours, how many customers would you estimate you have
13 throughout the day?

14 A On a typical Thursday, I would have anywhere from 12
15 to 20.

16 Q Okay. How is the beauty shop set up in relation to
17 the other homes around your house?

18 A Okay. Our house faces Day Drive, and it runs parallel
19 with Day Drive, and then it turns, like an L. And I
20 have a carport, a double carport, then my beauty shop
21 and another double carport. So my house is like an L.
22 And then, on the other, on this side of it was
23 LeeAnn's trailer; and we had other trailers there in
24 the yard. But it made like a big U. If you could've
25 connected her trailer with my house, it made like a

1 big U. And my beauty shop is right in the middle. I
2 have windows all the way around.

3 Q When you say you have windows around your beauty shop,
4 do you have blinds?

5 A No, no blinds, no curtains.

6 Q Why is that?

7 A I like to be able to see out.

8 Q All right. What do you see when you look out of your
9 beauty shop?

10 A Well, if you--- If you look out the front of my beauty
11 shop, you see my driveway and across my yard. And I
12 have two windows right beside my station that looks
13 into my back yard, and I can see the back of my house
14 and the back of LeeAnn's trailer.

15 Q All right. When the children are outside playing--and
16 I'm referring to your granddaughters, Carlisle and
17 Kaylee, as well as Victim ---are you able to visualize
18 them?

19 A Yes.

20 Q How is that?

21 A We had their play area set up right inside of the U,
22 the way everything was shaped, so that, no matter
23 where we were, if I was in my home or if I was in my
24 beauty shop or if LeeAnn was at home, we could see
25 them at all times if they were playing.

1 Q All right. When you refer to the play area, describe
2 what you're talking about.

3 A We had a swing set out there, some Little Tykes cars
4 and just general toys out there.

5 Q All right. So the swing set, can you tell us whether
6 or not that swing set is visible from your beauty shop
7 window?

8 A Most definitely.

9 Q And, when you refer to your station, in beauty shop
10 terms, what's a station?

11 A That is my work station where I stand, I shampoo, I
12 cut, I roll hair. I do everything at that station.
13 It has my chair there.

14 Q All right. And are you able to see the play area
15 directly from that station?

16 A Yes, ma'am.

17 Q Have you ever seen the children go outside and not go
18 to the play area?

19 A No, ma'am.

20 Q And why is that?

21 A Well, we've always told them that that's where they
22 have to go and play. If they were to go into the
23 other carport, I could see that also because there's
24 windows on that side also.

25 Q Okay.

1 A But they always would come out--- If they didn't come
2 to my beauty shop to tell me, hey, they would go out
3 to the play area. And it's close enough that I can
4 tap on the window and they can hear me.

5 Q All right. On this particular day, April 15th, 2010,
6 while you were working throughout the day at your
7 station, did you ever observe Victim outside?

8 A No, ma'am, not at all.

9 Q Did you ever see Lance Williams take her outside for
10 any purpose?

11 A No, ma'am.

12 Q Was there ever an occasion where Lance Williams came
13 out?

14 A Yes, ma'am.

15 Q And when did you see him?

16 A He came over to my beauty shop right before lunch,
17 midday, came in and sat down. I spoke to him, hey,
18 how are you today. I was busy but still chatting.
19 And I asked him, where is Victim And he said, oh,
20 she's taking a nap.

21 Q All right. At that point in time, did he mention
22 anything unusual about Victim

23 A No, ma'am.

24 Q Was there ever a point in time when you heard Victim
25 outside?

1 A No.

2 Q Was there ever a point in time when you heard her
3 crying?

4 A No.

5 Q Was there ever a point in time when Lance Williams
6 made you aware of anything wrong with Victim that
7 day?

8 A No.

9 Q How would you describe the terrain around that play
10 area and generally around LeeAnn's home and your
11 beauty shop?

12 A It's all grass.

13 Q Would you describe it as rough terrain?

14 A No.

15 Q Okay. What happened later in the day?

16 A LeeAnn came back. I talked to her a little while, and
17 then she had to go and leave, and so, to pick her
18 daughter up from school. So then, I guess about an
19 hour later, maybe around 2:00ish, Lance came back to
20 the beauty shop, came in and sat down, didn't say a
21 whole lot. I spoke to him, and again I asked him,
22 where is Victim She's taking a nap.

23 Q All right. So both times he entered your beauty shop
24 that day, he did not have Victim with him.

25 A No, ma'am.

1 Q Did he ever, at any point, indicate anything wrong
2 with Victim

3 A No, ma'am.

4 Q Did he ever tell you that Victim had fallen and hurt
5 herself in any way?

6 A No, ma'am.

7 MS. MAYES: Beg the Court's indulgence.

8 (Pause.)

9 Q You said previously that Lance Williams had described
10 Victim as a brat. How would you describe Victim

11 A Victim is a very loving, sweet child. Never, at
12 that point, had I ever seen her really pitch what you
13 call a temper tantrum. She was very easy going, mild
14 mannered, easy to please.

15 Q Thank you.

16 MS. MAYES: Nothing further.

17 THE COURT: Thank you, Solicitor. Mr. Floyd?

18 MR. FLOYD: Thank you, Your Honor.

19 CROSS EXAMINATION BY MR. FLOYD:

20 Q Ms. Hutto, you say he came out to your place around
21 2:00 o'clock?

22 A Uh huh (indicating affirmative response).

23 Q And how long did he stay then?

24 A Just a few minutes.

25 Q Was LeeAnn there?

1 A No. She had gone to get her daughter from school.

2 Q Okay. Now, I thought LeeAnn said she left about 2:30.

3 A Well, I mean, this is just an approximate.

4 Q Now, your home fronts onto Day Drive.

5 A Uh huh (indicating affirmative response).

6 Q Is that correct?

7 A Uh huh (indicating affirmative response).

8 Q So, if this was [REDACTED] [REDACTED], your home would sit here
9 (indicating) looking out toward Day Drive. Is that
10 correct?

11 A Right.

12 Q Then you go to the end of it over here (indicating),
13 and you go that way.

14 A Correct.

15 Q And that's your garage and your beauty shop. Is that
16 correct?

17 A Right.

18 Q And then you go a little past that---

19 A Uh huh (indicating affirmative response).

20 THE COURT: Would you answer yes or no for me,
21 please, Ms. Hutto?

22 A I'm sorry. Yes.

23 THE COURT: That's all right. I just need you to
24 say it for the record for me.

25 A Okay.

1 THE COURT: Thank you.

2 Q And then we go this way (indicating), and that would
3 be LeeAnn's home.

4 A Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q And it would be facing out this direction.

8 A Right.

9 Q Is that correct?

10 A (Witness nods indicating affirmative response.)

11 Q Now, if you're in your shop, you can see her back
12 yard.

13 A Yes, sir.

14 Q But you can't see her front yard, can you?

15 A I cannot see her front yard. I can see her side yard
16 but not the front door.

17 Q I've got you. And there is, is there not, a driveway
18 of some sort running all the way around her unit back
19 to the road?

20 A Yes, sir.

21 Q And that's not grass, is it?

22 A Yes, sir, it is.

23 Q It is?

24 A There might be a few little patches, you know, but
25 most of it is grass.

1 Q Now, but you cannot see anyone who would go out the
2 front door.

3 A No, sir.

4 Q Okay. Now, you had how many customers that day, 12 to
5 20 you say?

6 A Uh huh (indicating affirmative response).

7 Q And, when you're attending to your customers, you're
8 giving them your attention, are you not?

9 A Yes, I am.

10 Q And is there conversation going on too?

11 A Certainly, yes, sir.

12 Q That's part of the whole thing, isn't it?

13 A Uh huh (indicating affirmative response).

14 Q So you really can't say you, every second of the day,
15 were looking out in the play area.

16 A No, sir, not every second.

17 Q And you couldn't see the front door.

18 A No, sir.

19 Q The times you saw Lance that day, you didn't notice
20 anything unusual about him, did you?

21 A I did the second time he came in.

22 Q Oh, you did?

23 A Uh huh (indicating affirmative response).

24 Q You didn't say anything about that earlier, did you?

25 A No, sir.

1 Q What did you notice unusual?

2 A I noticed, when he sat down on my couch in the beauty
3 shop, that he was very fidgety. His hands--- You
4 know, he just wasn't like himself. He didn't have
5 anything to say other than what I said to him, you
6 know, hey, how are you, where is Victim

7 Q Did that make you so suspicious that you went over and
8 checked on Victim

9 A No, sir, it did not.

10 Q So it didn't make you suspicious of anything with
11 Victim did it?

12 A Huh uh (indicating negative response).

13 Q Thank you.

14 THE COURT: All right. Redirect, Solicitor?

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

16 REDIRECT EXAMINATION BY MS. MAYES:

17 Q Now, if you could just clarify for us, Ms. Hutto, when
18 you say that you're looking out of the beauty shop
19 windows, what exactly are you looking at? What is the
20 full scope of what you are able to see?

21 A I can see the whole back side of the trailer and both
22 ends. I cannot see the front of the trailer. I can
23 see what's going on on both ends of the trailer but,
24 and in the back, but not in the front.

25 Q All right. Does the front area of the trailer that

1 you cannot visualize contain any type of play area?

2 A No, ma'am.

3 Q Were any of the children's toys in that area?

4 A No, ma'am.

5 Q What about any of their little cars?

6 A No, ma'am.

7 Q What is in the front area of the trailer once you walk
8 out the front door?

9 A Flowers and grass.

10 Q All right. Where did **Victim** normally play based on
11 your observations?

12 A Most of the time, in the play area. Every now and
13 again, they would play under the carport because it's
14 concrete and they can ride their little toys. But I
15 can see them when they're under the carport.

16 MS. MAYES: Nothing further.

17 THE COURT: Recross, Mr. Floyd?

18 MR. FLOYD: Just very briefly, Your Honor.

19 THE COURT: Yes, sir.

20 RECROSS EXAMINATION BY MR. FLOYD:

21 Q Ms. Hutto, if **Victim** ever played in the front yard,
22 you couldn't see it, could you?

23 A No.

24 Q Thank you.

25 THE COURT: Thank you. Thank you very much,

1 Ms. Hutto. You may step down.

2 A . Thank you.

3 (Witness leaves the witness stand.)

4 THE COURT: All right. Solicitor, you may call
5 your next witness.

6 MS. MAYES: The State calls Marlena Clary.

7 THE COURT: All right. Ms. Clary. Is that
8 correct?

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

10 THE COURT: All right. If you'd come around for
11 us, please, and be sworn, Ms. Clary.

12 WHEREUPON, MARLENA CLARY, being first
13 duly sworn, testifies as follows:

14 CLERK: Have a seat, please, ma'am. Once you're
15 seated, please state your full name on the record, please.

16 THE WITNESS: My name is Marlena Clary.

17 THE COURT: Would you spell your last name for
18 us, please?

19 THE WITNESS: C-L-A-R-Y.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION BY MS. MAYES:

22 Q Good morning, Ms. Clary. Could you give us some
23 information about yourself?

24 A Yes. I'm a forensic nurse examiner with the Regional
25 Nurse Examiner Program based out of Palmetto Health

1 Richland.

2 Q All right. I'm going to ask you a few questions about
3 that. When you say that you're a forensic nurse
4 examiner, what do you mean by that?

5 A Our program conducts forensic nurse exams on patients
6 who present as a victim of sexual assault or domestic
7 violence.

8 Q All right. I want to take you back and have you give
9 us some information concerning your educational
10 background and training. And let's start with post-
11 high school.

12 A I received an LPN certificate through Midlands Tech
13 and then pursued my RN through Regents University and
14 began work as an RN at Palmetto Health Baptist.

15 Q All right. And, just to kind of give us a little bit
16 more information about those initials, by LPN, you
17 mean licensed practical nurse?

18 A Correct.

19 Q All right. And, then later, you became an RN, which
20 is a registered nurse?

21 A Correct.

22 Q All right. And how long have you been a registered
23 nurse?

24 A Approximately a little over 15 years.

25 Q All right. And where all have you practiced as a

1 registered nurse?

2 A At Palmetto Health Baptist--well, it was Baptist
3 before it became Palmetto Health--Palmetto Health
4 Richland, Providence Northeast.

5 Q All right. And, specifically, in your nurse training,
6 at what point did you become involved in conducting
7 what's called a sexual assault examination or a child
8 abuse examination?

9 A In 2005.

10 Q And in what regard? How did you become involved in
11 that?

12 A I was working in a women and children's area, labor
13 and delivery, and that was something I was always
14 interested in. And I was contacted by Terry Casto who
15 is in charge of the sexual assault program, and I took
16 a course that they put on and completed my clinicals
17 and then proceeded to perform sexual assault exams on
18 what we call a PRN basis, which is kind of as needed,
19 keep my full-time job but then cover call when I'm off
20 from my full-time job.

21 Q All right. And, when you talk about sexual assault
22 examinations, does that include adults?

23 A Correct.

24 Q And can you tell us whether or not that has also
25 included children and adolescents?

1 A Correct, it does.

2 Q And what type of specific training do you receive in
3 that field to conduct or carry out a sexual assault
4 examination?

5 A Well, for adults and adolescents, we attend a 40-hour
6 course where we learn, you know, all kinds of things,
7 anatomy, different forensic techniques, how to use all
8 the different equipment, a lot of the psychological
9 aspects of sexual assault. We hear from all kinds of
10 speakers from profilers and victim advocates and
11 forensic pathologists, pediatricians and things like
12 that. And then, once you complete your, the 40-hour
13 course, then you're required to complete your clinical
14 requirements which include so many speculum exams.
15 You know, we ride along with law enforcement. We
16 observe courtroom testimony. We have to perform so
17 many perceptive exams or shadowing exams before we can
18 be checked off that we're competent.

19 Q Is it possible for you to estimate how many sexual
20 assault forensic examinations you've conducted during
21 your nurse career?

22 A Almost a hundred.

23 Q How are the forensic nursing examinations overseen by
24 supervisors?

25 A Well, we do them on our own, but we work under the

1 medical director at the hospital that we're at. So
2 whatever physician is seeing the patient at that
3 particular hospital--- That's the only place that our
4 program sees patients is in the emergency room
5 setting, and so we--- Whoever the physician is, we're
6 working under that physician. Typically, that
7 physician is not there while we're doing our exam
8 because we are experienced and credentialed to do it
9 on our own; but, if we have questions or concerns or
10 we need a little assistance, they are there to help
11 us. But that's how we work with--- You know, we do it
12 in a room by ourselves with an advocate typically
13 leading, but we work under the direct supervision of
14 whatever physician is seeing that patient.

15 Q And are your findings or records subject to peer
16 review?

17 A Yes.

18 Q Now, when you talk about the training that goes into
19 this, how is it different? How is the field of sexual
20 assault forensic examinations different than a normal
21 examination of a child?

22 A Well, it's very specific to different forensic
23 techniques, interviewing the patient, taking into
24 consideration all the different aspects that can
25 affect somebody who's just been a victim of a crime;

1 and, you know, it's a lot different than just your
2 regular nursing. You know, you need to be able to
3 handle the actual--- Our primary goal is to handle the
4 medical care and make sure that patient is okay
5 medically and--- But then we also need to be very
6 skilled in understanding what techniques are
7 appropriate for that particular patient based on the
8 history and things like that. For pediatric patients,
9 on top of the other 40-hour course, we do another 30-
10 hour course for pediatric patients which we then,
11 again, have to complete certain clinical requirements
12 for that such as, you know, working with just a
13 pediatrician, doing well exams, well-visit exams, so
14 we can really differentiate between what's normal and
15 what's not because you can't really identify what's
16 not normal if you don't know what's normal, and then,
17 again, different family court things and different
18 issues that impact pediatric patients.

19 Q Is there also an established protocol that forensic
20 nurse examiners follow?

21 A Yes.

22 Q What is the protocol?

23 A We use--- Our program uses a computerized database
24 where we put all of our documentation in; and that's
25 what, quote, unquote, I think you're referring to.

1 Are you referring to that protocol, that
2 documentation?

3 Q Is there an established form?

4 A Yes, yes, uh huh (indicating affirmative response.)

5 Q And are you trained in how to evaluate a patient
6 subject to that form---

7 A Yes.

8 Q ---to that written protocol?

9 A Correct.

10 COURT REPORTER: I'm sorry. To that what?

11 MS. MAYES: Written protocol.

12 COURT REPORTER: Okay.

13 MS. MAYES: Your Honor, at this time, the State
14 would offer Marlana Clary as an expert in the field of
15 forensic nurse examination.

16 THE COURT: Mr. Floyd, do you have any *voir dire*
17 in that regard?

18 MR. FLOYD: No, Your Honor. I'm just a little
19 surprised because she was not identified as an expert in
20 the State's witness list that they provided us.

21 THE COURT: Well, I'll certainly allow you to
22 *voir dire* Ms. Clary if you would like to in that regard,
23 Mr. Floyd.

24 MR. FLOYD: That's okay, Your Honor. I don't
25 have any questions.

1 THE COURT: All right. Thank you. Thank you
2 very much. Ladies and gentlemen of the jury panel,
3 normally a person cannot give opinion testimony. Normally
4 when a person testifies, they must testify as to what they
5 either saw, heard or sensed by smell or something of that
6 nature, something perceived through one of our human
7 senses. However, there is an exception when someone is
8 qualified because of education or experience in a
9 particular field, art, trade, science or profession. They
10 are permitted to give their opinions in certain areas if
11 the Court qualifies them that way. This witness, Marlena
12 Clary, will be qualified in the area of forensic nurse
13 examination to give opinion testimony in that area. That
14 does not mean that you must accept the opinion; but it is
15 evidence for you, the jury, to use in any way you see fit.
16 Thank you, Solicitor. You may continue.

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

18 Q Now, when we talk about children, why might it be
19 important to assess physical abuse findings, potential
20 physical abuse findings, in addition to sexual abuse
21 findings?

22 A Well, our primary goal, again, is to medically make
23 sure that, you know, all of their injuries are taken
24 care of. And, a lot of times, some injuries aren't
25 obvious right away, so we have to get a complete,

1 accurate history to the best of our ability. And,
2 with pediatric patients, sometimes, if they're non-
3 verbal, that's not collected. So that's why that
4 physical exam, I mean, looking them over from head to
5 toe is extremely, extremely important.

6 Q All right. Now, on the day of April 15th of 2010, can
7 you tell us whether or not you were working at
8 Palmetto Health Hospital?

9 A I was.

10 Q And how did you become involved with a case concerning
11 **Victim** **[REDACTED]**

12 A I was on call that evening, and I was called in by the
13 pediatric emergency department stating they had a
14 case. We asked them brief routine questions, and I
15 determined that it met the criteria for me to come in.
16 So I responded to the ER.

17 Q All right. And what happens once you respond to the
18 ER?

19 A Once we get there, we talk to the physician who was
20 seeing the patient and to the nurses to try to
21 establish, you know, what's going on, what, if
22 anything, do they know, you know, what condition the
23 patient's in. We want to make sure that the patient
24 is stable obviously. Any life-threatening injuries or
25 anything that needs to be addressed needs to be taken

1 care of before we get involved. And, you know, we
2 just determine if they're stable enough that we can go
3 in there and begin our process.

4 Q All right. Now, you mentioned though before that
5 there was a protocol. How do you go about actually
6 following a certain protocol when you're doing a
7 forensic nurse examination on a child?

8 A We refer to, you know, that actual database; and it
9 just pretty much guides us as to, you know, obtaining
10 medical history. We need to know a little bit about
11 their past history because that can affect their
12 medical care and possibly some injuries or, you know,
13 reasons why we wouldn't see injuries. So we use that
14 protocol or that database to pretty much guide us for
15 the most part. A lot of times, you know, we might
16 have to do something a little bit out of order; but,
17 for the most part, if possible, we try to follow that.

18 Q All right. And, for purposes of medical diagnosis and
19 treatment, how do you go about finding out what
20 happened or trying to obtain a history?

21 A With pediatric patients, we interview the caregiver or
22 the person that, you know, brought them to the
23 emergency room and ask them, by themselves, kind of,
24 you know, what they know to have happened, were they a
25 witness, was something just reported or disclosed to

1 them. And so we get that first. And then, if the
2 child is able, then we talk to the child alone, away
3 from family or anything, and try to determine why
4 they're there without leading them, you know, why are
5 you here, what brought you here, that kind of thing,
6 so that, to see what their understanding of what's
7 going on is. And then we ask them some questions
8 about what happened.

9 Q All right. When it's a patient such as a one-year-
10 old, such as **Victim** how important is it to get
11 history---

12 A Yes.

13 Q ---about what might've happened from family members
14 for purpose of medical diagnosis and treatment?

15 A Extremely important because, if we don't have--- If we
16 are unable to get any kind of history, we can't just
17 examine a child looking for something just thinking,
18 oh, well, maybe something happened. So we have to go
19 based on what we're being told---

20 Q All right.

21 A ---and that guides us.

22 Q And what family members did you speak with in order to
23 obtain **Victim** history for purposes of
24 medical diagnosis and treatment?

25 A Her mother.

1 Q All right. And that would be Brittany [REDACTED] B

2 A Correct.

3 Q And what--- Can you tell us whether or not your
4 protocol documents that information?

5 A It does.

6 Q All right. I'm going to refer you to that. What, if
7 anything, was noted about Victim [REDACTED] demeanor for
8 purposes of medical diagnosis and treatment?

9 A She was---

10 Q You can refer directly to your protocol, please.

11 A She was--- When I got there, she had an IV. She was
12 actually I believe in the process of returning back
13 for a CT or some X-rays or something; and she was very
14 flushed, red-cheeked, very clingy to the people that
15 were with her. I believe it was maybe an aunt that
16 was with her too, with Brittany, her mom.

17 THE COURT: Sheriff, would you take care of that
18 telephone for me, please? Take it into custody. Thank
19 you. Solicitor, you may continue.

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

21 Q If you could, please refer to page 4 of your protocol.
22 Do you have your protocol with you?

23 A I do, uh huh (indicating affirmative response).

24 She--- Are you referring to my observations?

25 Q I'm asking for any history that was provided by family

1 members concerning her demeanor.

2 A Okay. Brittany had stated that she's not acting
3 normal, that she's crying a lot, she's acting like
4 she's really sore and hurting, she doesn't want to be
5 touched, she's acting lost and dazed.

6 Q All right. So the words lost and dazed, that was part
7 of her medical history from who?

8 A From her mother.

9 Q All right. And is it also important to try and
10 develop information for purposes of medical diagnosis
11 and treatment about a timeframe in which any injuries
12 might have occurred?

13 A Correct.

14 Q What was your understanding in that regard?

15 A That that had all taken place that day. We don't do
16 forensic evidence collection after 24 hours. We still
17 see a patient within 72 hours, but we really
18 absolutely have to establish a timeframe to the best
19 of our ability.

20 Q All right. And, after obtaining this history
21 concerning her demeanor, did you have the opportunity
22 to actually conduct a physical examination of Victim

23 B

24 A Yes, I did.

25 Q And who else was present when you did the physical

1 examination?

2 A The advocate, sexual trauma services advocate; and, at
3 times, her mother was present depending on what we
4 were doing.

5 Q All right. And I'm going to refer you to page 8 of
6 your protocol.

7 A Uh-huh (indicating affirmative response).

8 Q All right. And, at this point in time on the evening
9 of, or at this point in time on April 15th, 2010, had
10 **Victim** actually been admitted into the hospital,
11 into Palmetto Health Hospital?

12 A She had not been admitted as of yet, but we knew that
13 she was going to be admitted once everything, all the
14 testing and everything, was completed. So we knew
15 that she was technically not inpatient yet.

16 Q Okay. But she was still there in the emergency room?

17 A Correct.

18 Q And what time do you note that the examination
19 started?

20 A I started about 11:30.

21 Q All right. And approximately how long does the
22 examination take?

23 A It varies depending on, especially with pediatric
24 patients, just how cooperative they are and things
25 like that. But this took about three hours.

1 Q All right. So it was a three-hour examination.

2 A Yes.

3 Q And how, if at all, did you note or describe her
4 general physical appearance?

5 A I documented that she was tearful, very agitated, you
6 know, cried and moaned a little bit. She cried very
7 hard at times. She would drift off to sleep; but, the
8 minute she heard the slightest paper rustling or
9 camera shutter, she would be very--- She was very
10 vigilant, very hyper and vigilant. And she would go
11 back to sleep; and, then all of a sudden, anything
12 would startle her and wake her back up.

13 Q All right. Was she making any sounds or noises?

14 A She was moaning a lot even in her sleep.

15 Q Now, I want to start with the general physical
16 examination. How is that documented pursuant to the
17 protocol?

18 A We do just a head-to-toe assessment documenting, you
19 know, basically starting from the head, head, eyes,
20 ears, nose, throat, neck, chest, abdomen, lens, skin.
21 We document what we call a neuro-assessment just
22 trying to establish if they're, you know, impaired in
23 any way neurologically.

24 Q All right. And is there a specific form that goes
25 along with the general body examination?

1 A There is. There is. There's just the general, you
2 know, physical exam routine things. There is, uh huh
3 (indicating affirmative response).

4 Q All right. And how is the examination documented?

5 A We document all of our findings by body diagrams and
6 naming the body part that has a finding and then
7 documenting, to the best of our ability, what that
8 finding looked like.

9 Q All right. And can you tell us whether or not
10 photographs were taken in addition?

11 A Yes, they were.

12 Q And do you have with you today the information
13 concerning the overall physical examination of

14 **Victim**

15 A I do.

16 THE COURT: Would you show it to Mr. Floyd and
17 Mr. Snell first?

18 MS. MAYES: Yes, sir. And, for the record, these
19 are portions of the protocol exam---

20 THE COURT: All right.

21 MS. MAYES: ---that have been previously
22 provided.

23 Q Are you familiar with this document?

24 A Yes. It's our database blown up.

25 Q And who prepared this particular document concerning

1 [REDACTED] Victim [REDACTED]

2 A I did.

3 Q And for what purpose is it done?

4 A It's to show where we observe any type of abnormality.

5 MS. MAYES: Your Honor, at this time I would
6 offer this item into evidence. I believe it would be
7 State's Exhibit 9.

8 THE COURT: I thought it would be 10. Is it 9?

9 COURT REPORTER: Well, unless I missed,
10 something, Judge, but---

11 THE COURT: I try to act here like I do at home.
12 I don't like to correct anyone.

13 COURT REPORTER: I think it's 9, but---

14 THE COURT: All right. Mr. Floyd?

15 MR. FLOYD: Your Honor, the only problem we have
16 with it is---

17 COURT REPORTER: Judge---

18 THE COURT: I'm sorry, Mr. Floyd.

19 MR. FLOYD: We object, Your Honor. They can
20 certainly put the page in that she did. Why do they need a
21 blown-up copy of it? What does that accomplish except to
22 try to maybe greater emphasize it? They can put the report
23 itself in which this is actually just a copy of it.

24 THE COURT: All right. I'll allow it. State's 9
25 is in evidence subject to objections with the understanding

1 that it is an enlargement of the document itself, and the
2 fact that it is an enlargement should not be considered by
3 you to enhance or disenhanche the evidence or testimony.
4 The jury is the finders of the facts and the credibility of
5 the witnesses in that regard. State's 9 is in evidence
6 subject to objection.

7 (State's Exhibit 9 is marked for purposes of the
8 record.)

9 Q Nurse Clary, if I ask you to step down, would you
10 still be able to refer to your notes as well as to
11 this document?

12 A Can I bring them with me?

13 Q Yes, sure.

14 THE COURT: Make sure you keep your voice up when
15 you're away from the microphone, Ms. Clary; and, if you
16 would stand on the other side where you face back towards
17 the Bench and towards the court reporter, I would
18 appreciate that.

19 Q All right. And, if you could, as mentioned previously,
20 by Your Honor, just keep your voice up loud enough so
21 that each juror can hear you and the court reporter as
22 well.

23 A Okay.

24 Q I want to start by asking you, when we look at the
25 notations by number and by chronological order, what,

1 if anything, concerning [Victim] was noted as
2 the first location of injury?

3 A Number one is referring to her neck area here
4 (indicating). There was a bruise noted on there, and
5 there were two circular one-centimeter bruises noted
6 on her neck. And can I just clarify? These don't
7 point to exactly; this is just saying that, you know,
8 I picked like one neck. It's just pointing to the
9 left lateral neck, not necessarily to exactly the spot
10 where the injury was. So, if you were looking at a
11 photograph, the bruise might be over here where this
12 pointer is pointing right there (indicating). Does
13 that make sense? That's just the area.

14 Q All right. And, again, this is generated by computer
15 database?

16 A Exactly.

17 Q All right. And what was the second location of injury
18 that you noted?

19 A She had a bruise on her forehead, a two-centimeter
20 bruise.

21 Q And the third area of injury?

22 A She had an abrasion to the left side of her neck which
23 would be number, where this pointer is pointing here,
24 and going across here (indicating).

25 Q And the fourth area?

1 A On her thigh area in here (indicating), she had an
2 abrasion, kind of a line, a linear, what we call a
3 two-centimeter linear abrasion.

4 Q And the fifth area?

5 A That--- We use an ultraviolet light, and that is
6 to--- We turn the lights off in the room; and we, you
7 know, exam the body to see if there's any areas that
8 would fluoresce, and that is typically--- What we're
9 looking for is any kind of body fluid. Body fluid
10 will fluoresce; other things will too. But, if
11 anything fluoresces, based on the history, then we
12 we'll collect a specimen. And, on her foot, there was
13 an area there that did fluoresce, so I collected a
14 specimen.

15 Q And let me clarify. In addition to doing this
16 physical examination, is there a later portion that
17 includes a sexual assault or sexual abuse examination?

18 A Correct. And, depending on the exam, we might have to
19 collect the evidence as, you know, we're conducting
20 the physical exam.

21 Q All right. And so what, if anything--- Not
22 necessarily in **Victim** case but in any case in
23 general, what, if anything, might be significant about
24 an ultraviolet finding or fluorescent, fluorescent
25 appearance?

1 A What we're looking for specifically would be semen.

2 Q All right. And can you tell us whether or not---

3 MR. FLOYD: Your Honor, I object. There's no
4 evidence of a rape kit done and there's no semen found.

5 THE COURT: Overruled. She's an expert witness,
6 and the Solicitor is asking her what do they look for. You
7 can bring that out, Mr. Floyd.

8 MR. FLOYD: All right.

9 THE COURT: You may continue, Solicitor.

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

11 Q Now, specifically in Victim case, why do you
12 collect that not knowing ultimately what the results
13 may or may not be?

14 A Because it could be potential DNA. If it is semen or
15 saliva or whatever and we swab it, the lab can run
16 that and there could be potential DNA.

17 Q All right. And is that part of the protocol---

18 A Yes.

19 Q ---to collect?

20 A Correct.

21 Q And so this particular area that we're talking about,
22 number five, the ultraviolet, just to clarify, that is
23 not an area of injury. Correct?

24 A Correct.

25 Q All right. And as to area number 6?

1 A That was a bruise. She had several, three different
2 bruises on her elbow.

3 Q All right. As to Number 7?

4 A She had some bruises on her knee, you know, some
5 circular bruises there.

6 Q And, when you describe a circular bruise, what do you
7 mean by that?

8 A Just a round bruise, just, you know--- We try to
9 describe it in shape, if we can, so that you can
10 visualize it. And they were just, you know, three
11 round, circular bruises.

12 Q All right. Area number 8?

13 A She had an abrasion. Along with the bruise, the
14 bruising on her neck, there were also some abrasions
15 in that bruise, you know, inside. So something caused
16 the bruise, but there was an abrasion inside also.

17 Q All right. And then as to area 9?

18 A The back of her head was very tender and they had---
19 Based on the CT, she had a scalp hematoma and she had
20 petechial hemorrhages in her hair. She had very fine
21 blonde hair, and I was trying to be able to photograph
22 that; but, even just trying to move her hair out of
23 the way so that I could see it, she really wouldn't
24 allow me to do that.

25 Q All right. When you use a term like petechial, what

1 are you talking about?

2 A Petechiae are small little broken capillaries, blood
3 vessels, that just cause tiny little pinpoint, less
4 than about three-millimeter, red, typically reddened
5 areas caused by some sort of, you know, trauma or some
6 sort of lack of oxygen to that issue and so the
7 capillaries rupture.

8 Q All right. And you mentioned that you she had a
9 hematoma. What do you mean by hematoma?

10 A A hematoma is just swelling, bruising under the top
11 layer of skin.

12 Q All right. And so that would be at the back of the
13 head. Is that correct?

14 A Correct.

15 Q All right. Now, in addition to these overall findings
16 or the overall assessment that you do with a physical
17 body, what other areas of the body do you look at?

18 A Then we break it down by face, hands and then the
19 genital area.

20 Q Okay. And did you also do an assessment of Victim
21 face?

22 A Yes.

23 MS. MAYES: Beg the Court's indulgence.

24 (Pause.)

25 THE COURT: Will you show those to Mr. Floyd

1 first, please, Solicitor?

2 MR. FLOYD: Your Honor, the same objection we
3 made to the last one. We don't see any purpose to be
4 gained by giving a blown-up, exaggerated size copy of
5 something that's in the report---

6 THE COURT: All right.

7 MR. FLOYD: ---and then putting it in evidence.

8 THE COURT: All right. Thank you, Mr. Floyd. I
9 would--- You're offering that, Solicitor?

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

11 THE COURT: All right. So this would be--- Would
12 you have it marked, please?

13 (State's Exhibit 10 is marked for purposes of the
14 record.)

15 COURT REPORTER: That's Number 10, Judge.

16 THE COURT: All right. State's 10 is in evidence
17 subject to defense objection. Again, ladies and gentlemen,
18 the size is not an element for you to consider. It's to be
19 able for the jury to see the document as it's presented.
20 So State's 10 is in evidence subject to the previous
21 objection.

22 Q And do you recognize this particular document which is
23 State's Exhibit 10?

24 A Yes.

25 Q And how do you recognize this?

- 1 A It's on page 11 of my report.
- 2 Q Okay. And, again, keeping your voice up, in reference
3 to [Victim] [REDACTED] what is the first location of
4 injury that is noted?
- 5 A This is also what was noted on the body diagram; but,
6 because the neck is still considered part of the body,
7 it includes that again. So these are the bruises on
8 her neck (indicating).
- 9 Q All right. And what is noted next?
- 10 A On her right ear, she had bruises to what we call the
11 pinna, which is the ear, right ear, to this part of
12 the right ear (indicating).
- 13 Q All right. And next?
- 14 A The same thing, bruising to the left ear, this part of
15 the left ear (indicating).
- 16 Q And, when you refer to the pinna, what portion or area
17 of the ear would that be?
- 18 A That would be this outer, this top rim right here
19 (indicating).
- 20 Q And if you could keep your voice up for the court
21 reporter.
- 22 A Sorry.
- 23 Q All right. And what, if anything, was noted
24 concerning her forehead?
- 25 A She had a bruise on her forehead, a circular two-

1 centimeter bruise.

2 Q And what, if anything, was noted concerning her lip
3 area?

4 A She had a torn, reddened area when I lifted up her lip
5 underneath like something had hit it. It was bloody
6 and crusted over.

7 Q All right. When you make a notation concerning
8 bloodied, with the crusted blood---

9 A Uh-huh (indicating affirmative response).

10 Q ---can you tell us whether or not that's consistent
11 with an acute injury?

12 A It was definitely acute. It wasn't scabbed over, so
13 it was fairly recent. I couldn't specifically say a
14 timeframe, but it was still bleeding, freshly
15 bleeding.

16 Q And what, if anything, did you notice in addition
17 concerning the anterior portion of her neck?

18 A Again, another abrasion.

19 Q Was anything additional noted concerning the ear?

20 A Behind the right ear, she had--- I'm sorry. Behind
21 the right ear, right behind the pinna, this was
22 reddened (indicating). At that point, I couldn't tell
23 if it was a bruise; so, you know, I documented that we
24 recommend follow-up to see later on did that bruise,
25 did this hit that part and cause a bruise.

1 Q All right. And, as to the area that is noted as the
2 left lateral portion of the head?

3 A And these are pointing here and here (indicating), and
4 that's why I say that was actually behind both ears.
5 What I was just describing, it's pointing up there,
6 but that's just because that's, you know, there's only
7 certain descriptors you can choose. I don't put this
8 in there and draw an arrow. When I choose that area,
9 it just automatically points to this area if that
10 makes sense. I can't say, well, no, it was more over
11 here. But, behind both ears, it was reddened, and I
12 recommended follow-up. And let me clarify--I
13 apologize--on seven, there was, right here
14 (indicating)--and, again, see this is pointing here--
15 right here, there was a reddened area right in front
16 of her right ear that needed follow-up to determine
17 what that was. It was some--- It looked like some
18 sort of impression, but it was--- It was just reddened
19 at the time I saw her.

20 Q All right. And can you tell us whether or not that
21 impression could be consistent with a handprint or
22 fingerprint?

23 A It could be consistent, yes.

24 Q All right. And, specifically as to 8 and 9 that was
25 noted, what type of injury was that?

1 A We refer to it like as a boxer blow. When somebody's
2 hit, slapped or some kind of blunt-force trauma like
3 this, the skin of the ear gets trapped between the
4 object that's impacting them, and so it kind of takes
5 the brunt of the force; but then it actually also acts
6 kind of as an object hitting this area behind it.
7 It's kind of like if something's hitting the ear and
8 then the ear, along with that object, is hitting the
9 back of the ear on both sides.

10 Q All right. In addition to these external
11 examinations, did you also have the opportunity to
12 conduct a sexual assault or potential sexual assault
13 examination as a portion of your protocol?

14 A Yes.

15 Q And could you tell us whether or not that's routine in
16 other cases as well?

17 A Depending on the history, yes.

18 Q I'm going to show you this document and ask you
19 whether or not you recognize it?

20 A Yes.

21 Q How do you recognize this document?

22 A It's page 12 of my report, 12 and 13.

23 MS. MAYES: Your Honor, at this time, we would
24 offer this as State's 11 for evidence.

25 THE COURT: Mr. Floyd?

1 MR. FLOYD: Your Honor, we repeat our objection
2 to using these blown-up exaggerated copies. It's the same
3 objection.

4 THE COURT: All right. State's 11 is in evidence
5 subject to previous objection.

6 (State's Exhibit 11 is marked for purposes of the
7 record.)

8 Q Now, you mentioned before your protocol training.
9 What, if anything, is different when you have a child
10 who can't communicate? How, if at all, does that
11 affect your need to do a full protocol?

12 A Well, we don't just examine them just because and just
13 to see if we can find out what happened. We would
14 have to have something that would be suggestive of
15 some sort of sexual activity, some sort of either a
16 witnessed event or some sort of disclosure by the
17 child to an adult or some injury in a child that can't
18 be explained by routine medical findings.

19 Q All right. And, in Victim case, this is a child
20 who is not verbal. What, if anything---

21 MR. FLOYD: Objection, Your Honor. She's
22 testifying.

23 MS. MAYES: I'll rephrase that, Your Honor.

24 THE COURT: All right.

25 Q Was she verbal?

1 THE COURT: Sustained.

2 Q Yes or no. Was she verbal?

3 A She was verbal. She could speak, but she moaned and
4 cried and groaned.

5 Q Okay. And was she able to tell you what had happened
6 to her on April 15th?

7 A No.

8 Q All right. And, in a situation like this, what type
9 of general assessment is done prior to making the
10 determination to conduct a more definitive type of
11 sexual assault examination?

12 A The physician that sees the patient is going to talk
13 to mom and try to determine what happened, and then
14 they're going to do a physical exam, just a cursory
15 physical exam, to see if they can explain why this
16 might be happening. And, once the physician
17 determines that, you know, and they've ruled out any
18 kind of just medical problem causing these findings,
19 then they call us and ask us to come in and conduct an
20 exam.

21 Q Okay. So, prior to you even conducting your exam with
22 **Victim** had she been seen by other medical personnel
23 there at Palmetto Health?

24 A Yes.

25 Q All right. And, specifically, what, if any,

1 recommendation was made concerning the need for a
2 sexual assault examination of Victim -

3 MR. FLOYD: Objection, Your Honor. That would be
4 hearsay.

5 THE COURT: I would sustain that objection.

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

7 Q Did you have a chance to consult with other
8 physicians?

9 A Yes.

10 Q All right. And, as part of your medical diagnosis and
11 treatment, is it necessary to review the findings of
12 other physicians---

13 A Yes.

14 Q ---and other medical personnel?

15 A Yes.

16 Q Did you have the opportunity to review any
17 documentation in that regard?

18 A No, not any--- Written documentation at that point,
19 you know, hadn't been dictated, but I have to talk to
20 the physicians to ask them, you know, have they
21 cleared the patient medically, you know, did they find
22 anything that I need to be concerned---

23 MR. FLOYD: Objection, Your Honor. She's going
24 into hearsay.

25 THE COURT: I'll sustain the objection.

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

2 Q As a result of your communications with other medical
3 personnel, can you tell us whether or not you
4 conducted a sexual assault examination?

5 MR. FLOYD: Objection, Your Honor. That's just
6 trying to back door the hearsay.

7 THE COURT: Rephrase that question, please,
8 Solicitor.

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

10 Q As a result of your review of her history for purposes
11 of medical diagnosis and treatment, what further
12 action did you deem necessary pursuant to your
13 examination?

14 A I needed to perform a genital exam and a full forensic
15 exam.

16 Q All right. And, when you first began the genital
17 exam, what, if anything, was noted?

18 A According to this or my observations?

19 Q Right.

20 A According to this, her labia were swollen. She had an
21 abrasion between the left minora and majora, basically
22 the lips. And an abrasion is just an area of skin
23 that's not intact. And so she had that on both sides.

24 Q All right. And let me stop you and backtrack a little
25 bit. When you first begin the exam, does she start

1 out naked?

2 A No.

3 Q All right. And how is it that she becomes naked in
4 order for you to do the exam?

5 A We, depending on the history and depending on what's
6 happened prior to us arriving, we collect clothing,
7 depending on if that's the clothing they were wearing
8 at the time of the assault, as it could potentially
9 contain evidence. And she had undergone some, you
10 know, medical testing to make sure she was stable, but
11 she was wearing a diaper and a T-shirt.

12 Q All right. And, when a patient is wearing a diaper
13 and needs a genital examination, how is the diaper
14 removed?

15 A We wear gloves when we do anything with the patient,
16 especially collecting any type of evidence. And so we
17 collect that. I put my gloves on, took the diaper off
18 and photographed the findings in the diaper and then
19 collected the diaper, dried it, and it was packaged
20 and put in the kit.

21 Q All right. And, specifically, what, if anything, was
22 of note when you removed her diaper?

23 A This diaper actually had been put on her I believe
24 while she was there because it had some bloody streaks
25 in the diaper.

1 Q Okay. And, after observing the blood in the diaper,
2 what, if any, steps were taken?

3 A I, you know, made sure it was dry. We have to package
4 it and dry it, so I just dried that. But that had
5 already been relayed to me, that they had seen that
6 prior.

7 Q Okay. So, as part of her medical diagnosis and
8 treatment, was it necessary for you to determine
9 whether she had been bleeding earlier that day?

10 A Right.

11 Q All right. And what information was given to you in
12 that regard for purposes of medical diagnosis and
13 treatment?

14 A That she had never had any issues with any type of,
15 you know, trauma or any genital abnormalities that
16 would cause any bleeding. So this was not anything
17 that had occurred previously.

18 Q All right. Prior to that day?

19 A Correct.

20 Q All right. And, for purposes of medical diagnosis and
21 treatment, what is your understanding, pursuant to the
22 history you obtained, about vaginal bleeding that day,
23 the day she was seen in the emergency room?

24 A Can you rephrase that?

25 MR. FLOYD: Objection, Your Honor. There's been

1 no evidence about vaginal bleeding.

2 THE COURT: It's under---

3 MS. MAYES: Your Honor---

4 THE COURT: Excuse me. ---relevancy?

5 MR. FLOYD: Yes, Your Honor.

6 THE COURT: All right. I would overrule the
7 objection as to relevancy.

8 Q All right. Let me back up and ask you this. For
9 purposes of medical diagnosis and treatment, is it
10 necessary to ask questions such as, has she been
11 bleeding vaginally?

12 A Yes.

13 Q All right. And, when you observed the bloody streaks
14 in the diaper, is that something, for purposes of
15 medical diagnosis and treatment, that you would follow
16 up on with other family members in obtaining a
17 history?

18 A Correct.

19 Q All right. And do you know whether or not she had
20 been observed bleeding vaginally in the emergency
21 room?

22 A Yes, she had.

23 MR. FLOYD: Objection, Your Honor. That would
24 have to be to be hearsay.

25 MS. MAYES: For purposes of medical diagnosis and

1 treatment, Your Honor?

2 THE COURT: Who is the declarant? Who's telling
3 her that?

4 MS. MAYES: Well, let me clarify.

5 THE COURT: If the declarant is the mother as the
6 historian, under 803-4, it would be admissible. If there
7 are other declarants, I do not think it would be
8 admissible. I'd be glad to hear from either one of you in
9 that regard if you want me to, but---

10 MS. MAYES: Yes, sir, Your Honor, and I'll---

11 THE COURT: I'm not clear who the declarant is.

12 MS. MAYES: All right. I will lay a foundation.

13 THE COURT: Thank you.

14 Q Do you know whether or not any other medical personnel
15 had observed vaginal bleeding?

16 A Yes.

17 Q All right. And for purposes of your---

18 MR. FLOYD: Your Honor, I object. She just
19 established the fact that it's hearsay by an unavailable or
20 unpresent declarant, not a historian.

21 THE COURT: Step out a moment, ladies and
22 gentlemen. In fact, ladies and gentlemen, we'll take about
23 a 15-minute recess. Do not discuss the case during this
24 brief recess. Thank you very much.

25 (The jury retires to the jury room.)

1 THE COURT: I was operating under the assumption,
2 under 803-4, that the statements of medical diagnosis and
3 treatment were going to the medical history as to what Ms.
4 Brittany--- And I apologize; the last name just slipped off
5 my plate. Ms. [REDACTED] -B

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

7 THE COURT: ---what Ms. [REDACTED] B stated.

8 MS. MAYES: Yes, sir, Your Honor. It's the
9 State's position that any other medical personnel that
10 would have observed, not as part of hearsay, but would have
11 physically observed the child to be bleeding would then
12 share that information with the nurse, forensic nurse
13 examiner, for purposes of medical diagnosis and treatment
14 so that she could follow up on it. So they would also be a
15 historian for purposes of medical diagnosis and treatment
16 pursuant to Rule 803-4.

17 THE COURT: Mr. Floyd?

18 MR. FLOYD: Your Honor, I don't think you can get
19 around hearsay by saying, well, I won't name them a
20 declarant, I'll name them a historian. The history comes
21 from the patient or, in this case, the patient's mother
22 because of the age of the patient, not from some other
23 treating physician.

24 (Pause.)

25 MR. FLOYD: You've got to remember, Your Honor,

1 this is a nurse, not a doctor, giving opinions.

2 MS. MAYES: Yes, sir, Your Honor. Although
3 she---

4 THE COURT: That could be good or bad though, of
5 course, Mr. Floyd.

6 MR. FLOYD: True.

7 MS. MAYES: The State's position is that she is a
8 nurse continuing to obtain medical history that includes
9 present symptoms for purposes of further diagnosis and
10 treatment. And, in that regard, she does consult with
11 other medical personnel about their observations.

12 THE COURT: Do you have notes in Ms. Clary's
13 protocol as to the statements from other medical personnel?

14 MS. MAYES: No, we do not, Your Honor. We do
15 have the full medical records of **Victim** **██████** which have
16 been previously provided to defense counsel. And this is
17 not, as far as I know, this is not even an area that is
18 being contested, that the child was bleeding vaginally.
19 But, at this point, we can move on. I believe she has
20 testified that she witnessed the child bleeding vaginally
21 as well.

22 THE COURT: I'm going to sustain the objection.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: All right. Why don't we take us a
25 15-minute recess. Ms. Clary, you may certainly step down

1 and refresh yourself during this recess. You may not
2 discuss your case--- Excuse me. You may not discuss your
3 testimony with anyone during this recess. If anyone tries
4 to talk with you about it, please let me know. You're
5 subject to continuing direct and cross examination. All
6 right. Court will be in recess 15 minutes. Thank you.

7 (Whereupon, there is a recess.)

8 THE COURT: Solicitor, did you have something to
9 take up before the jury comes in?

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

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

12 MS. MAYES: Adrienne Riley from the State Law
13 Enforcement Division is here. She is the DNA analyst who
14 has prepared the report that I am now holding in my hands.
15 But she brought with her this report, and we just need to
16 make, have copies of it made and provide it to the defense
17 at this time. We'll also make a copy for ourselves. But
18 this would be her report concerning the finding of no semen
19 as a result of the screening of the sexual assault kit of
20 **Victim** and it is dated March 30th.

21 THE COURT: All right. Thank you. If you'll get
22 that to Mr. Floyd and Mr. Snell.

23 (Pause.)

24 THE COURT: The objections--I just wanted to
25 place on the record--to State's Exhibits Number 9, 10 and

1 11, as I understand it, are that they are enlarged
2 documents. I analyzed that--- I wasn't going to state all
3 my entire ruling in front of the jury, but I analyzed that
4 under Rule 403. I find that they are not unfairly
5 prejudicial and they're not misleading to the jury. When I
6 look at some of the research in that area, there's one
7 article I look at that tells me that it is no objection to
8 the admissibility of a photograph that is enlarged showing
9 the subject or object magnified where it does not have a
10 tendency to mislead. That is cited in 32 A.C.J.S.,
11 Evidence, Section 1245. I also looked at a number of cases
12 including *Roger Dale Johnson* which is a death penalty case
13 where they were allowed to place into evidence enlarged
14 photographs of the children of the victim of that
15 particular homicide and it was allowed although they had
16 the actual photograph. One basis for that was, of course,
17 the actual photographs were somewhat fragile. There're a
18 number of other cases in which it has been allowed. There
19 is also a much older case, *Virginia-Carolina Chemical v.*
20 *Kirven*, K-I-R-V-E-N, which is a 1900 case, 57 S.C. 445, 35
21 S.E. 745, which allows the enlargement of a photograph, in
22 this particular case having to do with an object of the
23 lawsuit. So that--- I think, given that, I just wanted to
24 clarify my ruling in that regard. I do not find they are
25 unduly prejudicial. In the *Kirven* case, a witness was

1 permitted to exhibit to the jury an enlarged picture of a
2 Mexican weevil taken from a photograph and published in a
3 bulletin stated to be from the State Department of
4 Entomology. There's evidence that the picture was a
5 correct representation of the weevil, and it held that the
6 introduction was proper. And there's evidence that this
7 document is a reproduction of the actual documents that
8 were prepared by the witness, Ms. Clary. Anything further,
9 Solicitor, before we bring in our jury?

10 MS. MAYES: No, sir, Your Honor.

11 THE COURT: Anything, Mr. Floyd, Mr. Snell,
12 before we bring in our jury?

13 MR. FLOYD: No, Your Honor.

14 THE COURT: Thank you. Bring us our jury,
15 please.

16 (The jury returns to the courtroom.)

17 THE COURT: It looks like a different jury every
18 time they come in the courtroom. It's like I've adjusted
19 my vision. You know, when I leave the house in the
20 morning, I never expect a car to be at that stop sign where
21 I first turn, and then there's a car. Welcome back. We're
22 continuing the trial of the case, the direct examination of
23 Ms. Clary by the Solicitor. Solicitor, you may continue.

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

25 Q And, Ms. Clary, if you could step back down.

1 A (Witness leaves the witness stand.)

2 Q And I was in the process of asking you about what is
3 State's Exhibit 11. And, if you could keep your voice
4 up again. Now, what area of the body are we looking
5 at here pursuant to your diagram?

6 A This is the female genitalia, and this is in a supine
7 position which just means basically kind of on her
8 back. And then this is the same genitalia, just
9 upside down because we have to sometimes put people in
10 different positions to better visualize what we're
11 seeing.

12 Q All right. And, when you use a term such as labia
13 minora, what part of the body are you referring to in
14 relation to the diagram.

15 A That would be the inner part of the vaginal lips in
16 layman's terms. You've got the outer majora which is
17 the part you just can see on most females. The inner
18 part is that inner part that's kind of tucked in a
19 little bit more.

20 Q All right. Now, how do you go about--- When you have
21 a small child who is one, how do you go about
22 conducting a genital examination of a child this body
23 size?

24 A We have to just kind of use whatever technique we
25 think is going to work, and we want to make it as

1 untraumatizing, less traumatizing. So, you know, if
2 somebody can hold them--- You know, there's all kinds
3 of ways we do this. So, you know, we don't want to
4 make it so that they are just screaming and fighting.

5 THE COURT: Speak up a little bit for me, please.

6 A I'm sorry. We're going to use whatever position
7 possible so that they'll cooperate. Typically, it's,
8 you know, in their caregiver, mom, dad, somebody's,
9 you know, maybe lap or whatever makes them comfortable
10 so we can--- As long as we can visualize what we're
11 seeing, it doesn't really matter. Two positions for
12 children that we typically use will be like prone
13 knee-chest, which would mean on her chest, you know,
14 laying like this (indicating). We kind of put their
15 bottom up in the air. That's pretty much what this
16 picture is. Or kind of maybe frog leg, laying back
17 supine, kind of with her legs kind of out to the side.

18 Q Was she able to cooperate with the exam?

19 A To some degree.

20 Q What do you mean by that?

21 A She, like I said earlier, she was very hyper vigilant
22 is a term we would use. Any noise, anything that we
23 would do would startle her very easily. And so, you
24 know, I try to continue and not stop and then start
25 again. And she was crying. She didn't want to be

1 touched. She didn't want to be messed with. And so,
2 you know, I was able to look at everything. I just
3 wasn't necessarily able to photograph everything
4 because I wanted--- The most important thing is for me
5 to actually assess the injuries. Ideally, we like to
6 assess them and photograph them; but, you know, we
7 don't want to prolong it if we don't have to either
8 and traumatize them any further.

9 Q Okay. What did you observe once you were able to
10 visualize the genitalia?

11 A That her labia--- There was swelling to her clitoral
12 hood, which is under number 5. And, because I didn't
13 use a body locator, that's why there's no number here,
14 but that would be right here (indicating). And this
15 area was swollen. Her labia majora, this entire, the
16 mons in this entire area, was edematous or swollen.
17 Between her left and right minora, there were
18 abrasions in the folds; and, between the--- There was
19 redness, but, you know, here it seemed bilaterally;
20 and that just means on both sides. On the right labia
21 minora, she had petechial hemorrhages there, petechiae
22 noted, kind of in a little line on this side over here
23 (indicating).

24 Q What, if anything, is significant about the presence
25 of petechiae?

1 A It usually, again, indicates, you know, some sort of
2 capillary or blood vessel rupture that causes the
3 blood to seep into the tissue.

4 Q Can you tell us whether or not that may be consistent
5 with trauma?

6 A Yes.

7 Q All right. Were you able--- First of all, let me ask
8 you this. What area are you talking about when you
9 refer to the hymen which is number 7 on your
10 list?

11 A The hymen is right there inside the vaginal opening.
12 And, here, it would be this area (indicating). And we
13 want to try to clearly look at all, look at it and see
14 if there's any tears, if it's bruised, bleeding, if
15 there's petechial hemorrhages or anything on it and,
16 you know, visualize what type of hymen it is. And I
17 could see it, but I couldn't clearly visualize all
18 aspects of it during my exam.

19 Q When you say that you could see it, you mean you could
20 see it with the naked eye?

21 A To some degree. I could not--- I was not able to
22 visualize all of it at one time.

23 Q And what do you mean by that, that you were not able
24 to visualize? Was there a reason that you were not?

25 A She just would not cooperate. That's a very tender

1 area for children who don't have estrogen and things
2 like that. So anybody touching that, it's very, very
3 painful. So, you know, besides her other injuries and
4 everything else that was going on, you know, she just
5 was not going to allow me to do that. I could--- We
6 want to visualize it intact, see all of it; and I
7 could not see all of it at one time. You know, I
8 could see maybe the--- I could see maybe the left
9 side. And then she'd move, and I could possibly see
10 the right side. But I could not determine that it was
11 all intact because I could not see it all at one time.

12 Q All right. And let me ask you a little bit about
13 pelvic examinations in general. An adult, for
14 example, when you conduct a pelvic examination of an
15 adult or do such a kit---

16 A Uh huh (indicating affirmative response).

17 Q ---how is she positioned?

18 A Usually in the lithotomy position, in stirrups, and
19 the legs are kind of flexed out a little bit like this
20 (indicating) and the knees bent.

21 Q All right. And, when you're referring to stirrups,
22 what are you referring to?

23 A On a--- Stirrups are, depending on the type of bed or
24 structure, they're just an instrument that comes off
25 of the bed or can actually be applied to the bed or

1 stretcher, and your feet, or sometimes your knees, can
2 hang to support your legs and hold them in that
3 position for the length of time the exam would take.

4 Q Now, with a child this size, such as a toddler, are
5 you able to put her in stirrups in order to better
6 visualize during the exam?

7 A No.

8 Q Okay. So, in addition to your naked-eye examination,
9 is there an instrument called a culpascope?

10 A Yes.

11 Q What is a culpascope normally used for by sexual
12 assault examiners such as yourself or physicians who
13 might do a sexual assault exam?

14 A A culpascope is used to--- It's basically like a
15 microscope. It's going to magnify the area. So it's
16 basically looking through something, like binocular
17 kind of, that allows you to see something up really,
18 really close, I mean, down to, you know, in-depth
19 detail as to the skin, the color, the intactness,
20 tears, that kind of thing.

21 Q Were you able to use that instrument, the culpascope,
22 during **Victim** exam?

23 A We used a culpascope. And you can use a culpascope
24 just to look, but then you can also take photographs
25 with it. It comes with a camera attachment, and it

1 takes photographs. At that time, our camera, we were
2 not using it for photographs. But I did want to look
3 through the culpascope to try to get a better
4 visualization of her hymen because it would really
5 magnify it for me. And it's a pretty big, obtrusive
6 piece of equipment; and, in order to get in there up
7 close and personal, she would not allow that. She
8 would--- You know, the equipment, it's just not
9 something unobtrusive that I can just, you know, use,
10 like a little magnifying glass, to look at it. And
11 she would have nothing to do with that.

12 Q All right. So, to clarify, were you able, at any
13 point, to visualize the hymen with the aid of the
14 culpascope with Victim exam?

15 A I was able to, again, visualize it a little bit better
16 than with my naked eye, but not to the point where I
17 could ever see it clearly enough.

18 Q Okay. All right. What, if anything, does it suggest
19 when there is a constellation of findings such as
20 multiple abrasions, redness and swelling to the labia
21 minora and labia majora of a child this age?

22 MR. FLOYD: Your Honor, we object to the
23 question.

24 THE COURT: I'd overrule that objection.

25 A It would suggest that that's not a normal finding in a

1 child that age to have those type of injuries in that
2 area. As to the cause---

3 Q Can you tell us whether or not this constellation of
4 findings may be consistent with trauma?

5 A Yes.

6 Q You may return to your seat.

7 A (Witness resumes the witness stand.)

8 Q Now, in addition to noting your findings as you did
9 here regarding the genital findings, the findings to
10 the face and the findings to the front and back of the
11 body, what, if any, other purpose is carried out with
12 the sexual assault portion of the examination?

13 A In this particular assault or in general?

14 Q In general.

15 A After we do our medical physical exam and then the
16 evidence collection--- Well, then we collect evidence
17 depending on the story or depending on--- Sometimes,
18 if we don't have a story, we're not exactly sure.
19 We're going to collect evidence based on the injuries
20 and based on what we think and where there possibly
21 could be evidence.

22 Q All right. And, in a case like this of Victim
23 where the victim or child is not able to provide a
24 history, what decision was made?

25 A Based on her injuries, I collected swabs from her

1 genital area, and I collected a buccal swab, which is
2 her DNA, just to be able to identify her DNA from any
3 other DNA that might be found. I collected, from the
4 UV positive area on her foot that fluoresced, I
5 collected a swab from that area and--- Let me refer to
6 my notes. I collected her diaper as I mentioned
7 earlier. I collected her shorts and her T-shirt that
8 she was wearing when she was brought in.

9 Q Okay. So, to clarify, when you talk about vaginal
10 swabs being collected, where are you collecting the
11 swabs from in reference to this diagram which is
12 State's Exhibit 11?

13 A Because of her age and because of her kind of lack of
14 cooperation, I did not stick that, our swabs, in past
15 her hymen or near her hymen. So I collected it from
16 inside, just inside the vaginal opening, just what we
17 would call the vestibule.

18 Q And there had been previous mention that, during your
19 full body examination, here on diagram 9, there was an
20 area that had fluoresced or shown ultraviolet on the
21 left foot?

22 A Uh huh (indicating affirmative response).

23 Q Can you tell us whether or not that area was also
24 swabbed and collected as part of the sexual assault
25 kit?

1 A It was.

2 Q All right. And, once you collect these items, what do
3 you do with them?

4 A We collect them, and we have a stand that's labeled,
5 and we put them in there. And then we have a swab
6 dryer. All of our evidence has to be completely dry
7 before we can package it. So we put all of our
8 specimens in this stand and then place it in the swab
9 dryer until everything is dry. Once it's dried, then
10 we package it all up, place it in individual envelopes
11 inside the kit, seal it, initial each individual
12 envelope, label it, time and date it and state what
13 that specimen is.

14 Q All right. And, in this particular case, once those
15 items were collected, can you tell us whether or not
16 they were turned over to law enforcement?

17 A They were.

18 Q And can you tell us whether or not, during the course
19 of your exam and that evidence collection, Shelby
20 Derrick, of the Lexington County Sheriff's Department,
21 was present?

22 A During the evidence collection?

23 Q Or after the items had been sealed and were ready for
24 transfer.

25 A Correct. She is the one that I turned the kit over to

1 when everything was completed and packaged.

2 Q All right. And, at that point, it was sealed.

3 Correct?

4 A Correct.

5 Q And, when you talk about sealing it, what are you
6 referring to?

7 A Well, inside the kit, each envelope is taped and
8 sealed individually. Then those envelopes go inside
9 another envelope that is taped and sealed and
10 initialed, and then those larger envelopes go in the
11 box. And then a copy of our report goes in there, and
12 then the kit itself is taped closed with evidence
13 stickers and initialed so that it can show if
14 anybody's opened that because it would be torn. And
15 then we document, on the front of the kit, the
16 patient's name, law enforcement agency and identifying
17 information. And then, on the back, there is a log
18 that shows who handled that kit once it was sealed.
19 And then I sign--- My name was on there signing it
20 over to the investigator.

21 Q All right. Now, you mentioned that the diaper was
22 collected.

23 A Correct.

24 Q Okay. Was that photographed as well?

25 A Yes, it was.

1 Q And for what purpose was it photographed?

2 A Anytime we see any type of unusual finding on clothing
3 or anywhere, we go ahead and photograph it.

4 (Pause.)

5 Q Okay. And, in addition to the diaper that you
6 mentioned being photographed, were other photographs
7 taken as well?

8 A Yes.

9 Q All right. And the injuries that you have noted
10 pursuant to your diagrams, can you tell us whether or
11 not those injuries were noted by photo documentation?

12 A Yes, they were.

13 Q I'm going to show you some photographs and ask you
14 whether or not you recognize them.

15 A (Pause.) Yes.

16 Q Can you state as to whether or not the photograph
17 depicting a diaper is a fair and accurate
18 representation of the diaper as you recall it once
19 it was removed from Victim

20 A Yes.

21 Q Can you state as to whether or not the photographs of
22 the specific injuries are a fair and accurate
23 representation of the injuries that are noted in the
24 sexual assault protocol and the physical abuse
25 protocol that you conducted?

1 A Yes.

2 MS. MAYES: Your Honor, at this time we would
3 offer these additional photographs as evidence. I believe
4 it would be State's 12, 13, 14, and 15.

5 THE COURT: All right. If you'd have them
6 marked, please.

7 COURT REPORTER: One moment, Your Honor.
8 (Pause.) I've marked them, Your Honor, 12 through 15.

9 THE COURT: All right. Mr. Floyd?

10 MR. FLOYD: No objection, Your Honor.

11 THE COURT: No objection?

12 MR. FLOYD: No objection, Your Honor.

13 THE COURT: All right. State's 12, 13, 14 and 15
14 are in evidence without objection.

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

16 (State's Exhibits 12, 13, 14 and 15 are marked
17 for purposes of the record.)

18 Q And, as to State's Exhibit 1 for identification,
19 previously marked for identification, I'm going to
20 show you this photograph and ask you whether or not
21 you recognize it.

22 A Yes.

23 Q Can you tell us whether or not the marks or bruises
24 noted in this photograph are a fair and accurate
25 representation of [Victim] as you recall them

1 to be?

2 A Yes.

3 MS. MAYES: Your Honor, at this time, we would
4 offer State's Exhibit 1 for evidence.

5 MR. FLOYD: Your Honor, we renew our objection
6 previously made as to that photograph.

7 THE COURT: I would sustain that objection at
8 this time. State's 1 is still ID only. All right.

9 Q Can you tell us---

10 MS. MAYES: May we approach, Your Honor?

11 THE COURT: Certainly.

12 (Whereupon, there is a bench conference off the
13 record in the presence of the jury but out of the hearing
14 of the jury.)

15 Q I'm going to show you State's Exhibit 1 for
16 identification and have you take a look at that. Do
17 you also have with you your protocol notes about any
18 treatment that was provided to Victim

19 A Yes, I do.

20 Q Was she, at any point, given any medication during the
21 course of her protocol examination?

22 A Yes, she was. Yes.

23 Q What kind of medication was she given?

24 A A pain medicine.

25 Q And what type of pain medicine was that?

1 A Morphine.

2 Q And what is morphine?

3 A It is a pain medicine to hopefully control her pain
4 and calm her down.

5 Q Okay. In addition to your notations in your records
6 about her being administered morphine, are there any
7 notations about her general demeanor during the course
8 of the examination?

9 A Yes.

10 Q And what is noted in that regard?

11 A My observations?

12 MR. FLOYD: Your Honor, is she referring to her
13 notes or---

14 MS. MAYES: I'm referring specifically to her
15 protocol examination.

16 THE COURT: All right. You may answer the
17 question, Ms. Clary.

18 A My observation of her behavior or---

19 Q Just her general demeanor as you noted it.

20 A She was moaning and crying and appeared very agitated.

21 Q All right. And can you tell us whether that's usual
22 or unusual for a small child undergoing this type of
23 examination?

24 A It's not unusual, but it's not usual. I mean, they
25 all react totally differently.

1 MS. MAYES: Your Honor, at this time, we would
2 offer State's Exhibit 1 as evidence.

3 MR. FLOYD: Same objection, Your Honor.

4 THE COURT: State's 1 is in evidence subject to
5 previous objection.

6 COURT REPORTER: May I remark it, Your Honor?

7 THE COURT: Yes, ma'am.

8 (State's Exhibit 1 is marked for purposes of the
9 record.)

10 Q And, for purposes of your identification at this time,
11 I'm going to show you what has been previously marked
12 as State's Exhibit 2, as State's Exhibit 3, as State's
13 Exhibit 4, State's Exhibit 5, and State's Exhibits 6,
14 7 and 8 and ask you whether or not--- If you could
15 review these, please.

16 A (Pause.)

17 Q Can you tell us whether or not those photographs
18 depict a fair and accurate representation of the marks
19 and bruises and abrasions that you noted in your
20 diagrams?

21 A Yes.

22 Q All right. I'll start by showing you State's Exhibit
23 15 and ask you what is this a photograph of.

24 A The top--- The top photograph is her diaper with the,
25 what I have to call--- We don't say blood. We just

1 document what we see, and so I described it as
2 reddish-brown streaks.

3 Q All right. And, during the course of your examination
4 of [Victim] did you note anything or did you observe
5 anything to be consistent with vaginal bleeding?

6 A She had some redness in some areas that looked like
7 they could have been leaking when I was doing my exam.
8 Some of the swabs were slightly bloody.

9 Q State's Exhibit 14, if you could tell us what we're
10 looking at in this photograph.

11 A That is her genitalia. She is--- And I apologize. I
12 can't see. She's upside--- She's in a prone position,
13 and that is my hand providing traction so that you can
14 visualize that area, so I can visualize that area.

15 Q Is this right side up?

16 A I'm sorry. With these glasses--- Can I--- I can't see
17 it that well with these glasses. I'm sorry. Can I
18 see it up close?

19 Q State's Exhibit 14.

20 A Okay. I don't know how you'd need to put it on there,
21 but I can show it to you with my finger. If my
22 finger's---

23 THE COURT: You need to speak up, please ma'am.

24 A I'm sorry. With my fingers pointing up in the air
25 like that (indicating), then this is the top.

1 Q Okay.

2 A This is the bottom (indicating).

3 Q Okay. Looking again at State's Exhibit 14---

4 A I'm sorry. What was the question?

5 Q ---what are we looking at here?

6 A Her genitalia, and that is--- That's her labia minora
7 in the center there, that kind of a V-shaped area
8 pointing down. There's a darkened area in the middle
9 and then the redness on either side of that. And,
10 because there's traction there, you can't really
11 appreciate the majora, the outer part, the lips,
12 because I'm spreading that apart so I can better
13 visualize the inner genitalia.

14 Q All right. And can you tell us whether these are
15 normal or abnormal findings?

16 A Abnormal.

17 Q Now, as to State's Exhibit 13, without traction, what
18 are we looking at?

19 A That is her mons, her genitalia, her mons and her
20 labia minora and then the folds in between, you know,
21 where her legs meet her genitalia there.

22 Q And what, if anything, is significant about your
23 observations in this photograph?

24 A Her mons and her labia appeared swollen at the time,
25 and there is a hint of some of the petechiae that I

1 mentioned there. You can see that on the outer edge
2 there, kind of on the inner edge of the left side, her
3 right side.

4 Q All right.

5 MS. MAYES: Your Honor, if I may approach the
6 witness?

7 THE COURT: Yes, ma'am.

8 Q What area are you referring to as the mons?

9 COURT REPORTER: How do you spell that by the
10 way?

11 A M-O-N-S.

12 COURT REPORTER: Okay.

13 A The mons would be this area right here (indicating),
14 and this would be the labia majora (indicating), and
15 the minora and, I mean, on her left side and her right
16 majora.

17 COURT REPORTER: Did you say minora?

18 A Majora.

19 COURT REPORTER: Majora.

20 Q This is State's Exhibit 1 for evidence. What, if
21 anything, is noted concerning the facial area?

22 A The bruising to her forehead.

23 Q All right. And in what locations are you referring
24 to?

25 A To the left side here (indicating), these bruises, and

1 kind of at the center. Wait a minute. This one.

2 Q So there was more than one bruise observed?

3 A Yes.

4 Q And State's Exhibit 3?

5 A This is the reddened area beside her right ear that I
6 documented needed further follow-up to determine if
7 that was going to turn into a bruise.

8 Q And you had noted on State's Exhibit 10, the diagram,
9 evidence of injury along the upper lip. Can you tell
10 us whether or not that was photographed?

11 A Yes, it was.

12 Q This is State's Exhibit 12. If you can tell us what,
13 if anything, is significant in these photos in
14 relation to the lip abrasion that you noted.

15 A There's--- I don't know if you can appreciate it that
16 much in this particular photograph, but there's more
17 photographs. This right here (indicating) is an
18 abrasion.

19 Q And are you also able to visualize that in the top
20 photograph?

21 A I was aware that I needed to look based on, you know,
22 her smile. At the time, there was a little bit of
23 blood, you know, kind of on her lip, so it made me
24 look inside of her mouth.

25 MS. MAYES: Beg the Court's indulgence.

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 Q What happened after you completed your protocol
4 examination?

5 A Once I completed collecting the evidence and my
6 physical exam, then I communicated with the physician
7 to determine what we needed to do with her. We assess
8 them and determine if we need to treat them or test
9 them for any sexually transmitted infections and if we
10 need to treat them for any sexually transmitted
11 infections. And so I consulted with the physician on
12 this. Based on our protocol and what I knew about the
13 history, it was not determined that she needed to be
14 treated at that time for anything.

15 Q All right. And do you know whether or not Victim
16 stayed there in the care of Palmetto Health after the
17 completion of your examination?

18 A Yes. I knew prior to my starting my exam that she was
19 going to be kept, be admitted. And, once I was done,
20 we were just waiting. She was going to the pediatric
21 intensive care. We just needed--- We were waiting on
22 a bed.

23 Q All right.

24 MS. MAYES: Nothing further at this time, Your
25 Honor.

1 THE COURT: Thank you, Solicitor. Mr. Floyd?

2 MR. FLOYD: Your Honor, may we approach?

3 THE COURT: Yes, sir, certainly.

4 (Whereupon, there is a bench conference off the
5 record in the presence of the jury but out of the hearing
6 of the jury.)

7 THE COURT: Step out a minute, ladies and
8 gentlemen, to your jury room, please. Do not discuss the
9 case during this brief recess.

10 (The jury retires to the jury room.)

11 THE COURT: Ms. Clary, would you mind just
12 stepping out the door for me momentarily? Do not discuss
13 the case with anyone during this brief recess. All right.
14 Thank you.

15 (Witness leaves the witness stand.)

16 THE COURT: Can you enlighten me a little bit
17 more, Mr. Floyd, or tell me what you need?

18 MR. FLOYD: Yes, Your Honor, I'll be happy to.
19 Mr. Snell, of course, got the discovery in this matter
20 before I became involved.

21 THE COURT: And speak up a little bit for me.
22 I'm sorry.

23 MR FLOYD: Mr. Snell got the discovery in this
24 matter---

25 THE COURT: Yes, sir.

1 MR. FLOYD: ---before I got involved. And there
2 seems to be some question as to whether or not the coloring
3 in these photographs are similar as to what he's been
4 provided.

5 THE COURT: All right.

6 MR. FLOYD: And we just wanted the opportunity to
7 review those photographs which are on his computer to see
8 if his recollection is correct on that because the coloring
9 did appear to be substantially different from his memory of
10 it.

11 THE COURT: All right. Where are those
12 photographs?

13 MR. SNELL: On my laptop out in the parking lot.
14 I didn't want to bring it into the courtroom. I didn't
15 want to bring it in during court.

16 THE COURT: Thank you. How much time do you need
17 then, Mr. Snell?

18 MR. SNELL: I can go out and probably have it
19 booted up and working in probably 15, I would estimate 15,
20 20 minutes, maybe sooner.

21 THE COURT: All right. Solicitor?

22 MS. MAYES: Yes, sir, Your Honor. I did receive
23 an e-mail from Mr. Snell earlier in the week--I believe it
24 was on Monday--asking if we had printed out photographs
25 from the DVD's that were previously provided. And those

1 were actually given to someone in the tech department and
2 they were printed out. And my response was, yes, we have
3 them, you can come view them this afternoon or I'll make
4 them available, they'll be available tomorrow morning,
5 meaning yesterday morning. So they have been available,
6 and that was offered to Mr. Snell by e-mail once they were
7 printed out.

8 THE COURT: All right. Well, I'll give you a
9 15-minute recess if you need that. The witness has been
10 instructed not to discuss her testimony with anyone, so
11 we'll take 15 minutes. And then we'll move forward with
12 the cross examination of Ms. Clary.

13 MR. FLOYD: Thank you, Your Honor.

14 THE COURT: All right. Court will be in recess
15 15 minutes. Thank you very much.

16 (Whereupon, there is a recess.)

17 THE COURT: Mr. Floyd, did y'all have the
18 opportunity to do your review?

19 MR. FLOYD: Yes, Your Honor.

20 THE COURT: Do you need any more time?

21 MR. FLOYD: No, Your Honor.

22 THE COURT: All right. What I'm planning on
23 doing is I'm having the clerk get the luncheon menus for
24 the jury now. We'll finish with Ms. Clary, and then
25 we'll just press on until such time as their lunch gets

1 here. And then they can take their lunch; and, when
2 they're finished with their lunch, we'll start back.

3 All right.

4 MR. FLOYD: Thank you, Your Honor. Can we show
5 you what we---

6 THE COURT: Oh, certainly. If you need to--- I
7 didn't know you needed to show me anything. I just wanted
8 to make sure you had adequate time to do your follow-up.

9 MR. FLOYD: Yes, sir, Your Honor. Your Honor,
10 this is what gives us some concern.

11 THE COURT: All right.

12 MR. FLOYD: You'll note, Your Honor, on---

13 THE COURT: Solicitor, do you want to look at
14 this at the same time?

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

16 THE COURT: I'll step down here. I'll step down
17 here by the court reporter. All right.

18 MR. FLOYD: Your Honor, you'll see on the
19 computer the photograph, this same photograph provided to
20 the defense early on. And you'll see on this that's been
21 printed out it is dramatically redder, I mean,
22 significantly, dramatically redder. Whereas this is almost
23 a fairly normal-looking vaginal area, this is almost like
24 it's been painted red, Your Honor.

25 THE COURT: What are you asking me to do?

1 MR. FLOYD: Your Honor, we're suggesting that
2 this appears to be doctored.

3 MS. MAYES: Your Honor, I can state for the
4 record that I have spoken with the IT person who printed
5 these particular photographs and that they have not been
6 photo-shopped in any way. Color has not been added. My
7 understanding is that it is in relation to the type of
8 photo paper that it's printed out on, the type of color
9 printer that's used. In this particular case, it's a laser
10 printer. And we're not sure what settings are on this
11 particular computer in order to get the depiction that
12 we're looking at now, whether that's a lighter setting or a
13 darker setting. But they're just not going to look the
14 same printed out as they would in the format of a computer
15 screen. Now, with that said, there is a slight, I would
16 say, discoloration between the photo that is shown on the
17 computer screen and the photo that has been printed out;
18 but, in looking at them, the photo that's on the computer
19 screen looks significantly too light from my perspective,
20 so---

21 THE COURT: Well, Mr. Floyd, I think what the
22 defense can do is certainly cross examine the witness using
23 the other photographs. And then, if you want to end up
24 marking the--- Well, I don't need to tell good trial
25 lawyers how to try cases, you or Mr. Snell or the

1 Solicitor. Y'all know how to try cases. But, you know, I
2 think, if it's--- I think you can attack whether or not
3 it's been changed or altered; and then, of course, I think
4 that's an issue for the jury. All right?

5 MR. FLOYD: Yes, sir.

6 MR. SNELL: Your Honor, we're going to hook up
7 the laptop to the screen if we could have a moment.

8 THE COURT: Yes, sir. Is the jury ready, Madame
9 Clerk?

10 CLERK: Your Honor, I told the bailiffs---

11 THE COURT: Well, how about hustling them up for
12 me, please.

13 (Pause.)

14 THE COURT: Bring us our jury, please.

15 (The jury returns to the courtroom.)

16 THE COURT: All right. We're continuing the
17 trial of the case by the cross examination of Ms. Clary by
18 Mr. Floyd.

19 THE COURT: You may continue, Mr. Floyd.

20 MR. FLOYD: Thank you, Your Honor.

21 THE COURT: Thank you for your continued complete
22 and undivided attention.

23 CROSS EXAMINATION BY MR. FLOYD:

24 Q Ms. Clary, I'm going to show you State's Exhibit
25 Number 14.

1 A (Pause.)

2 Q Does that picture--- Is that the same picture?

3 A From here and based on my vision, it looks the same to
4 me. It looks the same.

5 Q Except that one is noticeably more dramatically
6 reddened, isn't it?

7 A I apologize. I don't have my up-to-date glasses, so I
8 can't tell that from here seeing--- If I could get
9 closer, I could---

10 Q Sure.

11 THE COURT: You can step down and look at it if
12 you need to, Ms. Clary, certainly, and take State's Exhibit
13 14 with you. Certainly.

14 (Witness leaves the witness stand.)

15 THE COURT: And keep your voice up for us now
16 that you're away from the microphone.

17 A I don't know that I can answer that question because
18 that's more light. I think it's the audio-visual
19 aspect of it, not so much the photograph. I don't
20 think the photograph---

21 COURT REPORTER: Not so much the what?

22 THE COURT: Keep your voice up a little bit. I'm
23 not sure the jury could hear you.

24 A I don't know that I can answer that question, whether
25 or not this is redder or that one, because I think

1 you're seeing them in two different medias.

2 Q I understand. Were you able to see the one the State
3 flashed up right there before you finished your
4 testimony?

5 A Yes. I put my glasses on.

6 THE COURT: Put the microphone back over towards
7 her voice, Mr. Floyd. Perhaps she could speak into it
8 unless you are through; then she can return to the witness
9 stand. All right.

10 Q Did you see the one that the State put up on the
11 screen shortly before you finished your examination?

12 A Yes, I did.

13 Q And would you agree that that one in that media was
14 substantially redder than this one?

15 A I can't answer that. I'd have to see them side by
16 side to answer that question.

17 Q Thank you. Now, Ms. Clary, by the time you saw
18 Victim she had been in the hospital approximately
19 two hours, had she not?

20 A Let me refer to my notes. She arrived at the
21 hospital, according to the chart documentation by the
22 hospital, at 21:47, 9:47 p.m. And the--- I started my
23 physical exam at 11:30. But I had already, by that
24 time, I had already interviewed the mother. So I
25 would say that I probably arrived about an hour--- We

1 respond within an hour, so I probably was there
2 probably by about 10:30 and I started my physical exam
3 at 11:30.

4 Q So you started your physical exam almost two hours
5 after she had been admitted or, I wouldn't say
6 admitted, the technical term admitted, but arrived at
7 and was examined at some point by the hospital?

8 A Right. She had to go, undergo her other testing, the
9 CT and the X-rays.

10 Q So, before you saw her, she had already been examined,
11 poked, prodded, whatever they do, for some time.

12 A Well, when they have any idea that it could possibly
13 be a sexual assault, they don't poke, prod or exam.
14 They do just a cursory exam because they don't want to
15 destroy any evidence. So they really basically kind
16 of just look. And they saw that there was some blood
17 on the diaper and, based on the rest of the story--- I
18 can't testify to the extent of their exam, but that is
19 the practice, not to destroy evidence and to not poke
20 and prod.

21 Q But you weren't present for that, were you?

22 A No, I was not.

23 Q Now, **Victim** before you saw her, she had been given
24 narcotics, had she not?

25 A Yes, I believe--- I believe so.

1 Q In fact, didn't she have a morphine drip in her arm?

2 A Not a morphine drip. She had gotten some IV fluids,
3 and she was not hooked up to a continuous IV. She had
4 gotten some fluids. They believe--- I believe they
5 wanted to hydrate her a little bit, and so she had
6 just gotten some IV morphine in her IV, but she was
7 not connected to anything.

8 Q But she had been. Do you know how many doses of
9 morphine she had received before you saw her?

10 A To my knowledge, just one dose.

11 Q And had she received any Ativan?

12 A Not to my knowledge.

13 Q You reviewed all of those records?

14 A We--- I was told that she had received some morphine
15 in order to perform the CAT scan. She needed to be
16 still, and they really needed to adequately assess her
17 head injury, and that was--- You know, we try not to
18 medicate before we figure out what's going on because
19 we don't want to hide or mask any symptoms or any
20 injuries, so--- But it was necessary to try to calm
21 her down. So, as far as I know, I was only told she
22 had been given some morphine for the CT.

23 Q And does morphine affect a person?

24 A Yes.

25 Q Could it make them lethargic?

1 A Yes.

2 Q Could it affect the way their eyes look?

3 A I'm sorry?

4 Q Could it affect the way their eyes appear?

5 A If they look lethargic, possibly.

6 Q And were you informed by history that, since the
7 alleged assault, Victim diaper had been changed
8 and her genitals wiped?

9 A Since the assault had occurred?

10 Q Yes.

11 A Prior to me coming in there?

12 Q Yes.

13 A The diaper that was on her when I got there was the
14 diaper that I was told was the one that she was picked
15 up in. That was the diaper that I collected.

16 Q So, in your protocol, on page 3, do you see what I'm
17 referring to as to the diaper change?

18 A With diaper change, uh huh (indicating affirmative
19 response).

20 Q Are you saying that you changed that diaper or someone
21 else had?

22 A I did not change that diaper, no.

23 Q So someone else had changed the diaper.

24 A Someone had prior--- She was given to the baby's
25 father I believe about 6:15, 6:30. So, you know,

1 since then and me seeing her, I don't know how many
2 diapers were changed. But that was the diaper that
3 was given to me; that was the diaper that she had on
4 when she had arrived there.

5 Q But, by history, somebody else had changed her diaper
6 before you saw her after the alleged assault.

7 A By the history, yes.

8 Q And this is in your protocol, isn't it?

9 A Yes, uh huh (indicating affirmative response).

10 Q This is in the same document that these come from?

11 A Yes.

12 Q Of course, they didn't blow this one up for us, did
13 they?

14 A I wouldn't know.

15 Q Now, I refer you to page 5 of your report. Were you
16 told by history that the boyfriend had kept **Victim**
17 his daughter and LeeAnn's daughters the weekend before
18 last?

19 A Yes.

20 Q They didn't blow that page up either, did they?

21 A I can't answer that.

22 Q Now, you don't know, do you, when, timeframe wise,
23 other than history given to you, how old these bruises
24 or abrasions were?

25 A No.

1 Q By looking at them, you can't tell that.

2 A You can't. No, I can't.

3 Q And the same, for example, say, with the lip. You
4 can't tell when that happened.

5 A You can assume, if it's still bleeding, it's fairly
6 recent. But I can't date it, no, or time it.

7 Q And, as to the abrasions and bruises, there's no way
8 to time those, is there?

9 A Based on my exam at that time, no.

10 Q Thank you.

11 MR. FLOYD: No further questions, Your Honor.

12 THE COURT: Redirect, Solicitor?

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

14 REDIRECT EXAMINATION BY MS. MAYES:

15 Q Can you tell us what kind of camera you used to take
16 photographs?

17 A A Nikon. And I apologize. I can't think of the
18 version. I have a personal one, the same--- It's a
19 D-3000 I believe.

20 Q Okay. And is that a digital photograph, a digital
21 camera?

22 A Yes, it is.

23 Q All right. So it allows you to convert photographs
24 onto a computer. Correct?

25 A Correct..

1 Q All right. And do you also have the ability,
2 throughout your practice as a nurse examiner, to print
3 out photographs that are produced on a computer
4 screen?

5 A Yes.

6 Q All right. And do photographs necessarily always
7 print out the same as they appear on a computer
8 screen?

9 A No.

10 Q And what about high-resolution laser jet printers? Do
11 they necessarily produce the same product as it
12 appears on a computer screen?

13 MR. FLOYD: Now, Your Honor, I'm going to object
14 unless she's got some expertise.

15 THE COURT: I think you'd have to lay a
16 foundation. She's a forensic nurse examiner.

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

18 THE COURT: I think you would have to lay a
19 foundation as to the photography.

20 MS. MAYES: Yes, sir, Your Honor. Nothing
21 further.

22 THE COURT: Recross, Mr. Floyd?

23 MR. FLOYD: Nothing further, Your Honor.

24 THE COURT: All right. Thank you. Thank you
25 very much for being with us, Ms. Clary. You may step down.

1 MS. MAYES: May we approach.

2 THE COURT: Yes, ma'am.

3 MS. MAYES: We would ask that the witness be
4 excused.

5 THE COURT: Yes, ma'am. You can--- Well, you can
6 stand outside the door if you want to. No. You may be
7 excused, Ms. Clary. Thank you. Thank you very much. No
8 objections to that. Correct, Mr. Floyd?

9 MR. FLOYD: No objection.

10 THE COURT: Thank you for being with us.

11 (Witness leaves the witness stand.)

12 THE COURT: All right. And you say Ms. Riley,
13 Solicitor?

14 MS. MAYES: Yes, sir, Your Honor, Adrienne Riley.

15 THE COURT: All right. Ms. Riley, if you'd come
16 around and be sworn for us, please.

17 CLERK: Ms. Riley, how do you spell your first
18 name?

19 THE WITNESS: A-D-R-I-E-N-N-E. And then the last
20 name's Hefney. It's Riley-Hefney, H-E-F-N-E-Y.

21 WHEREUPON, ADRIENNE RILEY-HEFNEY, being
22 first duly sworn, testifies as follows:

23 CLERK: Have a seat, please, ma'am. Once you're
24 seated, speak up loud and clear stating your full name on
25 the record, please.

1 THE WITNESS: Adrienne Riley-Hefney.

2 DIRECT EXAMINATION BY MS. MAYES:

3 Q Good afternoon, Agent. Where are you employed?

4 A With the South Carolina Law Enforcement Division, more
5 commonly known as SLED.

6 Q All right. And what do you do with the State Law
7 Enforcement Division?

8 A Forensic DNA analyst.

9 Q All right. And how long have you been with the South
10 Carolina Law Enforcement Division?

11 A Almost 14 years, since November of 1997.

12 Q All right. And can you give us some information
13 concerning your educational background and training
14 that led to you becoming a forensic analyst with SLED?

15 A Sure. I have a bachelor of science degree in biology
16 from the University of South Carolina, Columbia
17 campus. I also have an MBA from Winthrop University.
18 I've attended post-graduate courses in the field of
19 genetics, microbiology and population statistics. And
20 I was trained on the job by a court-qualified analyst.

21 Q All right. And have you testified previously as an
22 expert in the field of forensic analysis, including
23 DNA analysis?

24 A Yes, ma'am, I have.

25 Q Is it possible for you to estimate how many such times

1 you've previously given expert testimony in this
2 field?

3 A Over 50 times. I would guess about 52 times, 53.

4 MS. MAYES: Your Honor, at this time, the State
5 would offer Agent Riley as an expert in the field of DNA
6 analysis.

7 THE COURT: All right. Mr. Floyd?

8 MR. SNELL: No objection, Your Honor.

9 THE COURT: Thank you very much. Again, ladies
10 and gentlemen, normally a witness cannot give opinion
11 testimony. Normally, when a person testifies, they must
12 testify as to either what they saw, heard or sensed by
13 smell or something of that nature. However, there is an
14 exception when someone is qualified because of education or
15 experience or training in a particular field, art, science,
16 craft. They are permitted to give their opinions in
17 certain areas if the Court qualifies them that way. This
18 witness, Agent Adrienne Riley-Hefney--- Did I pronounce
19 that correctly?

20 THE WITNESS: Yes, sir.

21 THE COURT: ---will be qualified in the area of
22 forensic DNA analysis to give opinion testimony in that
23 area. That does not mean that you must accept the opinion,
24 but it is evidence for you, the jury, to use in any way you
25 see fit. Thank you, Solicitor. You may continue.

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

2 Q Now, Agent, just in general, what is meant by the
3 science or field of forensic analysis?

4 A Forensic DNA analysis involves basically our DNA. Our
5 DNA is genetic information found within each of our
6 bodies. It's information that's passed down from our
7 parents. And the DNA that's in our hair, in our
8 nails, in our skin is the same DNA that's in our blood
9 and in our semen. And what I do is I develop DNA
10 profiles from evidence or unknowns and make
11 comparisons to known standards. And what are knowns
12 are the evidence that or what was taken from the
13 victim and the subject involved in a case, and
14 unknowns is the evidence samples or those samples that
15 are in question. A part of DNA analysis, prior to us
16 doing DNA analysis, is serology analysis. And what
17 serology analysis is is the identification of body
18 fluids, and that's where we determine what we're
19 dealing with, whether it's semen, saliva or blood,
20 before we can go on to DNA analysis.

21 Q Okay. So, if I understand correctly, prior to even
22 doing a DNA analysis, you first want to know whether
23 there's any body fluids present.

24 A That's correct.

25 Q All right. And those body fluids can include things

1 like, if it's a male person who might have left behind
2 that particular item of evidence that you're looking
3 at, it might be semen. Correct?

4 A That's correct.

5 Q And, in your particular field, do you have a way of
6 identifying a specific body fluid such as semen?

7 A That is correct.

8 Q All right. And how is that normally identified?

9 A Normally, we have what's known as an ABACard; and
10 what an ABACard is, it contains antibodies, antigen
11 P30, a protein found in male prostate glands that's
12 contained in semen. And, if semen is present, then
13 that card will read positive; it will give us three
14 lines. If there is no semen present, it will give us
15 two lines, which is the control line and then the
16 measure line which measures how much just generally is
17 in the card.

18 Q All right. And, in your line of work, have you had
19 the opportunity to examine what are called sexual
20 assault protocol kits?

21 A Yes, ma'am.

22 Q What all is contained in a protocol kit?

23 A A normal protocol kit will have vaginal swabs, rectal
24 swabs, oral swabs, fingernail scrapings, underwear,
25 sometimes a suspected body fluid swab, known pubic

1 hairs, known head hairs, pubic hair combings, blood
2 standard, saliva standard, are the most common things.

3 Q And do you always find the presence of semen?

4 A No, ma'am.

5 Q All right. And, in this particular case, can you tell
6 us whether or not you had the opportunity to be
7 involved in what is identified as SLED Lab Number
8 LTN07253?

9 A Yes, ma'am.

10 Q And in what way were you involved?

11 A I performed the analysis on the sexual assault kit
12 from the victim in this case.

13 Q And have you--- Do you have with you any documentation
14 in that regard?

15 A Yes, ma'am.

16 Q Can you tell us the identity of that victim?

17 A May I have the report?

18 Q I'm going to show you this document and ask you
19 whether or not you recognize it.

20 A Yes. This is my serology report that has my signature
21 on it, and it's where I examined the sexual assault
22 evidence collection kit from Victim [REDACTED] [REDACTED]

23 Q And does that report document your findings?

24 A Yes, ma'am.

25 Q All right. Now, in this particular case, did you have

1 the opportunity to analyze vaginal swabs that had been
2 collected pursuant to [Victim] [REDACTED] examination?

3 And we'd be talking about vaginal swabs taken at the
4 hospital.

5 A Yes, ma'am.

6 Q All right. And what, if anything, was noted
7 concerning that examination?

8 A There was no semen identified on the vaginal swabs.

9 Q All right. And was there also an opportunity to
10 examine a swab that was taken from the left foot area?

11 A Yes, ma'am.

12 Q And what was the result of that examination?

13 A From the suspected blood fluid from the top of the
14 left foot, there was no semen identified.

15 Q All right. Now, in a case where there is not
16 intercourse for example, would you necessarily expect
17 to find the presence of semen?

18 A No, ma'am.

19 Q In a case where there's been no ejaculation, would you
20 expect to find the presence of semen?

21 A No, ma'am.

22 Q Can you tell us whether or not, in a case where there
23 is potentially ejaculation, what, if anything, might
24 affect the ability to recover that type of evidence?

25 A Well, some of the things in the years I've noticed, if

1 a person, if the male is aspermatic, we will not get a
2 male DNA profile but we may get a positive semen. If
3 the patient has been bathed or had bathed or had been
4 bathed since the incident but before the kit was
5 collected, then usually semen is not identified on
6 those types of situations.

7 Q So, in a case where a victim has taken a bath or been
8 bathed, you may not recover forensic evidence.

9 A That's correct.

10 MS. MAYES: Nothing further, Your Honor.

11 THE COURT: Thank you, Solicitor. Mr. Snell?

12 MR. SNELL: Thank you, Your Honor.

13 CROSS EXAMINATION BY MR. SNELL:

14 Q Is it true and correct that, when you tested for DNA
15 evidence, you didn't test for any source, whether it
16 be saliva, blood, semen or any other bodily fluid?

17 A That is correct.

18 Q Do you have a copy of your report labeled serology
19 analysis?

20 A I do.

21 Q And could you tell us what the date of this report is?

22 A March 30th, 2011.

23 Q And that's the date the report was prepared?

24 A Yes, sir.

25 Q All right.

1 A That's the date the report was approved after all the
2 reviews.

3 Q And the testing was actually done last week in this
4 case?

5 A Yes, sir. My testing was actually done on March 24th,
6 2011.

7 Q So the analysis of the kit in this case wasn't done
8 until last week.

9 A That is correct.

10 Q Now, does the analysis indicate that there was like---
11 Is it true the analysis doesn't indicate there was any
12 DNA at all found on [REDACTED] Victim [REDACTED]

13 A I did not perform DNA analysis on the kit, only the
14 serology analysis.

15 Q Does it indicate that there was any results--- Were
16 there any positive results? Isn't it true there were
17 no positive results on the serology report?

18 A For the items that were tested, there were no positive
19 results. Correct.

20 Q And the items tested were from either the vaginal and
21 rectal areas?

22 A Yes, sir. Vaginal swabs, rectal swabs and the
23 suspected body fluid from the top of her left foot---

24 Q Now, there were other---

25 A ---as well as the vaginal and rectal smears.

1 Q Now, there were other samples taken the report
2 indicates, including her diaper, the left ear, the
3 right ear and left thigh and also her left and right
4 minora. Is that correct?

5 A That is correct.

6 Q Okay. But there was no analysis performed?

7 A No, sir, there was not.

8 Q All right. And do y'all perform analyses as directed
9 by law enforcement or the police?

10 A We work with the investigator and law enforcement on
11 what needs to be analyzed based on the facts of the
12 case.

13 Q So the police would have decided what was analyzed and
14 what wasn't.

15 A The police or, and/or the Solicitor's Office.

16 Q And is it your understanding that this, that all the
17 testing was done in accordance with the request from
18 the Solicitor's Office or from law enforcement?

19 A That is correct.

20 Q Thank you.

21 MR. SNELL: No other questions. Thank you.

22 THE COURT: Thank you, Mr. Snell. Solicitor, any
23 redirect?

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

25

1 REDIRECT EXAMINATION BY MS. MAYES:

2 Q In this case, was there ever any specific indication
3 of sexual intercourse or ejaculation that would lead
4 to further examination?

5 A No. There was no semen identified on the vaginal
6 swabs or the rectal swabs.

7 Q All right.

8 MS. MAYES: Nothing further, Your Honor.

9 THE COURT: Recross?

10 MR. SNELL: No, Your Honor.

11 THE COURT: Thank you. Thank you for being with
12 us today. And you may step down. Any objections to the
13 agent being excused?

14 MS. MAYES: None from the State.

15 MR. SNELL: None from the Defendant.

16 THE COURT: Thank you. You may be excused.

17 (Witness leaves the witness stand.)

18 THE COURT: All right. Solicitor, you may call
19 your next witness.

20 MS. MAYES: The State calls Dr. Susan Luberoff.

21 WHEREUPON, DR. SUSAN B. LUBEROFF, being
22 first duly sworn, testifies as follows:

23 CLERK: Have a seat, please, ma'am. Once you're
24 seated, Doctor, please speak loud and clear and state your
25 full name on the record.

1 THE WITNESS: I'm Susan Breeland Luberoff.

2 MS. MAYES: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 DIRECT EXAMINATION BY MS. MAYES:

6 Q Dr. Luberoff, can you give us some information about
7 yourself?

8 A Yes. I'm a pediatrician. I graduated from the USC
9 School of Medicine in Columbia in the third class to
10 graduate in 1983 and completed a pediatric residency
11 at Children's Hospital at Richland Memorial in 1986.
12 And, since then, I have practiced as a pediatrician in
13 several different types of settings; but the majority
14 of my time, my professional time, has been spent in
15 the field of child abuse pediatrics.

16 Q What specific training have you received in the field
17 of child abuse pediatrics?

18 A Back in about 1991, '90 or '91, I spent a six-week
19 period of time in Denver at the Kempe National Center
20 for the Prevention and Treatment of Child Abuse as a
21 scholar in residence with their program. I completed
22 a three-week training about that same time through the
23 Huntsville National Children's Advocacy Center
24 specifically with regard to sexual abuse. And I've
25 attended numerous trainings and workshops over my

1 career particularly focused on medical and other
2 aspects of children's injuries and physical abuse and
3 sexual abuse of children.

4 Q Now, what do you do specifically in conjunction with
5 Palmetto Health Hospital?

6 A I'm actually employed by the University of South
7 Carolina School of Medicine, Department of Pediatrics,
8 as an associate professor of clinical pediatrics; and
9 they have me stationed at a clinic that is part of a
10 children's advocacy center that specifically helps to
11 evaluate children suspected of having been physically
12 or sexually abused. In that role, I take call at
13 Palmetto Health Children's Hospital. If the staff
14 there are treating a child or admit a child to the
15 hospital where they have concern that there could be
16 significant abuse or neglect, then the staff will
17 consult me to come over and help in the evaluation of
18 that child.

19 Q All right. And is it possible for you to estimate how
20 many times you've testified previously as an expert in
21 the field of child abuse pediatrics?

22 A Well, when I go to court to testify, sometimes it's
23 kind of--- It's kind of a mystery to me how the Court
24 decides what exactly to title my area of expertise.
25 So I've been qualified in various courts as an expert

1 in child abuse pediatrics, child physical abuse, child
2 sexual abuse, pediatrics, different permutations of
3 the phrase. And I don't keep track by what type, but
4 I've testified in South Carolina in courts. I stopped
5 counting after a hundred times many years ago. So
6 I've testified many, many, many times for this
7 particular, you know, for cases where there's a child
8 where there was some concern about abuse or neglect.

9 Q Now, in addition to your clinical experience in the
10 field of child abuse assessment and pediatrics, what,
11 if any, knowledge do you have or do you maintain
12 concerning the medical literature in this field?

13 A Well, I keep up with the medical literature the best
14 that I can. I attend--- Just about every year, I'll
15 attend a child abuse conference that is specifically
16 aimed at medical professionals in the field. The
17 American Academy of Pediatrics, their monthly
18 publication with pediatric literature often contains
19 articles of interest in the area of child abuse
20 pediatrics. I'm a participant--- In South Carolina,
21 we have a program that sort of coordinates the medical
22 approach to assisting in child abuse evaluation; and,
23 in that program, we have a, three times a year,
24 medical round-table meeting where the medical
25 providers, like me, and the State come together and

1 meet all day and do peer review. We'll bring cases to
2 discuss and keep up with each other.

3 MS. MAYES: Your Honor, at this time, the State
4 would offer Dr. Susan Luberoff as an expert in the field of
5 child abuse pediatrics.

6 THE COURT: All right. Mr. Floyd, any questions
7 in that regard?

8 MR. FLOYD: I just have one question for the
9 doctor, Your Honor.

10 THE COURT: All right.

11 VOIR DIRE EXAMINATION BY MR. FLOYD:

12 Q Dr. Luberoff, have you always testified for the State?

13 A No, sir.

14 Q How many times have you testified for the defense?

15 A When I come to court, I'm really here to testify for
16 the education of the Court. Most often, I'm here at
17 the invitation of the prosecution. Most often, when
18 the defense would invite me to come, those are cases
19 where there's a strong case against abuse; and so
20 those usually are taken care of outside of this
21 setting. But I have, at times, been invited by the
22 defense; mostly, mostly by the prosecution.

23 MR. FLOYD: Thank you.

24 THE COURT: Any other questions in that regard,
25 Mr. Floyd?

1 MR. FLOYD: No other questions, Your Honor.

2 THE COURT: Thank you. Again, ladies and
3 gentlemen, normally a person cannot give opinion testimony.
4 Normally, when a person testifies, they must testify to
5 either what they saw, heard or sensed by smell or something
6 of that nature. However, there is an exception for an
7 individual who, by training, education or experience, has
8 become qualified in a particular field, art, science or
9 profession. They are permitted to give their opinion in
10 certain areas if the Court qualifies them that way. This
11 witness, Dr. Susan Breeland Luberoff, will be qualified in
12 the area of child abuse pediatrics to give opinion
13 testimony in that regard. That does not mean you must
14 accept the opinion, but it is evidence for you, the jury,
15 to use in any way you see fit. Thank you. Solicitor, you
16 may continue.

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

18 CONTINUATION OF DIRECT EXAMINATION BY MS. MAYES:

19 Q Now, Dr. Luberoff, you have mentioned previously your
20 clinical experience. Can you tell us whether or not
21 that includes experience in conducting child sexual
22 assault examinations?

23 A Yes, it does.

24 Q And does it include experience in conducting child
25 physical abuse examinations?

1 A Yes, it does.

2 Q And do you always necessarily find evidence of abuse
3 even when you're requested or consulted with by other
4 physicians?

5 A Do I necessarily find evidence of abuse? No.
6 Oftentimes, we find no evidence of abuse. Even if
7 abuse has happened, an exam is often normal.

8 Q All right. And, in a case where there is a child who
9 is not able to communicate either because of age or
10 handicap, what efforts are made in order to determine
11 what may have happened to the child?

12 A Well, a history is gathered; and that history may come
13 from the caregivers of the child, from other people
14 that were in the vicinity when whatever the matter is
15 arose. That history, from my standpoint, can come
16 either directly from a parent. Often, and most often,
17 a large amount of my history comes from what history
18 the hospital has already gathered. By the time I'm
19 involved in a case in the hospital, usually the
20 medical staff, usually several different people, have
21 already gathered history from whoever brought the
22 child to the hospital, and they may also have history
23 from other relatives who have since appeared. So,
24 often, a large part of my history comes from the chart
25 or from history that's already been gathered.

1 Sometimes I'm able to get that history directly or
2 supplement the history directly with the parent
3 myself.

4 Q And can you tell us why that may be necessary for your
5 medical diagnosis and treatment?

6 A Well, history is a very important part of all medical
7 diagnoses or virtually all medical diagnoses and
8 treatment. For example, if a child comes in and
9 coughs in front of me, I can't make a diagnosis by
10 observing that child cough, but I may be able to make
11 a diagnosis by observing that child cough and finding
12 out from the child or the parent how long the cough
13 has been there, what the cough has been like, what
14 they've already tried, other, a lot of other
15 information besides just what I observe.

16 Q All right. And on what date were you specifically
17 consulted with by other individuals at Palmetto Health
18 Richland to get involved in the case of Victim
19 [REDACTED]?

20 A I believe I was consulted on April 16th of 2010. I
21 brought a copy of my report that I dictated.

22 Q All right. So April 16th would be after the day of
23 the alleged incident or alleged injury?

24 A Yes. As I understand it, the child came into our
25 hospital or presented to our emergency room on the

1 15th, sometime in the evening; and then I was
2 consulted the next day after she had been admitted to
3 the hospital.

4 Q And, for purposes of us keeping a timeline of events,
5 would your involvement have been before or after what
6 is called the SANE forensic nurse protocol?

7 COURT REPORTER: I'm sorry. I did not understand
8 you. Before or after what is called the---

9 MS. MAYES: SANE forensic nurse protocol.

10 A My involvement would have been after that.

11 Q All right. And what is the first step you took in
12 becoming involved in Victim case?

13 A I received a telephone call asking me to come and
14 evaluate the child, and I came over to the--- She was
15 in the pediatric intensive care unit or the pediatric
16 intermediate intensive care unit. It's all one big
17 area. When I arrived there, there were several people
18 assembled that were involved in the investigation; and
19 I talked with them. I reviewed her chart; I reviewed
20 her X-rays. I don't remember exactly in what order I
21 looked at the X-rays versus examining her, but all of
22 this was in one visit. I did perform an examination.
23 I took photographs. I had to be assisted in my exam
24 by several people. She had been, according to the
25 records, had been very distressed in the emergency

1 room, and it had been difficult to accomplish her
2 entire exam there. So, for my exam, I made sure that
3 I had a child life specialist in place; and that's a
4 particular professional that would spend some time
5 letting the child get used to her and knows how to
6 comfort a child and how to assist. We have many of
7 these at the Children's Hospital that help assist
8 children through different procedures and different
9 examinations. So I did have that advantage when I did
10 **Victim** exam.

11 Q All right. At whose request was it that you get
12 involved?

13 A The resident who called me was Dr. Restrepo. He was
14 the resident--- I believe he's an emergency room, or
15 it could be a pediatric, resident rotating in the PIC
16 unit that month. He was a physician in training.

17 Q All right. And, when you start your examination, what
18 body parts are you looking at?

19 A I do a detailed examination of all of the skin from
20 head to toe, even between the fingers and toes. I
21 look into any openings that I can, the ears, the eyes,
22 the mouth, the genital area. I feel or palpate over
23 the bones for any evidence of tenderness or swelling.
24 I assess the child's ability to interact with me, does
25 it look like she's acting normally, sort of what's her

1 mental status at that time. A large part of my exam
2 is focused on skin, bones, genital area, looking for
3 any signs of injury and then looking for signs of
4 neglect also. We'll look at, you know, how much fat
5 does the child have, is the child well grown, well
6 developed and so on.

7 Q All right. And can you tell us whether or not any CT
8 scans or ultrasounds were ordered in **Victim** case?

9 A A CT scan of her head was ordered because she had a
10 significant amount of bruising around her head and
11 so--- She's not old enough to tell us what happened to
12 her head, so a head CT or CAT scan was ordered. And,
13 in **Victim** case, that CAT scan did not show any
14 injury inside her skull, no injury to her brain or no
15 bleeding inside her brain; but it did show a rather
16 large hematoma or collection of blood under the scalp
17 on the back of her head.

18 Q All right. So the hematoma was located on the back of
19 her head?

20 A On the back of her head.

21 Q All right. And what, if anything, was noted along her
22 forehead?

23 A On the CAT scan or my exam?

24 Q On your exam that led to the CAT scan.

25 A On her forehead, she had bruising. She had bruising

1 actually on both sides of her head in the region of
2 her ears. She had a very easy-to-feel large boggy
3 area on the back of her head that would have been
4 represented as that hematoma on the CAT scan. She
5 also had some injury to her mouth. And those were the
6 findings about her head.

7 Q All right. Now, you used the term boggy in reference
8 to the back of her head. What are you referring to?

9 A Boggy, soft, mushy, spongy feeling. Just a fluid sort
10 of feeling to the skin.

11 Q All right. And were any additional CT's ordered?

12 A I believe that she had an abdominal CT as well because
13 of the widespread nature of the injuries on her body
14 and because, when she came in, one of the blood tests
15 that was done was to measure for any blood signs of
16 liver damage. And her initial test was just
17 marginally, marginally elevated on that, so an
18 abdominal CT was done and did not show any injury to
19 her liver or her spleen or any of her organs in her
20 abdomen. And then that blood test actually normalized
21 rather quickly, so I really don't know whether that
22 was related to any kind of injury in her abdomen or
23 not. There's no other evidence that there was injury
24 in her abdomen.

25 Q All right. So, in addition to these digital images

1 and X-rays, what, if any, other type of examination
2 was conducted?

3 A She had some other blood work done. She had a CBC,
4 which is a blood count. She had some clotting studies
5 done, some chemistries. And then she had--- We did do
6 a set of X-rays that examined all of the bones of her
7 body to see whether she had any broken bones anywhere
8 that she, by her age, wouldn't be able to tell us
9 about.

10 Q All right. And did you actually conduct an external
11 examination yourself?

12 A Yes, I did.

13 Q And what was the date and time of the physical exam?

14 A Well, it was April 16th. I'm not sure what time it
15 was.

16 Q All right.

17 A I believe I arrived over there sometime in the
18 afternoon, but I'm not certain.

19 Q Do you also have the means to document your
20 examination by photographs?

21 A Yes, I do.

22 Q And was that done?

23 A Yes.

24 Q Can you tell us whether or not there were any
25 indications of physical abuse to [Victim] [REDACTED]

1 A Yes, there were. She had numerous bruises that I've
2 already mentioned, the ones involving her head and her
3 face. She had actually two different injuries
4 involving her mouth. One was that her upper lip had a
5 laceration; it was sort of split on the inside edge of
6 her lip, and this appeared to correspond to her teeth.
7 The laceration was about the size of one of her
8 incisors. She also--- And that was a fresh injury.
9 She also had, inside the lower lip--- At the base of
10 your lower lip, there's a piece of tissue that
11 connects your lip to your gum, and that's called the
12 frenulum. And that area had an injury that was
13 somewhat older. It was in a healing stage, and I
14 estimated that at being probably a few days old. I
15 can't put a real fine line on that, but it was clearly
16 older than the fresh injury to the top part of her
17 mouth. **Victim** also had bruises to one side of her
18 neck. She had a series of bruises in the area of her
19 left elbow that were small. It was a collection of
20 bruises that we commonly see in sort of a grip
21 mechanism of injury. She had a series of small
22 bruises around the right knee that also was similar in
23 pattern to that around her left elbow. There was a
24 small injury near her right nipple that was more of an
25 abrasion; it was a little bit of a curved injury that

1 suggested, but is not diagnostic of, a fingernail
2 mark. She had some scratch marks on her left leg that
3 were non-specific. I don't feel like they probably
4 were related to abuse or to someone else inflicting
5 them. She had injury in her genital area that
6 included a series of bruises in sort of a curved
7 pattern over the front or the pubic area of her diaper
8 area. She had injuries to her hymen, which is a part
9 of the structure of the vagina. She had injuries just
10 under the clitoris, which were some injuries on both
11 sides of torn tissue or torn skin. The injury to her
12 hymen was bruising, and it involved most of the back
13 portion of the hymen. Let me just refer to my notes
14 and make sure I'm not missing anything. The bruising
15 on the two sides of her head also involved her ears;
16 the ears were bruised as well. She had--- At the base
17 of her spine area, she did have a bruise there that
18 was clearly older than the other injuries that I don't
19 feel like was related to anybody doing anything to
20 her. That's an area where we frequently see injuries
21 from children tumbling about in space, and I actually
22 usually refer to that as a tumbling injury. So that
23 wasn't significant. Okay. I think I've covered
24 everything.

25 Q I'm going to show you some photographs and ask you

1 whether or not you recognize them.

2 A (Pause.) Yes I do.

3 Q And how is it that you recognize those photographs?

4 A These are six photographs that I took when I did my
5 exam of **Victim**

6 Q All right.

7 A I took a lot of photographs, but these are six of
8 them.

9 Q All right. I'm also going to show you State's 5,
10 State's 4, State's 2, State's 6 and State's 7 and ask
11 you whether or not the injuries noted in these
12 photographs are a fair and accurate representation of
13 what you observed.

14 A (Pause.) Yes, they all are.

15 MS. MAYES: And, Your Honor, as to the
16 photographs she has identified as taking during her exam,
17 we would offer them for evidence at this time.

18 THE COURT: Show them to Mr. Floyd.

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

20 THE COURT: Have you seen them, Mr. Floyd?

21 MR. FLOYD: No, Your Honor.

22 (Pause.)

23 MR. FLOYD: Your Honor, we have no objections
24 to--well, they're not marked yet--these four---

25 THE COURT: All right. If you'd have them

1 marked, Solicitor.

2 MR. FLOYD: ---five photographs.

3 MS. MAYES: I believe we would be starting with
4 State's Exhibit 16 and then 17, 18, 19 and 20.

5 THE COURT: State's 16 through 20 is in
6 evidence without objection.

7 (State's Exhibits 16, 17, 18, 19 and 20 marked
8 for purposes of the record.)

9 Q Dr. Luberoff, I want to first start with any injuries
10 to the head. You have testified previously about an
11 injury or hematoma to the back of the head. What, if
12 any, other points of impact or injury were noted?

13 A Several areas of the forehead which you can see in the
14 photographs that you've just projected, as well as the
15 bruising in the area of both ears, on both sides of
16 the head, all represent points of impact.

17 Q And I'm going to show you now State's Exhibit 7 which
18 would be the left ear area and ask you what, if
19 anything, is noted in these photographs.

20 A There is bruising. I don't know--- Would it be at all
21 helpful if I could come down and point or do you want
22 me just to try to describe it from here? First of
23 all, these two pictures look a little different from
24 each other because, in one of them, there was a flash
25 and then, the other one, there wasn't. So that's the

1 difference in color. But there's bruising here on the
2 edge of what we call the pinna, which is the actual
3 ear proper. And it's seen again down here, and the
4 difference in color is just because of the absence and
5 presence of a flash. There's also bruising here on
6 the scalp. And, if you lay the ear back or fold the
7 ear back, those two areas come in contact with each
8 other. So it appears that this represents one single
9 injury where the ear was impacted against that same
10 area of the scalp.

11 Q Now, in your clinical experience and your training and
12 education, are injuries to the ear normal as
13 accidental or play injuries for children?

14 A Children can sustain accidental injuries to an ear.
15 If they do or when they do, it'll be one ear. That
16 injury doesn't go through the head and show up on the
17 other side of the head. So a single injury is going
18 to cause an injury to whatever ear is involved, but it
19 does happen.

20 Q And what, if any, type of force, in your opinion, is
21 necessary to produce this type of injury?

22 A Well, it's a fair amount of force. It's enough force
23 to bruise the ear and the scalp. I can't quantify
24 that for you. But most of us have been bruised, and
25 we have some idea how much force that takes.

1 Q And, now, as to the area of the right ear, this would
2 be State's Exhibit 6.

3 A And this--- Actually this might not be one of the
4 photos that I took. This might be one of the ones
5 that the SANE nurse took. This one definitely is one
6 that I took. But, in both of them, you can see
7 bruising on the edge of the ear. And here, I'm trying
8 to unfold the ear so that you can see a little bit of
9 bruising within the fold. And it's hard to see in
10 this child's hairline in the photographs, but there
11 was similar bruising of the scalp behind the ear on
12 this side as well. The forehead bruises that were
13 seen in the original photograph, you can see them kind
14 of coming around the side here too, and there's
15 bruising in front of the ear.

16 Q Can you tell us whether or not there was evidence of
17 an injury around the ears or around the face which may
18 be consistent with a slap or a strike?

19 A There actually is a characteristic pattern of injury
20 that we can see when a child is hit with an open hand
21 hard enough to cause a bruise. I did not see that
22 type of bruising. That'll leave little narrow lines
23 that represent the area in between the fingers, sort
24 of stripe marks. I did not see that. These injuries,
25 at least to the child's forehead, were more sort of

1 vaguely round-shaped injuries. They weren't the open-
2 hand slap type of injury. And then, on the ear,
3 there's not a particular pattern to those involving
4 the ear against the scalp, but I can't point out a
5 particular pattern or particular implement or anything
6 like that.

7 Q All right.

8 MS. MAYES: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 Q And, as to State's Exhibit 3, do you recall whether or
11 not any injuries were noted on the side area of the
12 face?

13 A Yes. This photograph that I'm holding is a similar
14 view to the top photograph on the screen, and this
15 injury is shown better in the photograph that I'm
16 holding. In Exhibit 3, it's a little clearer here.
17 And it's a bruise injury also. And, again, I can't---
18 It's not--- It's not that linear kind of open-hand
19 slap sort of bruise that we see. I can't tell you
20 what exactly was the implement that caused it, but
21 it's a bruise.

22 Q I'm going to show now what is State's Exhibit 2.
23 What, if anything, is significant about this
24 photograph?

25 A This is the child's left elbow that I mentioned

1 earlier, and this is the series of one, two, three
2 bruises arranged kind of around to the elbow. But
3 that is very typical of a grip mechanism of bruising.

4 Q And, by grip, you're referring to what?

5 A Well, what we call a grip mark, like a hand forcefully
6 grabbing a child hard enough to cause bruising that
7 would represent fingertips.

8 Q And this is State's Exhibit 4. If you could tell us
9 what we are observing in this photograph.

10 A This is--- Let me try to orient you. It's a little
11 bit harder to tell what body part this is. This is
12 the diaper up here (indicating), and this is the right
13 leg. This is the knee area. So that's the lower leg.
14 And, again, there is a series of about three bruises.
15 Two of them are roughly round. This one's not as
16 round looking. But the proximity of them and the
17 appearance of them also suggest a grip mark.

18 Q I'm going to show you State's Exhibit 5. And can you
19 tell us whether or not this photograph was taken by
20 you?

21 A Both of these were taken by me.

22 Q All right. What are we looking at here?

23 A Here, we're looking at some injuries along the jaw
24 line. There's some bruising there, again, on the
25 face. I don't think I mentioned the jaw line earlier

1 when I was listing things. But the child's neck also
2 has a series of bruises. The one that's most sort of
3 useful to me in this neck injury is there's a portion
4 of it that's sort of a little narrow, straight narrow
5 line that's kind of red looking. That is a pattern of
6 injury that we commonly see from clothing, like, if a
7 child is jerked or the clothing is yanked against the
8 skin, then we'll get those narrow linear marks
9 sometimes. These are not really exactly like that
10 one. It's bruising; it's on the neck which is
11 definitely a very protected place. It's not a place
12 that we routinely see accidental injuries in children.
13 These injuries look more similar to the injuries that
14 were around the elbow and around the knee, but I can't
15 tell you that they are not part of a clothing type
16 mechanism or, you know, I can't say that they're not
17 part of this injury. They could be, but they look
18 different and might be a different--- It might be two
19 different causes.

20 Q In other words, the two separate marks that we're
21 looking at might not have been caused during the same
22 event?

23 A They very likely were because they're so close to that
24 area, but it's possible. It's possible, for example,
25 that the linear part, the line, represents clothing

1 and the other represents fingertips all in one act if
2 something--- If the child were jerked by the shirt or
3 something like that, then that could all happen at
4 once.

5 Q Okay. I'm going to show you State's Exhibit 12 and
6 ask you what, if anything, is significant in this
7 photo.

8 A Okay. First, I do want to point out to disregard all
9 this redness on the cheeks. That's not inflicted
10 injury. That's just representing a child that's
11 exhausted and has been crying. And that's not---
12 We're not here about that. That's just artifact
13 really of the child. The upper lip, it's kind of hard
14 to see in this photograph; but the laceration or sort
15 of the split lip I was talking about is in this area
16 of the upper lip on the left (indicating).

17 Q All right. And could you show us again on the bottom
18 photograph what area you're referring to?

19 A Yes. And these are not my photographs. These were
20 taken I think by the SANE nurse. I'm pretty sure. I
21 think I have a better photograph of the injury to the
22 lip in the stack that you showed me earlier.

23 MS. MAYES: Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 Q What, if anything, may cause such an injury?

1 A That's very typical of an injury that's caused by
2 impact of the face where the tooth cuts into the lip.
3 And that can happen from being hit in the face. It
4 can happen from falling onto an object. But it's
5 some--- It's some kind of blunt force application to
6 the face.

7 Q All right. Resulting in injury along this location?

8 A The upper lip.

9 Q All right. Now, you had mentioned that there was also
10 an older injury. Is that visible in this photograph?

11 A No. To see that injury, you have to pull the lower
12 lip down. I did have some photographs that I took of
13 that injury.

14 Q Now, Dr. Luberoff, looking at the totality of injuries
15 to **Victim** do you have an opinion as to whether or
16 not these injuries are consistent with child physical
17 abuse?

18 A Yes. One thing that I haven't actually mentioned at
19 this point is that---

20 MR. FLOYD: Your Honor, I'm going to object to
21 the standard. I don't think the Solicitor--- I don't think
22 consistency is the correct standard.

23 THE COURT: All right. Well, you can rephrase
24 the question, Solicitor.

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

1 Q Dr. Luberoff, do you have an opinion to a reasonable
2 degree of medical certainty as to whether or not
3 [Victim] sustained injuries of child physical
4 abuse?

5 A Yes, I do. I made a diagnosis of child physical
6 abuse.

7 Q All right. And what led to that diagnosis?

8 A The history, the examination of [Victim] and, in
9 addition to the presence of the injuries, the absence
10 of injuries that we ordinarily expect to see in a
11 child her age. We would expect to see scattered small
12 bruises on the shins in a child that's active and
13 moving around in space and would expect to see some
14 injuries on the bony prominent parts. And the absence
15 of any significant number of injuries in those areas
16 is good evidence that [Victim] was not excessively
17 clumsy, did not have a bleeding disorder that makes
18 her bruise more dramatically because she did not have
19 a large number of injuries in the places that we would
20 expect to see accidental injuries in a child her age.
21 Q All right. In addition, what, if any, indications are
22 there as to any of the injuries that have been noted
23 here through these photographs? What, if any,
24 indications are there that those injuries would be the
25 result an inflicted injury?

1 A The distribution, the location of those injuries, the
2 pattern--some of them were patterned injuries like the
3 collection of small circular bruises around the elbow
4 and the knee--the wide distribution about the head,
5 the large hematoma on the posterior scalp, the
6 involvement of both ears. The appearance and the
7 number and the wide distribution of these injuries
8 really very strongly support the diagnosis of
9 inflicted injury or physical abuse.

10 Q Can you tell us anything about the timeframe of these
11 injuries or whether or not these injuries appear to be
12 acute, in other words, having occurred within the last
13 24 to 36 hours?

14 A These injuries, with the exception of the one on the
15 lower spine which was an older looking injury and with
16 the exception of the one inside the lower lip which
17 did appear to have some days of healing behind it, the
18 rest of the injuries appeared quite fresh. I can't
19 give you an exact time of when those would have
20 happened, but all were within the previous couple, day
21 or two.

22 Q And, just to clarify, the injury that you noted that
23 was older is a separate injury than the one noted here
24 in this photograph.

25 A The injury that's older you can't see in that

1 photograph.

2 Q Now, in addition to the physical abuse assessment, did
3 you also conduct any type of examination to see
4 whether there had been any type of abuse or assault
5 concerning Victim genitalia?

6 A Yes, we did a careful exam of her genitalia as well.

7 Q And what can you tell us about that examination?

8 A She did have bruising in the genital area on the front
9 part of her genitals, in the area that we call the
10 mons pubis, which is in front of the heavy big pubic
11 bone. There was a series of small bruises in sort of
12 an arc pattern. Then, to look at the vagina and
13 hymen, we have to actually move the labia or the lips
14 out of the way because the vagina is inside and the
15 hymen is inside. So I very carefully moved the labia
16 aside, and that's when the injury, the deeper injury,
17 was obvious, which included some tearing of tissue on
18 both sides extending sort of down from the clitoris
19 and then bruising to the hymen itself, which is a bit
20 of tissue near the beginning of the vagina. It's set
21 somewhat up inside the body. But hers was in a
22 circular shape with an opening in the middle of it
23 which should be there to let mucus escape from her
24 body, and the hymen itself had sustained a bruise
25 injury.

1 MS. MAYES: Beg the Court's indulgence.

2 (Attorneys confer.)

3 Q I'm going to show you a diagram and ask you whether or
4 not you recognize what is depicted in the diagram.

5 A This is a diagram to explain the structures of a
6 female genitalia. And the way this diagram is drawn,
7 it's drawn to depict a child that hasn't reached
8 puberty yet.

9 Q All right. And, for demonstrative purposes, if you
10 could, step down and show us exactly the part that
11 you're talking about when you refer to the hymen.

12 A Okay.

13 THE COURT: Solicitor, let me ask you before you
14 do that, how much longer do you have on direct with Dr.
15 Luberoff?

16 MS. MAYES: Possibly 20 more minutes.

17 THE COURT: All right. I think I'm going to take
18 a recess at this time. Ladies and gentlemen of the jury
19 panel, we're going to take a recess. I know some of you
20 like to go out and walk about and all. You may certainly
21 do so. Your lunch is here. I'm going to give you, say, 35
22 minutes. If you're through, if you're all back together
23 prior to the 35 minutes, if you'll let me know--I'm not
24 going out either--we'll start right back. But, at any
25 rate, it won't be any later than--- Gosh, it's already 2:00

1 o'clock. It won't be any later than 2:30, and we will
2 start back. As I say, I know some of you like to go
3 outside and walk about. You may certainly do so. Please
4 remember do not discuss the case during this brief recess.
5 Do not do any--- Well, you won't have access to your
6 computers and all. But do not do any investigation on your
7 own. Thank you very much. You may now go with your
8 bailiff.

9 (The jury is excused for lunch at 2:00 p.m.)

10 THE COURT: All right. Doctor, you may certainly
11 step down and refresh yourself during this recess. You may
12 not discuss your testimony with anyone. You're subject to
13 continuing direct and cross examination. All right?

14 THE WITNESS: Yes, sir.

15 THE COURT: Anything further from the State
16 before we take our luncheon recess, Solicitor?

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

18 THE COURT: Mr. Floyd, Mr. Snell?

19 MR. FLOYD: No, Your Honor.

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

21 We'll be in recess until 2:30.

22 (Whereupon, hearing recessed for luncheon
23 break.)

24 THE COURT: Anything from the State before we
25 bring our jury back, Solicitor?

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

2 THE COURT: Defense, Mr. Snell, Mr. Floyd?

3 MR. FLOYD: Nothing, Your Honor.

4 THE COURT: Bring us our jury, please.

5 (The jury returns to the courtroom.)

6 THE COURT: All right. Welcome back, ladies and
7 gentlemen. I appreciate your work ethic and your continued
8 focus and attention that you've shown throughout the trial
9 of this case. We're continuing the trial by the direct
10 testimony of Dr. Luberoff by the Solicitor. Solicitor, you
11 may continue.

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

13 Q Prior to the break, Dr. Luberoff, I had asked you if
14 you could step down and familiarize us with this
15 diagram.

16 (Witness leaves the witness stand.)

17 A Okay. The way that the child is positioned in this
18 picture, she's laying on her back. And these are her
19 thighs, her legs extending up (indicating). The labia
20 or the lips that I talked about having to move out of
21 the way to examine the genital area are here
22 (indicating). The hymen is--- I'm trying to figure
23 out how they have this drawn. The hymen is this bit
24 of tissue that sort of surrounds the opening to the
25 vagina (indicating). The dark represents the air

1 within the vagina. I need to stand back from it for a
2 minute. Okay. And this dark area here (indicating)
3 represents the urethra or the opening to the bladder,
4 to the tube that leads into the bladder. And the
5 clitoris is up in this area (indicating).

6 Q Dr. Luberoff, what, if anything, is significant about
7 the hymen?

8 A Well, the hymen is a part of the vagina. It's a piece
9 of tissue or an area of tissue that's near the opening
10 to the vagina. It can be different shapes, different
11 sizes in different people. **Victim** hymen was very
12 common shape for children her age, which is that it
13 was circular; it was in the shape of a circle with an
14 opening in the middle of it, like I said, to allow for
15 mucus to exit from the vagina and so on. It can come
16 in different shapes. The hymen has a lot of
17 significance in sort of old wives' tales and family
18 myth kind of arenas in that a lot of people grow up
19 believing that, when the hymen gets touched or the
20 first time it's involved in a sexual act, that it
21 ruptures or gets destroyed or goes away or, in some
22 dramatic way, records that event. And, in fact,
23 that's not the case. In most cases, that hymen, it
24 doesn't get injured by being touched or by being
25 involved in a sexual act. It's a piece of normal

1 living human tissue with no magical properties, and it
2 has some strength and some substance to it. It's a
3 mucus membrane type of tissue in that it's one of the
4 moist tissues of the body that remains bathed in
5 moisture all the time, kind of like the lining of your
6 mouth is. And, in kind of a similar way that the
7 lining of your mouth is somewhat tough, the hymen is a
8 lot tougher than people sort of grow up thinking that
9 it is. So, when we do exams on children where there's
10 some concern about possible sexual abuse, oftentimes
11 parents or lay people may expect, if there's been
12 sexual abuse, there's going to definitely be injury to
13 the hymen. But, in fact, very often we find that the
14 hymen looks completely fine after sexual acts. Even
15 in pregnant teenagers, that hymen most often is
16 completely normal. When a teenager's pregnant, you
17 know for sure there's been some kind of extensive
18 sexual contact. So it doesn't ordinarily have
19 injuries.

20 Q All right. I'm going to ask you specifically about
21 that. In your clinical experience conducting child
22 sexual assault exams, have you conducted exams where
23 there's been a history provided of penetration and,
24 yet, have normal findings where the hymen is
25 concerned?

1 A Yes. Actually, in the clinic where I work, at the
2 Assessment and Resource Center, about 75 percent of
3 the children that we examine in the center are sent
4 for concerns about possible sexual abuse. The child
5 has given a disclosure, or there's some reason that
6 someone's worried about it. And, in pre-pubertal
7 children, children who haven't reached puberty yet,
8 the most common type of sexual abuse that ends up
9 being discovered to be true or that a finding is made
10 involves digital fondling or digital penetration of a
11 child's genital area. Sometimes the penis is involved
12 in pre-pubertal children. Sometimes a mouth or other
13 parts are involved. But the most common form that we
14 see is with a finger. And, in those cases, it is
15 actually extremely rare for me to find an injury to
16 the child's hymen. Now, I will say that, in the
17 clinic setting, those are children where a disclosure
18 is made about something that maybe happened two weeks
19 ago or two years ago. So, in the clinic, we're not
20 seeing children who are coming straight from an event
21 having happened. We would be more likely to see
22 injuries if I were in an emergency room setting where
23 I could see the child immediately afterwards. But, in
24 my setting, it's extremely rare. And then, in the
25 acute-care setting where an event has happened within

1 A Well, this is a blunt force trauma kind of injury
2 also. There being sort of a curved arrangement of a
3 series of bruises raises the possibility, when we're
4 looking at injuries in children, of bite mark. That's
5 the type of pattern that we can see in a bite mark.
6 This doesn't have to be a bite mark. It can be
7 another kind of blunt force trauma. It can be where
8 the child has been struck a number of times in that
9 area or struck with an object with a pattern, but it
10 raises the concern for a bite mark.

11 Q And, again, a similar photograph. This would be
12 State's Exhibit 17.

13 A This is just another view of the same area. You don't
14 see quite as much of her genitals because the diaper
15 is in the way. But these are the bruises.

16 Q I'm going to show you what is State's Exhibit 19 and
17 ask you if you can give us a detailed explanation of
18 what we are looking at in this photograph.

19 A This is a photograph where we've taken the labia and
20 moved them to the side in order to see the internal
21 structures. And these are--- There are two sets of
22 lips or two sets of labia, and these are the major
23 lips or the labia majora. The minor lips are starting
24 to develop here. In a young child, those are
25 underdeveloped, and they're going to grow and become

1 of the genitalia was normal?

2 A It was not normal.

3 Q In what ways was it not normal?

4 A She had bruising on the outside of her genitalia, in
5 the pubic area. She had bruising of the actual hymen
6 itself. And then she had torn tissue inferior or
7 below where the clitoris is, on both sides where the
8 labia begin.

9 Q All right. And can you tell us whether or not the
10 injuries that you observed are consistent or
11 diagnostic of vaginal penetration?

12 A Yes, they're diagnostic of vaginal penetration. The
13 hymen is within the vaginal area, and this is an
14 injury to that area. And the only way to get there is
15 by penetrating into that area. So these were
16 penetrating injuries.

17 Q Now, you mentioned previously that, in addition to the
18 documentation you made, that you also photographed
19 that portion of the exam.

20 A Yes, in Victim I did.

21 Q Okay. I'm going to show you a photograph and ask
22 you--this would be State's Exhibit 20--and ask you
23 what we're looking at in this photograph.

24 A Okay. This is the outside part of Victim's genital
25 area, and the bruising that I referred to is here

1 (indicating). There's several small bruises arranged
2 in sort of an arc across the pubic or mons pubis area.
3 Some of this is--- Where you see redness here
4 (indicating), that's just diaper imprint; that's not
5 injury. That's just artifact of clothing or diapers.
6 So, in this particular view, you can see the external
7 bruising. This bruising actually appeared over the
8 number of hours between when she was seen by the
9 P-SANE nurse in the emergency room and when I did my
10 exam several hours later. I did have access to those
11 original photographs that the SANE nurse had taken,
12 and the bruises were not nearly as evident at the time
13 that she first came in as they were by the time I saw
14 her. You could see them in pictures, but they weren't
15 as obvious.

16 Q What, if anything, might that indicate in that the
17 bruises became more evident by the time you did your
18 examination the following day?

19 A Well, that helps us know that they're quite fresh
20 because they're still evolving, still, blood is still
21 coming to the surface where you can see it.

22 Q In terms of child abuse assessment, Dr. Luberoff, do
23 you have any particular impression from a medical
24 perspective as to what may have caused this type of
25 bruising pattern?

1 A Well, this is a blunt force trauma kind of injury
2 also. There being sort of a curved arrangement of a
3 series of bruises raises the possibility, when we're
4 looking at injuries in children, of bite mark. That's
5 the type of pattern that we can see in a bite mark.
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15 is in the way. But these are the bruises.

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20 moved them to the side in order to see the internal
21 structures. And these are--- There are two sets of
22 lips or two sets of labia, and these are the major
23 lips or the labia majora. The minor lips are starting
24 to develop here. In a young child, those are
25 underdeveloped, and they're going to grow and become

1 more prominent as the child gets older. The injuries
2 that I've talked about are some tearing along these
3 sides where the labia minora reflect and join to the
4 base of the major labia. That is really actually
5 impossible for me to see from here. I'm pointing
6 where I remember it being in the photograph up close,
7 but I can't see it from this distance. I really
8 would--- I don't know if it's possible for me to hold
9 that and point it out to the jury, but it's just real
10 difficult for me to do that from here. And the other
11 injury that I know is in this photograph because I've
12 looked at it plenty is this is the hymen. The circle
13 with the dark opening in the middle being shadowed,
14 that's in the vagina; and that hymen has some bruising
15 associated with the entire posterior portion of it.
16 The whole back half of the hymen is bruised.

17 Q When you talk about bruising to the hymen--and that
18 would be more the internal structure of the vaginal
19 opening--what type of force is necessary to produce
20 that finding?

21 A Well, it's bruising, and so it requires a certain
22 amount of force to cause bruising. You're not going
23 to get bruising in that area from normal care, normal
24 perineal care. In fact, it is a recessed area. It's
25 kind of a little bit hard to tell how far recessed,

1 but you can see that's my thumb. So, looking at the
2 size of my thumb, you can get an idea that that is
3 recessed a good bit inside the child and it's--- For
4 example, just in the normal use of my mouth during the
5 day, I don't bruise it in the normal course of putting
6 things in my mouth and brushing my teeth and that sort
7 of thing. It takes some force to bruise that tissue,
8 and it takes some force to bruise this. I can't put a
9 number on that force, but it does take force.

10 Q Can you tell us whether or not this is consistent with
11 a penetrating injury?

12 A Yes, it is. It's an internal injury; it's a
13 penetrating injury. It's--- The force had to bypass
14 the labia and get actually past--- Part of the injury
15 is here involving the minora labia, but it's even past
16 that. The hymen is deeper inside the body than those
17 labia.

18 Q Now, throughout your experience in pediatrics, can you
19 tell us whether or not this type of injury is normally
20 found following a standard diaper change?

21 A It's not.

22 Q Or standard medical care to a child?

23 A No, it's not.

24 Q Can you tell us whether or not this type of injury may
25 occur as a result of digital penetration or insertion

1 of a finger or fingers into the vagina?

2 A Yes, it can happen with that if some force is used.

3 It's not going to happen with gentle care. For
4 example, when I'm examining children, I often need to
5 use a Q-tip or my gloved finger to examine those
6 parts. And that kind of care, that kind of intrusion,
7 does not result in injury.

8 Q I think you had previously mentioned that there were
9 additional photographs of the lip injuries that you
10 noted. I'm going to show you this photograph and ask
11 you whether or not the lip injury that you noted is
12 visible in the photograph?

13 A The acute, the fresh lip injury is. It involves the
14 top lip. The other injury that I'm talking about
15 that's in the bottom is covered by the bottom lip
16 here. You can't see that injury in this photograph.

17 Q All right. Can you tell us whether or not that
18 photograph is a fair and accurate depiction of the
19 fresh injury to Victim lips?

20 A Yes, it's a good, accurate depiction of that.

21 Q Okay.

22 MS. MAYES: And, Your Honor, this would be
23 State's Exhibit 21.

24 THE COURT: Mr. Floyd?

25 MR. FLOYD: No objection, Your Honor.

1 THE COURT: All right. State's 21 is in evidence
2 without objection.

3 (State's Exhibit Number 21 is marked for purposes
4 of the record.

5 Q And, when you talk about a fresh or acute injury, can
6 you tell us whether or not that could have occurred
7 within the last 24 to 36 hours?

8 A This very likely could. This certainly occurred
9 within the last 36 hours or so. The skin has not
10 begun to cover over with a new layer of epithelium
11 yet; it's still very raw if there's even--- You can
12 even see a little bit of blood in that area. That
13 area heals very quickly.

14 Q Now, when you examined Victim without her diaper on
15 in order to do the sexual assault examination, can you
16 tell us whether or not there was any indication of her
17 having any type of vaginal rash?

18 A No. Her skin was in very good condition in that area.
19 There was no diaper rash or rash involving the vagina
20 at all.

21 Q Was there any indication of her having any vaginal
22 eczema or dry skin?

23 A No. In general, her skin was in very good condition
24 except for the bruising and the injuries.

25 MS. MAYES: Nothing further at this time, Your

1 Honor.

2 THE COURT: Thank you, Solicitor. Mr. Floyd?

3 MR. FLOYD: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION BY MR. FLOYD:

6 Q Good afternoon, Dr. Luberoff.

7 A Good afternoon.

8 Q The records did indicate that the child had eczema.

9 A Her past records did indicate that she had a history
10 of eczema, yes. We didn't see any active eczema on
11 her exam at the hospital.

12 Q And she had had some type of cream prescribed to her?

13 A Yes. She had--- As I recall, she had been to the
14 doctor about in January and had a cream prescribed.

15 Q Now, Dr. Luberoff, do you have your report up there
16 with you?

17 A Yes, I do, the report that I dictated.

18 Q And is the history that you received, is that
19 important to you in making your diagnosis?

20 A History is always helpful, almost always helpful.

21 Q And could you refer to the history on page 1 of 3?

22 A Yes, sir.

23 Q Would you agree that it says, around noon the mother
24 called to check on her child and the boyfriend told
25 her the child had fallen and had a bump on her head?

1 A How far down are you? I want to catch up.

2 Q One, two, three. Starting with the third line down,
3 the middle of the third line. Let me make sure. Are
4 we reading from the same thing?

5 A Yes, sir.

6 Q Okay.

7 A Just tell me how far down to go.

8 Q Around--- See where my finger's pointing?

9 A Yes. Thank you so much.

10 Q Could you read me the next line from that?

11 A Beginning with around noon?

12 Q Well, I read that one about the bump on the head.

13 A Sometime shortly thereafter, a family friend went to
14 the home and got the child dressed up and fixed her
15 hair for a visitation with her biological father and
16 paternal grandmother.

17 Q And would you continue, please, a couple more
18 sentences?

19 A The boyfriend with whom the child had been left is not
20 the child's father. When that friend left, meaning
21 the friend who came to do the hair and dress Victim
22 when that friend left, Victim was okay. When mom
23 returned later in the early evening, she noted that
24 Victim was dressed only in a diaper, was fussy and
25 her hair was unkempt. The boyfriend then gave the

1 mother the history that Victim had taken a nap and
2 had awakened sweaty and, therefore, he had bathed her
3 and washed her hair and had put her clothes in the
4 washing machine. Victim's mother then saw a knot on
5 her forehead, but that was the only injury that she
6 noted at the time.

7 Q Thank you, ma'am. So that was part of the history
8 that you were working with?

9 A Yes.

10 Q Now, Dr. Luberoff, bruising--- Some people will bruise
11 easier than others, won't they?

12 A Some people do bruise easier than others, yes, sir.

13 Q And the amount of force required to produce a bruise
14 could vary greatly.

15 A The amount of force to produce a bruise depends on
16 several factors.

17 Q And, when you say something like blunt trauma, would
18 that be blunt trauma if I punch somebody with my
19 thumb?

20 A Well, not if it didn't result in injury. The trauma
21 part implies injury. That's blunt force---

22 Q That's blunt force, isn't it?

23 A ---if you punch like that, but not blunt force trauma.

24 Q Right. I just asked the question. That's blunt force
25 right there (indicating), isn't it?

1 A Yes.

2 Q And that's blunt force (indicating).

3 A Yes. Blunt force is a phrase we use to differentiate
4 from sharp force like with a knife or electrical force
5 or heat force. It's a category of force.

6 Q And you cannot quantify, can you, the amount of force
7 it would take to produce a bruise?

8 A I can only quantify it in generalities.

9 Q For example, if I were to walk by this table and bump
10 against it, that may bruise me. Is that correct?

11 A It may.

12 Q In some people, it might not bruise.

13 A In some people, it might not. And it would depend on
14 how hard you hit the table.

15 Q Now, are babies more delicate than adults, if that's a
16 proper question?

17 A That's a complicated question. Some parts of them are
18 tougher than adults. Some parts of them are not.
19 Their skin is actually thicker than adult skin; it has
20 a lot--- Well, in general, it has more subcutaneous
21 fat and more collagen and more supportive structures.
22 So people tend, after they become adults, to actually
23 become easier bruisers as they age because the skin
24 does become more susceptible to bruising with aging.

25 Q And babies, like adults, some babies bruise easier

1 than other babies?

2 A Some babies bruise more easily than other babies, yes,
3 particularly if the baby has a bleeding problem of
4 some kind.

5 Q Do you notice--- Is there any difference, for example,
6 between, say, blondes and brunettes and about bruise
7 ability?

8 A Not in bruise ability. The darker a person's skin is,
9 for example, African-American skin, it may be much
10 more difficult to see the bruise. But, as far as
11 bruise formation, there is no association of one
12 particular color of skin being easier to injure.

13 Q How about--- How long does it take from the trauma,
14 let's say blunt force trauma, how long does it take
15 from the blunt force trauma for the bruise to become
16 visible?

17 A Sometimes you can see evidence pretty quickly that
18 there's going to be a bruise. You may see a red mark
19 where you've hit the corner of that table, for
20 example. In most cases, it's going to take a matter
21 of often hours for the blood to break out of those
22 broken blood vessels and rise far enough up into the
23 surface of the skin to be able to see it. So, when
24 the actual injury happens, most often you don't see a
25 bruise right at that moment or right within the first

1 few minutes; but the bruise will become more obvious
2 over the next several hours or even over the next
3 couple of days, depending on how deeply that bruise
4 involved tissue and what the evolution of that bruise
5 is.

6 Q And is there any set time for how long it takes the
7 bruise to dissolve so that it's no longer visible?

8 A No. The majority of bruises will dissolve within a
9 couple of weeks completely. More superficial or more
10 shallow bruises will go away much faster than that.

11 Q So, when you see a bruise on someone, it may be 24
12 hours old or it might be four or five days old.

13 A There are aspects of the bruises that sometimes can
14 give us a hint as to whether the bruise is closer to
15 24 hours or closer to last week, but it's not a fine
16 science as far as dating those bruises. But, you
17 know--- I know I've bruised myself plenty of times,
18 and I've seen lots of bruised people. Bruises, they
19 do change color over time, and we do follow those
20 color changes. Sometimes following those color
21 changes can give us an idea. I mentioned one of the
22 bruises on **Victim** being the bruise on her lower
23 spine, and that it looked older. It looked older
24 because of the color of it, because of how it was
25 feathering out and fading at the edges, different

1 aspects of it that helped me say, well, that one is
2 older. But I can't tell you what day it happened.

3 Q And can you say with certainty exactly when these,
4 when the trauma occurred that produced any of the
5 bruises that you observed on Victim

6 A I can't say with certainty when they happened. I can
7 tell you that, within a reasonable degree of medical
8 certainty, these bruises were relatively fresh, which
9 means within the last couple of days. As far as
10 pinpointing it, I'm not able to do that simply by
11 looking at the bruises.

12 Q And you saw her on the 16th?

13 A On the 16th.

14 Q So, for example, there could've been some trauma that
15 occurred on the 14th or maybe the 13th that now is
16 visible and you can observe it.

17 A That's possible. Some of the bruises, the bruise, for
18 instance, on the ear that still had a good bit of
19 redness in it, I would find it hard to--- I would find
20 it hard to accept that bruise being as old as three
21 days old. And, like I say, that's not an exact
22 science. These are in the category that I would call
23 fresh which, like I said, is within the last couple of
24 days.

25 Q Now, what is the difference between a bruise and an

1 abrasion?

2 A A bruise is bleeding out of the blood vessels that
3 oozes through the skin to where you can see it; the
4 skin is not broken. An abrasion is, the lay term for
5 that is a scrape or a scratch; so the skin is, it's
6 superficially broken.

7 Q So you've got some loss of integrity of the skin,
8 don't you?

9 A Yes.

10 Q And, with bruising, you don't lose integrity, but
11 you've got some underlying blood vessels that are
12 bruised, don't you?

13 A Yes, that are oozing blood.

14 Q And an abrasion can occur with very little force,
15 could it not?

16 A Well, it depends. It depends on where it is and what
17 the history is. A common way, for instance, for a
18 child to get an abrasion would be tripping on the
19 sidewalk and scraping a knee. That's a kind of
20 abrasion. And then, you know, that's a significant
21 amount of force to that child.

22 Q And a laceration as opposed to an abrasion?

23 A Laceration means a cut. A laceration is going to be
24 deeper than an abrasion. It might be more discrete as
25 in maybe have more edges to it than an abrasion. An

1 abrasion tends to be a little bit broader. There's
2 some overlap in those two terms.

3 Q Because that is, likewise, an interruption in the
4 integrity of the skin.

5 A It is an interruption in the integrity.

6 Q And it may be a very slight interruption, but it would
7 still be classified as a laceration.

8 A Lacerations can be shallow.

9 Q For example, with a fingernail, if I knick my skin
10 with my fingernail, that would be a laceration,
11 wouldn't it?

12 A It may be. And I would have to look at what you did
13 with your fingernail, and my particular definition of
14 whether that's an abrasion or a laceration might vary
15 from another examiner's. But there is some overlap in
16 there. So, for me, if it made, if your fingernail
17 made sharp edges and it kind of separated, that's a
18 laceration and not an abrasion.

19 Q Now, there was one more term that's been used here,
20 hematoma. Is that just a deeper bruise?

21 A No. A hematoma is actually a mass of blood, like a
22 lump of blood; so a hematoma is something you can
23 feel. A bruise you can see; but usually I can't
24 really feel a bruise. If it's--- If there's a
25 collection of loose blood, a blood clot for example,

1 then that can represent a hematoma. The hematoma that
2 we're talking about on the scalp was under the scalp.
3 The scalp has several layers, and the deepest layer of
4 it is really tough and thick; and under that is the
5 skull. And the hematoma that we saw on the CT scan
6 and that I could feel at the bedside was a collection
7 of blood under the scalp, between the scalp and the
8 skull. So it wasn't the same thing as a bruise. In
9 fact, I couldn't see it on her skin; I couldn't see
10 discoloration; and we oftentimes can't because that
11 bleeding is deeper; it's deep under the scalp.

12 Q But it's similar. The bruise would be the bleeding
13 closer to the skin surface, and the hematoma would be
14 some bleeding a little bit below the outer skin
15 surface.

16 A In this particular case, her hematoma was under the
17 scalp, yes.

18 Q However, extensive testing was done; and there was no
19 injury to the intracranial aspect of the skull, was
20 there?

21 A There was no injury to her skull. There was no injury
22 to her brain or to anything within the skull. The
23 skull did protect everything within it.

24 Q And there were no broken bones, were there?

25 A There were no broken bones.

1 Q Now, I remember that there was like a bruise on the
2 forehead.

3 A There were several on the forehead.

4 Q And some of them looked different ages, did they not?

5 A They all looked within the same range of age to my
6 exam.

7 Q Now, if a child fell and hit their forehead on the
8 ground, that would produce a bruise, wouldn't it?

9 A A forehead bruise is common in children this age.

10 Q And, in fact, if the child fell and fell and hit their
11 head, they very well likely may have bit their lip
12 too. Is that correct?

13 A They could have.

14 Q And this injury that you saw to the lip, it was right
15 where the teeth are, where some teeth are, wasn't it?

16 A It looked like a tooth impact injury, yes.

17 Q So very likely--I won't ask you to say likely--but
18 possibly, if the child fell and hit her forehead, she
19 could have injured her lip at the same time.

20 A It would actually be really hard to do those both in
21 the same fall because it's two different parts of the
22 face impacting and the nose separates those two
23 spaces. But either of those injuries can happen in an
24 accidental fall.

25 Q Or, as far as that goes, a child could bump their head

1 on a piece of furniture or bump their mouth on a piece
2 of furniture and produce the same apparent injury.

3 A It's common to have injuries to the mouth from running
4 into furniture at this age, at the age of this child,
5 not at my age.

6 Q Let me ask you a couple of questions about the
7 genitalia. The hymen, isn't that a kind of protective
8 coat on the exterior of the vagina?

9 A It's part of the beginning of the vagina, but the
10 vaginal structures include the vestibule, the area
11 outside of the hymen also. The part that we consider
12 to be the internal genitalia really begins inside the
13 labia. The vagina itself, that people think of as the
14 vagina, is behind the hymen. But all of those
15 structures are internal, internal to the labia; so
16 those are considered internal structures, the hymen
17 itself and the---

18 Q I'm sorry. I didn't mean to stop you.

19 A Okay.

20 Q I didn't mean to stop you. I just want to make sure I
21 was clear on something because I think you got right
22 to the heart of what I was asking. The medical
23 community would consider the area from where you
24 separate the labia and, when you go inside, is that
25 posterior?

1 A Interior.

2 Q Interior?

3 A Or deep is another word we use.

4 Q Okay. So the medical community would consider, when
5 you separate the labia and then the interior, and then
6 going deeper, you would consider that to be internal.

7 A Yes, we would consider that penetration, internal
8 penetration.

9 Q However, you don't penetrate the vagina itself until
10 you pass the hymen.

11 A Correct.

12 Q Is that correct?

13 A Correct.

14 Q And so, technically, if the vagina is the internal
15 organ, the hymen and the mons pubis and the labia and
16 all, they would be external to it.

17 A The hymen is external to the vagina, but it is part of
18 the internal portion of the genitalia. The mons pubis
19 is external; that's the external genitalia. But the
20 hymen is part of the internal genitalia. The vagina
21 is part of the internal genitalia.

22 Q I'm going to show you State's Exhibit Number 13. And
23 would you describe for the jury exactly what that
24 represents because then I'm going to ask you a couple
25 of questions about it?

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
PLAINTIFF,

10-GS-32-1860
10-GS-32-1861

-VS-

TRANSCRIPT

LANCE AUSTIN WILLIAMS,
DEFENDANT.

MARCH 30 & 31, 2011,
& APRIL 1 & 5, 2011.
LEXINGTON, S. C.

BEFORE:

HONORABLE R. KNOX McMAHON, JUDGE.

APPEARANCES:

L. SUZANNE MAYES
Assistant Solicitor for the
Eleventh Judicial Circuit
Attorney for the State.

JAMES R. SNELL, JR.
Lexington, S. C.

H. WAYNE FLOYD
West Columbia, S. C.
Attorneys for Defendant.

RECORDED BY:
L. COCONUT PANTSARI
COURT REPORTER.

TRANSCRIBED BY:
CAROLE R. SHEALY
COURT REPORTER.

1 A Yes. This is the external genitalia. This is the
2 pubic area or the mons pubis. These are the labia
3 majora, the major lips or larger lips. These are the
4 thighs. This is not really a part of the genitalia.

5 Q Okay. Do you consider the mons pubis, do you consider
6 that part of the genitalia?

7 A Yes, but the external genitalia.

8 Q And so what you have to do then is you separate, if
9 you pull those apart, is the picture you get here. Or
10 am I bypassing a step there?

11 A No. You've got it.

12 Q I've got it?

13 A Uh huh (indicating affirmative response.)

14 Q Okay. So, when you pull those apart, now, that's
15 external. There's no question about that.

16 A Correct.

17 Q All right. So, now, you pull those apart. You're
18 actually just looking inside the folds.

19 A Right.

20 Q Is that correct?

21 A Yes.

22 Q And, inside the folds, you'll have the labia?

23 A These are the labia.

24 Q Those are the labia.

25 A So these folds are the labia. And there's another set

1 of folds inside that are called the labia minora, the
2 minor labia. Those are underdeveloped in children
3 this age; they're real small as you can see. But I
4 can show them to you.

5 Q Okay.

6 A But those are more internal.

7 Q All right. So you've got the minor labia, and then
8 you've got the hymen. Now, well, you've also got the
9 clitoris in there. That's external, isn't it? It's
10 inside the mons pubis, but it's external to the
11 vagina, is it not?

12 A It's external to the vagina, yes.

13 Q Okay. So you have the hymen which is external to the
14 vagina, then you've got the hymen which is external to
15 the vagina, and then you have the vagina.

16 A Yes.

17 Q Okay. I think I have it now.

18 A Okay. Where we make a distinction is when the type of
19 tissue changes from the skin, the dry tissue to the
20 moist tissue. The mucus membrane types of tissues,
21 those are the internal structures.

22 Q Okay. Thank you. I've got you. So, in the medical
23 profession, when you get to the mucus membrane type of
24 tissue or the moist tissue---

25 A Then you're inside.

1 Q ---then you're considering that internal.

2 A Correct.

3 Q Is that correct?

4 A Yes.

5 Q Okay. Thank you, Dr. Luberoff. I think I understand
6 it now.

7 A Okay, good.

8 Q Now, Dr. Luberoff, you did see several old injuries,
9 did you not, the greening bruise on the back and
10 something on the inside of the lip?

11 A Yes, and--- Yes, those are the old injuries that I
12 remember.

13 Q And it's not uncommon for children who are learning to
14 walk and get around to have injuries.

15 A No. It's quite common.

16 Q And sometimes you'll see a bruise or an injury and you
17 really couldn't tell what caused it unless somebody
18 gave you some history maybe to influence your opinion.

19 A Most bruises you can't tell what caused them.
20 Sometimes you can if the bruise, you know, matches a
21 particular belt, for example, or a particular
22 implement that we're able to look at. But most
23 bruises don't have particular shapes to them, so you
24 can't tell with any kind of certainty exactly what
25 caused the bruise.

1 Q And, in a like manner, you can't always tell how old
2 the bruise is.

3 A That's correct.

4 Q And a lot of times bruises will not even appear until
5 hours later.

6 A Bruises can take several hours to appear.

7 Q Can they take as long as a day or two to appear?

8 A It's very unusual for a bruise to take as long as a
9 day for any sign of it at all to start appearing, but
10 they will sometimes become much more dramatic on the
11 second day or the third day.

12 Q So they might not peak for several days.

13 A Excuse me?

14 Q They might not peak. That might be the wrong term.

15 A No. That's a good word. I'll agree with that. They
16 might not peak for several days, some bruises might
17 not, particularly very extensive, very deep bruises.
18 For example, when an individual is in a motor vehicle
19 accident, sometimes it's not until the second or third
20 day that we start seeing the peak appearance of some
21 of the bruises.

22 Q Thank you. Give me just a moment, Dr. Luberoff.

23 (Pause.) Thank you, Dr. Luberoff.

24 THE COURT: Thank you, Mr. Floyd. Redirect,
25 Solicitor?

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

2 REDIRECT EXAMINATION BY MS. MAYES:

3 Q I want to start by asking you a few questions about
4 what Mr. Floyd was asking you way back at the
5 beginning of his cross examination. He was asking you
6 about whether or not you had the opportunity to review
7 some of [Victim] [REDACTED] pediatric records.

8 A Yes.

9 Q And, when we talk about that, we're talking about her
10 pediatric history records from her pediatrician.
11 Correct?

12 A Yes.

13 Q And he asked you about whether or not you've had the
14 opportunity to review a pediatric record concerning
15 eczema.

16 A Yes.

17 Q What can you tell us about that?

18 A About that record?

19 Q Correct.

20 A There was one visit that I found in her records to her
21 pediatrician. I believe it was about in January of
22 the same year. I would have to review it to know for
23 sure when it was. But there was a single visit with a
24 complaint of dry skin and also constipation, and the
25 physician noted dry skin involving the cheek and the

1 legs I believe and prescribed a steroid lotion or
2 ointment to use on the dry skin, on the eczema. He
3 diagnosed--- He or she diagnosed eczema. I could not
4 read the signature of the physician.

5 Q All right. And do you have a copy of that with you?

6 A Not up here. Actually, I don't have a copy of it with
7 me in the courthouse at all.

8 MS. MAYES: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 Q If you could review these documents to yourself and
11 then let us know whether or not those documents are
12 the same pediatric records you previously reviewed.

13 A (Pause.) So far, yes. This will take me a minute.

14 (Pause.) Yes, these are records that I reviewed.

15 Q All right. And what is your understanding of the past
16 treatment, the date of the past treatment, for eczema
17 or dry skin?

18 A This note is from January 12th of 2010.

19 Q All right. Is there anything at all, in any of the
20 history that you reviewed from past pediatric records
21 or that you obtained from family members, that
22 concerns dry skin to the vaginal area?

23 A I did not directly obtain history from the family
24 members, but there was no mention of dry skin in the
25 vaginal area or eczema involving the vaginal area in

1 these medical records.

2 Q All right. And, when you yourself actually observed
3 [Victim] during her exam, was there anything or any
4 indication at all of vaginal dryness or dry skin in
5 that area?

6 A No.

7 Q And the ointment that you referred to, what type of
8 ointment is that?

9 A It's one of the steroid ointments.

10 Q All right.

11 A The name of it is Elocon.

12 Q All right. And would a pediatrician or a medical
13 doctor recommend that type of ointment to be placed on
14 a child's vagina?

15 A Ordinarily, we would be careful to recommend that the
16 genital area be avoided when using steroid creams.

17 Q And why is that?

18 A Because steroid creams, when they're used for a long
19 period of time or when they're used what we call under
20 occlusion, which means covered like with a Band-Aid or
21 with a diaper, they can cause changes to the skin that
22 are permanent. They can cause thinning of the skin
23 and problems that might not be reversible to normal
24 when you stop the cream. So we particularly--- Only
25 in just a handful of particular circumstances would we

1 use these kinds of creams in the genital area, and
2 that's under very close supervision with a definite
3 stop date and close medical follow-up.

4 Q All right. And specifically, when we talk about
5 anything concerning medical treatment to [Victim] you
6 mentioned before about talking with family members.
7 Why did you not have an opportunity--- Why or why not
8 did you have an opportunity to speak with family
9 members?

10 A At the time that I went to see [Victim] her mother
11 was being assessed in the emergency room following
12 some sort of a fainting spell that she had had. So
13 she wasn't available to me. So my--- All of the
14 history that I had came from the medical staff who had
15 obtained a good bit of it directly from the mother.

16 Q All right. And is there a notation specifically about
17 that in your consultation report?

18 A Yes, there is.

19 Q All right. And I know that Mr. Floyd was asking you
20 previously about the history that you obtained, and
21 there was a quote concerning mom, and it said, mom---
22 I believe the quote that you read previously was, mom
23 returned later in the evening and she noted that
24 [Victim] was dressed only in a diaper, was fussy and
25 her hair was unkempt.

1 A Yes. All of that history that Mr. Floyd and I read
2 together was history that I obtained from the medical
3 staff and others who had obtained the history
4 directly. I didn't get any of this directly from the
5 mother myself.

6 Q So it's coming third hand to you at this point.

7 A It's third hand to me, and it's a summary of it.

8 Q All right. And so, in that summary, you wouldn't have
9 first-hand knowledge as to whether or not it was the
10 mother or LeeAnn Harvey that actually had that
11 conversation with the boyfriend.

12 A I don't know who LeeAnn Harvey is; but, no. I don't
13 have any direct knowledge of who had that
14 conversation.

15 Q All right. And you had noted that you weren't able to
16 speak with Brittany [B] in person on the 16th. And
17 why was that?

18 A I had been told that she was in the emergency room
19 being assessed because of some sort of a fainting
20 spell that she had experienced.

21 Q All right. And this was within 24 hours of her child
22 being hospitalized.

23 A It was. I was there I believe in the afternoon of the
24 16th, and the child had been hospitalized sometime
25 that previous night. So, yes, within 24 hours of the

1 hospitalization.

2 Q Now, without being able to specifically date a bruise,
3 what, if anything, can you tell us about the freshness
4 of the vaginal injury?

5 A Vaginal injuries actually heal very, very quickly,
6 similar to the way injuries inside the mouth generally
7 heal very quickly. There was a considerable amount of
8 bruising to the hymen. Ordinarily, that kind of
9 injury will resolve very nicely within just a few
10 days. The areas at the edge of labia minora which
11 represented torn skin, those generally actually will
12 heal within two days, within 24 to 48 hours. Injuries
13 like that, they're very shallow. They heal very, very
14 quickly. So those both appeared to be quite fresh.

15 Q All right. And what, if anything, might the presence
16 of vaginal bleeding, like in a one-year-old child,
17 suggest about the timing or freshness of the vaginal
18 injury?

19 A Well, if there's active bleeding, again, that--- That
20 area heals very quickly. When there is bleeding from
21 an injury in a child's vaginal area, the active
22 bleeding part stops pretty quickly. The blood vessels
23 will close down. The--- We don't usually see bleeding
24 more than a few hours after an injury unless it's an
25 extraordinary injury that's very deep.

1 Q All right. And I believe Mr. Floyd was asking you
2 about the different layers or structures internally
3 within the vaginal opening. But can you explain to
4 us, from a medical perspective, why your diagnosis was
5 a penetrating injury to the vagina?

6 A Because it was an internal injury. The labia are in
7 the way, and actually the bone under the mons pubis
8 also kind of protects that area. We don't see
9 injury--- It's not a surface injury; it's an injury
10 inside the child. This isn't the kind of injury that
11 you could see from falling on the floor or ordinarily
12 even from straddling something and being injured
13 unless there's a protruding part that penetrates into
14 that hymen and vaginal area. So that's what we mean
15 by penetrating injury; it insinuated itself or forced
16 itself up into those more internal areas.

17 Q All right. Now, in talking about the bruises around
18 the head which would include the forehead, the areas
19 of both ears and then the back of the head where the
20 hematoma was located, can you tell us whether or not
21 you would expect that multitude of impact sites in a
22 single fall?

23 A No, no. A single fall can give a child a bruise in
24 the single place where that child's head impacts when
25 he falls. So we--- As Mr. Floyd and I discussed, it's

1 not uncommon at all for a toddler or a child who's
2 learning to move around in space to hit his head on
3 furniture or to fall on the floor and hit his head.
4 That's very, very common. Where we expect to see
5 bruises from children learning to move around in space
6 all the way until they become graceful is on the bony
7 prominent parts of the body which would be the
8 forehead, the chin, the cheek, the elbows, the knees,
9 the shins. That's where we expect to see accidental
10 injuries. And, when we're looking at injuries in
11 children and trying to kind of figure out are these
12 accidental or not accidental, we look at the
13 distribution of those injuries and we compare how many
14 injuries are there in the parts that make sense. As
15 was mentioned earlier, some children do bruise more
16 easily than other children, and those children will
17 have more bruises in the parts that make sense. I
18 mean, **Victim** had a lot of bruises on her forehead,
19 but her bruises kind of went all the way around her
20 head, involved all the surfaces of her head. She had
21 no bruises on her shins, no bruises on the bony part
22 of her knee, no bruises on the bony part of her elbow.
23 So she--- Her body could tell me that she wasn't
24 someone who was an easy bruiser, who bruised more
25 easily than normal, or she would have more bruises in

1 those parts where children are supposed to get bruises
2 when they're moving around and learning to move. So
3 this--- The fact that so much of her head was involved
4 really makes it extraordinarily unlikely. Any one of
5 those injuries could have been an accidental injury,
6 but they could not all have happened in one fall. And
7 something happened all the way around her head, really
8 involving all the different surfaces of her head.

9 Q Thank you.

10 MS. MAYES: Nothing further, Your Honor.

11 THE COURT: Recross, Mr. Floyd?

12 MR. FLOYD: Just a couple of questions, Your
13 Honor.

14 THE COURT: Yes, sir.

15 RECCROSS EXAMINATION BY MR. FLOYD:

16 Q Dr. Luberoff, I think you just referred to a visit to
17 Sandhills Pediatrics on January 12th of 2010.

18 A Yes.

19 Q Isn't it true that the reason for the visit was that
20 there was a rash all over her?

21 A That was the complaint. It says, check rash all over.

22 Q And all over could mean in the genital area,
23 couldn't it?

24 A I don't--- I'm not sure what---

25 Q You couldn't say though.

1 A I can't say what it means.

2 Q It just says, check rash all over.

3 A Right.

4 Q Okay.

5 A The doctor's description of what he or she found
6 talked about dry skin on the legs and the cheek. That
7 next section under physical exam is the actual
8 physical findings. The top part is what we call the
9 chief complaint, what you say you're there for when
10 you go to the doctor.

11 Q And it's not uncommon for children to have a diaper
12 rash, is it?

13 A No, it's not uncommon to have a diaper rash.

14 Q And you could have a diaper rash even if the momma or
15 the daddy's not doing anything wrong.

16 A You can.

17 Q Now, are you--- If I'm asking you something that you
18 don't feel comfortable answering, please stop me. Are
19 you familiar with the mechanism of changing a female's
20 diaper?

21 A Quite.

22 Q And would you agree with me that there are times, when
23 you change that diaper, that you will be making
24 contact with the mons portion and also the labia?

25 A Yes. Very frequently, when you're changing the

1 diaper, you're going to make contact with those parts,
2 usually in wiping.

3 Q And it's a small area in there. All this stuff is
4 kind of close together.

5 A It is.

6 Q And sometimes you've got to even separate them and
7 clean out and so forth.

8 A Sometimes you do have to separate and clean out,
9 particularly after a messy diaper.

10 Q Now, I know we're not supposed to put that steroid
11 cream on the genital area. You told us that. Is
12 there something on the cream itself that has a warning
13 on that? Does the container of the cream have that
14 warning?

15 A The package inserts that come with them I believe
16 contain that warning. Now, I don't usually read in
17 great detail the package inserts of things that I,
18 when I get prescriptions filled. But I believe that
19 it contains that warning on the package insert for
20 steroid creams.

21 Q Well, if you used that steroid cream in the genital
22 area, would it irritate it?

23 A No. The way a steroid--- A steroid is an anti-
24 inflammatory. If you were irritated in the, whatever
25 area that you're putting it on, one of the actions of

1 it is to take the irritation away, so it's--- Unless
2 you're allergic to some component of it, it's actually
3 going to make things look better and not irritate.

4 Q And are people sometimes allergic to the steroid?

5 A Every once in a while, somebody's allergic to
6 something in the cream.

7 Q In the cream.

8 A Yes.

9 Q One more question. Would touching the genitalia of a
10 young female in order to clean the female as a result
11 of a dirty diaper, would that be a medically
12 recognized touching of a child?

13 A You mean, is it appropriate to touch that area in
14 cleaning a diaper?

15 Q Yes.

16 A Yes.

17 Q Thank you.

18 THE COURT: Thank you very much, Doctor. You may
19 step down. Thank you for being with us today. Any
20 objection to the doctor being excused from the State?

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

22 THE COURT: From the defense?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: Thank you. Thank you again.

25 (Witness leaves the witness stand.)

1 THE COURT: All right. I believe we'll take a
2 15-minute recess. Ladies and gentlemen, please do not
3 discuss the case during this brief recess. Remember to
4 keep an open mind and do not begin your deliberations until
5 you are instructed to do so. You may now go with your
6 bailiffs.

7 (The jury retires to the jury room.)

8 THE COURT: Court's not really in recess,
9 Solicitor. How many more witnesses do you have?

10 MS. MAYES: I think we have the detective, Your
11 Honor, and then one more witness about photographs. And
12 then the other two are simply chain witnesses.

13 THE COURT: All right. Do you know, at this
14 point, whether you're going to offer evidence or testimony,
15 Mr. Floyd or Mr. Snell? And you don't have to share that
16 with me at this time; but, if you can, I would appreciate
17 that. If you can't, I understand.

18 MR. FLOYD: We anticipate some.

19 THE COURT: All right. Do you anticipate how
20 long it might take?

21 MR. FLOYD: Well, of course, depending on the
22 cross examination, one to two hours.

23 THE COURT: All right. Thank you. Thank you
24 very much. Court will be in recess 15 minutes.

25 (Whereupon, there is a recess.)

1 THE COURT: All right. Anything from the State
2 before we bring in our jury, Solicitor?

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

4 THE COURT: Defense, Mr. Floyd?

5 MR. FLOYD: Nothing from the defense, Your Honor.

6 THE COURT: Thank you. Bring us our jury,
7 please.

8 (The jury returns to the courtroom.)

9 THE COURT: All right. Welcome back, ladies and
10 gentlemen. We're continuing the trial of the case by the
11 presentation of witnesses by the State in its case in
12 chief. Solicitor, you may call your next witness.

13 MS. MAYES: The State calls Detective Ed
14 Prestigiacomo.

15 THE COURT: All right. If you'd come around,
16 please, and be sworn.

17 WHEREUPON, ED PRESTIGIACOMO, being
18 first duly sworn, testifies as follows:

19 CLERK: Have a seat, please, sir. Once you're
20 seated, speak up loud and clear stating your full name on
21 the record, please.

22 THE WITNESS: Ed Prestigiacomo, P-R-E-S-T-I-G-I-
23 A-C-O-M-O.

24 DIRECT EXAMINATION BY MS. MAYES:

25 Q And, Detective, where are you employed?

1 A Lexington County Sheriff's Department.

2 Q And in what regard?

3 A I'm a detective.

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

6 A Roughly 16 years.

7 Q All right. And what all do you do at the Sheriff's
8 Department as a detective? What are your different
9 job responsibilities?

10 A I am a major crimes detective. I investigate
11 homicides, armed robberies, rapes and aggravated
12 assaults.

13 Q All right. And have you also had the opportunity
14 throughout your career to become involved in
15 investigations that deal with sexual assault and
16 physical abuse?

17 A Yes, I have.

18 Q All right. How did you become involved in the
19 investigation of this particular case?

20 A On this particular date, April 16th, I was on call for
21 that day for major crimes. I was called and summonsed
22 to go to Palmetto Health Hospital in reference to a
23 child abuse case.

24 Q All right. And what happened upon your arrival?

25 A I met with Victim Assistance Detective Erica Owens and

1 Crime Scene Investigator Shelby Derrick who was there
2 in the room with the victim, [Victim]

3 Q All right. And this was, again, on the following day
4 after her admission to the hospital. It was on the
5 16th. Is that correct?

6 A Yes, it was.

7 Q All right. And did you have an opportunity to
8 actually observe [Victim] yourself?

9 A Yes, I did. I initially was there with her with
10 several nurses, Derrick and Owens; and, later on, I
11 was in the room with her when Dr. Luberoff did her
12 inspection and documented her injuries.

13 Q All right. Now, what was the first step in your
14 investigation after you arrived at the hospital and
15 made contact with [Victim]

16 A My assessment of this child was that she was abused,
17 and it was important for me to develop a timeline
18 going backwards, however far I had to go back, in
19 relation to the bruises to find out who physically had
20 hands on that child during that timeframe and then
21 start interviewing people and find out who had access
22 to her.

23 Q All right. And can you tell us whether or not that's
24 the usual approach in a child abuse investigation when
25 the child can't communicate about who has harmed them?

1 A Typically, everyone, yes.

2 Q All right. And so what did you do first in terms of
3 trying to pinpoint a timeframe in which the injuries
4 may have occurred?

5 A I started with people who were there, immediate family
6 to include the mother, Brittany, who we got a partial
7 statement from and then she had an episode at the
8 hospital, but we were able to get some information
9 from her. I interviewed her father. I interviewed
10 LeeAnn Harvey who owns the residence where this
11 occurred and who had, was with the child the morning
12 of this incident and several times, several visits
13 throughout that day. And then I attempted to make
14 contact with Lance Williams.

15 Q All right. And you mentioned that her mother,
16 Brittany, had an episode at the hospital. What are
17 you referring to?

18 A I heard she had fainted and she wound up being treated
19 at the hospital for that.

20 Q All right. Now, you mentioned also the Defendant,
21 Lance Williams. Why did he fit within the timeframe
22 of people that you wanted to speak with?

23 A I had learned that he had been taking care of her on
24 the 15th, during that day.

25 Q Now, you mentioned that you did speak with the mother

1 and with the aunt or with LeeAnn Harvey, who is the
2 mother of Kaylee and Carlie and the person they lived
3 with. Were you able to get statements from them?

4 A Yes, I did.

5 Q All right. And, ultimately, what efforts did you
6 undertake to get a statement or make contact with
7 Lance Williams?

8 A The first contact was a phone call to his cell phone
9 which was an hour or two after I had--- Well, I got to
10 the hospital. Upon leaving the hospital, I had called
11 him, advised him that I wanted to talk to him about
12 **Victim** and what had happened to her. He told me he
13 wanted to come and see me and clear it up, that he had
14 done nothing to her and he had to go to a wedding the
15 next day in Alabama, so he wanted to come and clear it
16 up. I made an arrangement with him to meet me at the
17 Lexington County Sheriff's Department.

18 Q All right. And, when you say that you made an
19 arrangement for him to meet you at the Sheriff's
20 Department, can you tell us whether or not that was by
21 his agreement, that he would voluntarily meet you
22 there?

23 A Yes. He advised me he was picking up his two-year-old
24 daughter from Enoree, I believe it was, South
25 Carolina, and would come to the Sheriff's Office

1 possibly with his mother as well.

2 Q All right. And, when he arrived at the Sheriff's
3 Department, was that by virtue of a private vehicle or
4 was he brought in by law enforcement?

5 A It was either his or his mother's vehicle. I don't
6 know.

7 Q It was a non-law enforcement vehicle. Correct?

8 A Yes.

9 Q And what happened next?

10 A I met with him, introduced myself. He knew why he was
11 there, to talk about **Victim** And I took him into an
12 interview room at the Sheriff's Office.

13 Q All right. And did he go with you voluntarily to the
14 interview room?

15 A Yes, he did.

16 Q All right. Now, when you talk about the interview
17 room, how do you get there?

18 A Well, the front lobby of the Sheriff's Office, you go
19 into a door to the left hallway, another door, and
20 then there's three interview rooms set up for that
21 purpose. And that's where we went, into the first
22 interview room.

23 Q All right. And, when you talk about going into these
24 various rooms, was he handcuffed prior to going in
25 there with you?

1 A No.

2 Q All right. And what happened next?

3 A I briefly talked to him about his background.

4 MR. FLOYD: Your Honor, we would object to any
5 statement of the Defendant prior--- We would object to any
6 statement of the Defendant prior to the administration of
7 his *Miranda* rights.

8 THE COURT: All right. Your objection is noted
9 for the record, and I would reaffirm previous rulings.
10 Thank you, Mr. Floyd. You may ask your next question,
11 Solicitor.

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

13 Q What happened once you entered the interview room?

14 A We spoke about his background. He told me he was born
15 in Alabama, spent some time I think in Florida and
16 wound up moving to Swansea. We talked about how he
17 met Brittany. And then we were met by Sergeant Jeff
18 Palkowski who was assisting me with the interview.
19 And I asked him what happened to [Victim] And he
20 said, what are you talking about. And I advised him
21 that she had bruises all over her body and I needed to
22 know what happened. He advised me that she had fallen
23 and he had already told the mother about this. So I
24 took out several pictures, started out with the
25 bruises on her arms, showed him these pictures that

1 looked like circular bruises, finger marks to me.
2 I've seen them before where, you know, you grab a
3 child too hard or grip their arms or sling them around
4 by an arm possibly. He advised me that this was the
5 way he picks up his daughter and that he was corrected
6 by his mother in past about it. You know, he
7 advised--- He told me that he shouldn't have done that
8 but that's how he picks her up and he caused those
9 bruises. The next picture I took out, I believe the
10 next one was her ears, both of her ears that, to me,
11 looked like somebody had slapped her in her ear very
12 hard to cause a bruise behind the ear as opposed to
13 just the ear itself. He told me that he did that out
14 of discipline and it happened on two occasions
15 throughout the day, one when she threw a temper
16 tantrum, was throwing her toys, and he hit her from
17 behind, slapped her in the head twice on one side. He
18 proceeded to tell me that there was another incident
19 sometime during the day where she threw her bottle
20 down and he got mad about that and slapped her on the
21 other side twice. I took out--- The last picture I
22 had was two pictures, and one I think, I believe it
23 was the forehead with--- There were several circular
24 bruises. I've seen that before where somebody maybe
25 pokes a child like this (indicating) with their

1 finger. And there was a picture of the outside of her
2 vagina that had bruises. He explained that the
3 forehead was from when she had fallen outside, out
4 front in rough terrain; and, you know, we went round
5 and round about there was no broken skin. He said
6 that the bruise on the vagina was when he had to put
7 cream on her vagina because of eczema and that he may
8 have pressed too hard. During--- Throughout this part
9 of the interview, Mr. Williams had told me a story
10 about, me and Jeff Palkowski, about how he was in
11 military school and was in an accident--I can't
12 remember if he said he punched a plate glass window or
13 he fell through one--where a shard of glass had
14 severed the nerves in his hand; and he said that his
15 hand is numb to the touch, he has no feeling in his
16 hand, sometimes he doesn't know his own strength.
17 And, several times throughout this interview, he
18 demonstrated that. One time he said, here, I'll show
19 you how strong my grip is. And he squeezed my hand.
20 And he said, I don't even feel, have a feeling there.
21 And one time he started punching the desk, telling us,
22 I have my no feeling in my hand, I don't know my own
23 strength. It was at this point I knew he wasn't going
24 home and he was going to get arrested; and this is
25 when we advised him of his *Miranda* to continue the

1 interview, which we did. He asked me if he was
2 getting arrested. I said, yes, you are. And he wrote
3 a statement, and we continued with some follow-up
4 questions.

5 Q All right. Now, when you said that it got to the
6 portion where he had made a specific admission
7 concerning the vaginal findings, you stopped the
8 interview. And that was for what purpose?

9 A At that point, I knew he was getting arrested and it
10 was time to tell him his *Miranda* rights. And, when he
11 asked me if he was getting arrested, I told him, yes,
12 you are. And we continued with the statement.

13 Q All right. And I'm going to show you a document and
14 ask you whether or not you recognize it?

15 A Yes, I do.

16 Q How do you recognize that document?

17 A This is the Lexington County suspect statement form
18 that I took out. On the top portion of it, it has the
19 *Miranda* rights typed out, and it's the same statement
20 form that Mr. Williams filled out for us.

21 Q Okay. And I'm going to ask you to tell us whether or
22 not you recognize your own signature on this document.

23 A Yes, I do.

24 Q And how do you recognize your own signature?

25 A It is at the bottom left. That's my signature.

1 Q All right. And do you recognize the signature of Mr.
2 Williams?

3 A Yes, I do.

4 Q And where is it located on the document?

5 A On the bottom, right above person giving statement.

6 Q And what is the date of this document?

7 A April 16th, 2010.

8 MS. MAYES: Your Honor, at this time, we would
9 offer, as State's Exhibit 22 for evidence, the two-page
10 statement.

11 THE COURT: Mr. Floyd?

12 MR. FLOYD: Just subject to our earlier
13 objection, Your Honor.

14 THE COURT: All right. State's 22 is in subject
15 to previous objections, and I'd reaffirm my rulings.

16 (State's Exhibit Number 22 is marked for purposes
17 of the record.)

18 Q I'm going to hand this State's Exhibit 22 back to you
19 and ask you, if you could, to please start at the top
20 of the document and tell us exactly what Mr. Williams
21 was advised of on April 16th, 2010, concerning his
22 *Miranda* warnings or rights.

23 A I listed the--- They're listed out. There's five of
24 them, and we read them to him verbatim, gave him the
25 statement back. I told him again to read each right

1 individually and, when he was willing to waive it and
2 he understood it, to place his initials at the end of
3 that particular right and move on to the next one.
4 Number one is, I have a right to remain silent. Two
5 is, anything I say can and will be used against me in
6 a court of law. Three is, I have a right to talk to a
7 lawyer for advice before asked any questions and to
8 have him or her present with me during questioning.
9 If I have no money for lawyer's fees, the Court will
10 appoint one to represent me without cost. If I
11 wish--- If I decide to answer questions now without a
12 lawyer present, I still have the right to stop
13 answering questions at any time. I also have the
14 right to stop answering questions at any time until I
15 talk with a lawyer. I have read this statement of my
16 rights, and I understand what my rights are. I make
17 the following statement.

18 Q All right. And how do you go about determining
19 whether or not Mr. Williams understands each of those
20 individual Miranda rights?

21 A I asked him--- We start out asking him his education
22 level, to grade 12. He's coherent to me. He doesn't
23 seem like he's under the influence, and he understands
24 what I'm saying. And part of that is, if you
25 understand the rights and are willing to waive them.

1 It's a twofold question with the *Miranda* issue for a
2 suspect.

3 Q All right. And is there any way that he could
4 individually acknowledge each right and his
5 understanding of each right?

6 A Yes.

7 Q How is that done?

8 A He told me verbally and by placing his initials next
9 to the right.

10 Q All right. And did he appear to voluntarily agree to
11 participate further in the interview?

12 A Yes.

13 Q At any point in time, did he ask for questioning to
14 stop?

15 A No.

16 Q Did you promise him anything in exchange for
17 participating in the interview or providing a
18 statement?

19 A No.

20 Q Did you threaten him or coerce him in any way in order
21 to have his participation in the interview or in
22 obtaining a statement?

23 A No.

24 Q And, at this point, did Mr. Williams agree to waive
25 his *Miranda* rights and actually make a formal

1 statement?

2 A Yes, he did.

3 Q And in what format was the formal statement to be
4 given?

5 A I had him write it in his handwriting.

6 Q So that would be a written statement?

7 A Yes.

8 Q And, when you say he had the opportunity to put it in
9 his handwriting, how do you go about letting them know
10 what their rights are in terms of, you can give a
11 statement, and how do you instruct them to go about
12 doing that?

13 A It's very simple. To keep it legal for him, I tell
14 him to write down what he told in me and his story,
15 and then I do not interrupt him until he was finished
16 writing.

17 Q And the document you have previously identified,
18 State's Exhibit 22 which contains the *Miranda* warnings
19 and rights, can you tell us whether or not that also
20 contains the written statement of Mr. Williams?

21 A Yes, it does.

22 Q I'm going to ask you to start at the beginning of that
23 statement and, if you could slowly for the court
24 reporter and for the jury, if you could slowly read
25 what the events are as described by Lance Williams.

1 A On 4/15/10 [Victim] [REDACTED] was in my care. She has two
2 bruised ears which is the result of two slaps to each
3 ear, once for discipline because she was throwing toys
4 everywhere, the other ear due to her throwing her cup
5 around. The bruises on her head are from falling
6 outside on rough terrain while playing. The bruises
7 on her arms are due to lifting her by her elbows. The
8 bruise on her neck occurred sometime while playing
9 outside. I might have grabbed her shirt collar to
10 catch her and bring her back. The bruising around her
11 privates is from the cream I applied for her dry skin
12 as I applied too much force due to lack of feeling in
13 my hand. I gave her a bath around afternoon due to
14 her sweating in her sleep. And then he was done, and
15 I wrote some direct questions for him---

16 Q All right.

17 A ---for him to answer.

18 Q All right. And, throughout that entire statement that
19 he wrote, can you tell us whose handwriting it is in?

20 A Mr. Williams'.

21 Q And how did he acknowledge--- At any point, was he
22 given the opportunity to acknowledge whether or not
23 that was an accurate statement?

24 A Yes.

25 Q How so?

1 A To look at it and have him sign it at the bottom, at
2 the end of the statement.

3 Q And does it contain his signature?

4 A Yes, it does.

5 Q All right. So, at this point in time, he has informed
6 you in the written statement that the bruising to the
7 ears are the result of him slapping her in each ear
8 because she was throwing toys and a cup.

9 A Yes.

10 Q And he has indicated to you that the bruising around
11 the private area is from cream that he applied with
12 too much force.

13 A Yes.

14 Q Now, in what way or format did you follow up with any
15 additional questions that you might have after he had
16 provided the written statement?

17 A I usually--- I advised Mr. Williams, I'm going to
18 write a little Q, with a colon, and that I would write
19 out a question. And then, after the question, I would
20 write an A, representing answer, and then to have him
21 write an answer to that question.

22 Q All right. And why did you feel the need for more or
23 additional follow-up questions?

24 A There were some things that were not answered in his
25 written statement.

1 Q All right. And so is there a second page to State's
2 22 which is the statement of Lance Williams?

3 A Yes.

4 Q And, on this second page, what was the first question
5 that you posed to him?

6 A I wrote, how many diapers did you change yesterday.

7 Q All right. So, as you write out the question, how is
8 he given the opportunity to respond?

9 A I had him write the answer.

10 Q All right. And, when you asked him how many diapers
11 had been changed, what was his response?

12 A Five.

13 Q All right. What, if anything, else did you ask in
14 follow-up?

15 A What kind of cream did you rub on her vagina.

16 Q All right. And what was his response to that?

17 A Aveeno lotion.

18 Q Aveeno lotion?

19 A Yes.

20 Q All right. And what did you ask next?

21 A Where did the blood come from.

22 Q And what was his response?

23 A He wrote, butt.

24 Q And what did you ask next?

25 A Do you spank Victim

1 Q And what was his response to the question about
2 spanking [Victim]

3 A Yes.

4 Q And what did you ask next?

5 A Do you have an anger problem.

6 Q And what was his response?

7 A Yes.

8 Q And what did you ask next?

9 A What happened to [Victim]'s vagina, referring to
10 bruises.

11 Q And what was his response?

12 A Was angry that the poop got in between her and used
13 excessive force to clean her with a wipe. Poop got in
14 between her lips, used excessive force to clean her.

15 Q All right. So whose handwriting was that response in
16 that he had used excessive force to change a dirty
17 diaper?

18 A Mr. Williams'.

19 Q All right. And that question was also in--- Was that
20 answer also in response to a specific question about
21 bruising around her vagina?

22 A Yes.

23 Q Now, what happened after you submitted these
24 additional questions in terms of allowing him to
25 acknowledge whether that portion of the statement is

1 true and accurate?

2 A He had the opportunity as well. I gave him the second
3 page, and he put his signature down at the bottom.
4 And I provided him a copy with his statement.

5 Q Okay. Ultimately, was Lance Williams placed under
6 arrest for the physical assault and the sexual assault
7 or assault against the sexual organs of **Victim**

8 **[REDACTED]**

9 A Yes.

10 Q And on what date was he placed under arrest?

11 A I'm sorry?

12 Q On what date was he placed under arrest?

13 A April 16th.

14 Q All right. Now, the location of these offenses is in
15 Swansea. Correct?

16 A Yes.

17 Q And can you tell us whether or not Swansea is within
18 the confines of Lexington County?

19 A Yes, it is.

20 Q And what information did you have concerning the
21 Defendant's age at the time of the offenses?

22 A Twenty-five, 26 roughly.

23 Q All right. What happened next?

24 A Mr. Williams was placed under arrest and escorted to
25 the Lexington County Detention Center.

1 Q Now, ultimately, did you also carry out additional
2 portions of this investigation by collecting
3 photographs that were taken at the hospital?

4 A Yes, I did.

5 MS. MAYES: Nothing further, Your Honor.

6 THE COURT: Thank you, Solicitor. Mr. Floyd?

7 MR. FLOYD: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION BY MR. FLOYD:

10 Q Detective Prestigiacomo, when you took these
11 statements from Mr. Williams, he was in the Sheriff's
12 Department?

13 A Yes, sir.

14 Q And was he behind a locked door?

15 A No, he was not.

16 Q There was no locked door going back there?

17 A It's a locked door going in; but, coming out, it was
18 not locked. I may have previously misspoken.

19 Q Okay. You had to unlock it to get him back there.

20 A You have to unlock it with a code to get in; but, to
21 come back out--- They made changes years ago.

22 Q And he voluntarily came there, did he not?

23 A Yes, he did.

24 Q And you had confronted him with a phone call saying
25 that you had to speak with him about injuries to

1 Victim or words to that effect.

2 A Yes, sir.

3 Q And he denied wrongdoing and said he wanted to come
4 clear it up. Is that---

5 A Yes.

6 Q Now, when he got there though and after your initial
7 contact with him and so forth, you began to show him
8 pictures, did you not?

9 A Yes.

10 Q Now, these pictures showed bruises.

11 A Yes, they did.

12 Q Is that correct? Or injuries of some type.

13 A Yes.

14 Q Now, had you already talked with other family members
15 and had the understanding that those bruises were not
16 initially apparent to people until later that night?

17 A Yes. My understanding was that they were revealed at
18 a baseball game that evening with the grandparents.

19 Q So would you agree with me that he was surprised to
20 see the bruises?

21 A I don't know if he was surprised or not.

22 Q Well, other people hadn't seen them, had they?

23 A Right.

24 Q And they were of the exterior, you know, the head and
25 ears and so forth. So would you agree with me that he

1 would, this would be the first time he would have seen
2 them also?

3 A Possibly, yes.

4 Q And so you then began to question him about each one
5 of the bruises.

6 A Yes.

7 Q And, of course, he answered you and then gave you the
8 written statement as to explain each one of the
9 bruises that happened.

10 A Yes.

11 Q Now, he also, did he not, vehemently denied that he
12 penetrated her?

13 A He explained to me that he was very upset and pissed
14 that she had a poopy diaper and that he penetrated her
15 too hard to clean it. I think, at one point, I even
16 put my hand up there, and I did this (indicating) to
17 demonstrate I guess the vaginal lips. And I said,
18 well, show me how hard you did it. And he came in and
19 he said, well, you have my numb hand that I have no
20 feeling with. And he dug and just raked into my hand.
21 And I was taken a back and shocked. And I looked at
22 Jeff Palkowski, and we just--- I was in disbelief.
23 And we continued with the statement.

24 Q All right. You made a report, did you not? You made
25 a summary?

1 A Yes, I did.

2 Q And did you not say, I then told Williams that there
3 was bruising inside of [Victim] vagina?

4 A Yes.

5 Q Williams became a little bit loud and said he would
6 never hurt a child like that and he said he has his
7 own daughter. Williams reiterated that he would never
8 penetrate a little girl like that.

9 A Yes.

10 Q Is that accurate?

11 A Yes.

12 Q So he did vehemently deny anything sexual in this
13 situation, did he not?

14 A Well, I don't know if it's sexual, but penetration
15 doesn't have to be sexual out of anger.

16 Q But he denied penetration, didn't he?

17 A Yes, he did initially, yes.

18 Q Well, he did all through. We'll get to that.

19 A Okay.

20 Q Now, you then confronted him with pictures. Let me
21 see if I can find the right place. When you first
22 showed him pictures, you even showed him some pictures
23 of what appeared to be bruising on the outside of the
24 vagina, did you not?

25 A Yes, sir.

1 Q And that's when he said those bruises could have come
2 from when he put the cream on her because of the
3 eczema.

4 A Yes.

5 Q All right. And you then showed him another set of
6 pictures which you described as being inside the
7 vagina or some other pictures of the vagina.

8 A I don't recall if we showed him the inside because I
9 don't think I had, at that time, did not have those
10 pictures from Dr. Luberoff. I think it was three sets
11 of pictures like I testified to, the first one being
12 the one on the arms, both ears and then there was one
13 picture compiled with the forehead and the outside of
14 **Victim** vagina.

15 Q Did you, in your report, say, I asked Williams if,
16 during the day on this day, if he put anything inside
17 of **Victim** vagina to explain the bruising?

18 A Yes.

19 Q He hesitated and paused and said she had a poopy
20 diaper that had to be cleaned by him. I asked him to
21 elaborate. He said poop got between the lips of her
22 vagina so he had to clean the poop. And that's when
23 he showed you I guess the demonstration.

24 A The demonstration, yes, sir.

25 Q So it's your testimony and your opinion that Mr.

1 Williams was voluntarily speaking with you at this
2 time.

3 A Can you rephrase that question, sir?

4 Q Did you feel that Mr. Williams was voluntarily
5 speaking with you on this day?

6 A If he was telling the truth? I think---

7 THE COURT: No, that wasn't his question,
8 Detective.

9 Q Was he freely and voluntarily---

10 A Yes, sir.

11 Q ---speaking with you?

12 A Yes, sir.

13 Q And did you--- Well--- And was he attempting to answer
14 the questions that you asked him?

15 A Yes. He answered questions, which I believe he
16 minimized what he was trying to tell us and minimized
17 his role in this situation.

18 Q But he came there of his own free will---

19 A Yes, he did.

20 Q ---in order to address the question of **Victim**

21 A Yes, sir.

22 Q He knew that before he came.

23 A Yes, sir.

24 Q He was out of town.

25 A Yes, sir.

1 Q No way for you to make him come in, was there?

2 A No, sir.

3 Q He could have gone on to Alabama.

4 A Yes.

5 Q But he freely and voluntarily came in and spoke with
6 you, did he not?

7 A Yes, he did.

8 Q Thank you. No further questions.

9 THE COURT: Redirect, Solicitor?

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

11 REDIRECT EXAMINATION BY MS. MAYES:

12 Q Now, I believe Mr. Floyd used the term cream. And you
13 had also asked him about any cream that he claimed to
14 have placed on [REDACTED] Victim [REDACTED] vagina and his response
15 concerning Aveeno lotion. What's your knowledge of
16 what is Aveeno lotion? Is that a prescription cream?

17 A I believe it's over-the-counter, a hand and body
18 cream.

19 Q All right. A brand-name store-bought cream.

20 A Yes.

21 Q All right. And, in addition to that, I believe you
22 indicated that he then, at some point, gave several
23 demonstrations. What was he demonstrating?

24 A He was explaining to us how he had no feeling in his
25 hand. And, like I said, there were four

1 demonstrations that we got throughout this interview.
2 One I failed to mention was, when he told us about the
3 ear bruises, he slapped his own head with his numb
4 hand, and I thought it was pretty hard. Then he
5 wanted to squeeze my hand to show me that he had a
6 strong grip but didn't have feeling. Then he punched
7 the desk several times to show that he has no feeling
8 in his hand, that, you know, he doesn't know his own
9 strength which is why the bruises are on **Victim**

10 Q And those words, doesn't know his own strength, were
11 whose words?

12 A Mr. Williams'.

13 Q And what else did he demonstrate?

14 A How he cleaned--- No, excuse me. How he put lotion on
15 **Victim** 's vagina or--- My mistake. Let me say that
16 again. How he was cleaning her poop diaper---

17 Q All right.

18 A ---with a wipe.

19 Q All right. And this is after he had originally said
20 he put, that the injuries to her vagina must have
21 occurred because he put lotion on her. He then later
22 stated the injuries must have occurred because he used
23 excessive force while changing her diaper---

24 A Yes, ma'am.

25 Q ---which he reported was a dirty diaper.

1 A Yes.

2 Q And what did he demonstrate in that regard?

3 A I--- You want me to go through it again?

4 Q Yes.

5 A I put my hand up, demonstrating I guess lips of a
6 vagina. And I wanted him to show me how hard he did
7 it. And he came in and raked through my knuckle, and
8 it hit into the wood. It was loud enough for both of
9 us to hear it.

10 Q All right. And, as you went through the various
11 bruises to **Victim** and showed him these bruises, at
12 any point, did he indicate that that bruise had
13 already been existing or was already existing prior to
14 him having **Victim** in his care that day?

15 A He never said that.

16 Q All right. And did he attempt to offer an explanation
17 as to each bruise you confronted him with?

18 A Yes, he did.

19 Q Was there ever a point in time where he said, I don't
20 know where that bruise came from?

21 A No.

22 Q So, for each bruise, ultimately, he gave some type of
23 explanation.

24 A Yes.

25 Q Now, you also stated previously on cross examination

1 that, based upon your observations, he appeared to be
2 minimizing his involvement in this. Can you tell us
3 whether that's usual or unusual in suspect interviews?
4 A Very typical. And, as a detective, I will--- We, you
5 know--- I explain to them, I explain to people I
6 interview or suspects, that this is not the movies,
7 we're not going to interrogate you like on TV. We
8 give them the opportunity to write their story; and
9 sometimes it's a lie; sometimes it's all the truth.
10 My experience tells me most of the time it is
11 somewhere in the middle where they justify their
12 actions and they minimize their activity. And I
13 believe that applies with his statement.

14 MS. MAYES: Nothing further.

15 THE COURT: Mr. Floyd, recross?

16 MR. FLOYD: Yes, sir, just a couple more
17 questions, Your Honor.

18 RE CROSS EXAMINATION BY MR. FLOYD:

19 Q Did you review your summary, or do you have it with
20 you?

21 A Yes, I do.

22 Q Isn't it true that what you first did, as far as the
23 vaginal area, was show him a picture of the outside
24 of the vagina, the mons pubis or whatever that term
25 was?

1 A Yes, sir.

2 Q And that's when he said, that could've come from the
3 lotion I applied.

4 A Yes, sir.

5 Q Later you asked him then, you mentioned, what about
6 bruises inside the vagina.

7 A Yes.

8 Q So that was a separate situation, was it not?

9 A To me, it was, yes.

10 Q And that's when he said, well, that would've had to
11 come from the diaper, explaining how he did the
12 diaper.

13 A Yes.

14 Q Okay. Thank you, Detective.

15 MR. FLOYD: No further questions.

16 THE COURT: Thank you, Detective. You may step
17 down.

18 THE WITNESS: Thank you, sir.

19 (Witness leaves the witness stand.)

20 THE COURT: All right. Solicitor, you may call
21 your next witness.

22 MS. MAYES: Yes, sir, Your Honor. Shelby
23 Derrick, Your Honor.

24 THE COURT: Come forth, please. Is it Ms.
25 Derrick? Is that right?

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

2 THE COURT: All right, Ms. Derrick.

3 WHEREUPON, SHELBY DERRICK, being first
4 duly sworn, testifies as follows:

5 CLERK: Have a seat, please, ma'am. I need you
6 to speak up loud and clear. Once you're seated, state your
7 full name on the record.

8 THE WITNESS: Shelby Lorraine Derrick.

9 THE COURT: All right. Solicitor?

10 MS. MAYES: Yes, sir, Your Honor. Beg the
11 Court's indulgence.

12 DIRECT EXAMINATION BY MS. MAYES:

13 Q Where are you employed?

14 A Lexington County Sheriff's Department.

15 Q And what is your job description there?

16 A Crime scene investigator.

17 Q All right. And what do you mean by crime scene
18 investigator?

19 A I take photographs and process crime scenes.

20 Q All right. And does that also include evidence that
21 might be recovered from a crime scene?

22 A Yes, ma'am.

23 Q Or evidence that might be recovered in relation to any
24 crime?

25 A Yes, ma'am.

1 Q All right. And how do you document evidence that
2 comes into the possession or custody of the Sheriff's
3 Department?

4 A By incident report.

5 Q All right. And, Ms. Derrick, do you also keep
6 notations of specific items of evidence?

7 A Yes, ma'am.

8 Q And, in this particular case concerning **Victim**
9 how did you first become involved?

10 A I was notified by our dispatch, and I responded to
11 Palmetto Richland Hospital.

12 Q All right. And on what date did you go out there to
13 the hospital?

14 A 4/16 of 2010.

15 Q All right. So that's the same date that Detective
16 Prestigiacomo was out there as well. Correct?

17 A Actually, I was--- I made contact with Victim's
18 Assistant Erica Owens at that time.

19 Q All right. So that would've been even prior to the
20 arrival of the detective. Right?

21 A Yes.

22 Q And this would've been approximately what time of day
23 or night?

24 A I arrived at the hospital at 11:23.

25 Q All right. And that would be a.m.?

1 A Yes.

2 Q All right. On the morning of the 16th.

3 A Yes, ma'am.

4 Q Prior to noon.

5 A Yes, ma'am.

6 Q And, ultimately, did you have the opportunity to
7 collect any evidence that concerned diapers?

8 A Yes, ma'am.

9 Q All right. And the diaper items had been placed into
10 a bag by a family member. Correct?

11 A Yes, ma'am.

12 Q All right. And they had been retrieved from the
13 residence. Was that your understanding?

14 A Yes, ma'am.

15 Q All right. And for what purpose?

16 A I was told the mother had collected the items and
17 brought them to the hospital because they had been---

18 MR. FLOYD: Objection, Your Honor, hearsay.

19 A Oh, I'm sorry.

20 Q Well, let me just ask you this. Did law enforcement
21 request to take possession of those items?

22 A Yes.

23 Q All right. And did you, in fact, take possession of a
24 bag of diapers while at the hospital on April 16th,

25 2010?

1 A Yes, ma'am.

2 Q All right. And, once you took possession of those
3 diapers, where did you take them and place them?

4 A I secured them in our crime lab and then turned them
5 into the evidence property room.

6 Q All right. And, when you say you secured them, what
7 do you mean by that?

8 A They were placed in a secured locker.

9 Q All right. And then they go into the evidence room.
10 Correct?

11 A Yes, ma'am.

12 Q And how are they marked or maintained so that you know
13 you have the right item in connection with the right
14 case?

15 A By case number.

16 Q All right. And was all of that done in this
17 particular case?

18 A Yes, ma'am.

19 MS. MAYES: Nothing further, Your Honor.

20 THE COURT: Mr. Floyd, Mr. Snell?

21 CROSS EXAMINATION BY MR. FLOYD:

22 Q Ms. Derrick, you didn't go to the home, to the house
23 itself, did you?

24 A No, sir.

25 Q So whatever you did you got at the hospital.

1 A Yes.

2 MR. FLOYD: No further questions, Your Honor.

3 THE COURT: Redirect?

4 MS. MAYES: Nothing further, Your Honor.

5 THE COURT: Thank you very much, Detective
6 Derrick. You may step down. Any objections to this
7 officer being excused from the State?

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

9 THE COURT: Defense?

10 MR. FLOYD: No, Your Honor.

11 THE COURT: Thank you. And you are excused.

12 (Witness leaves the witness stand.)

13 THE COURT: All right. You may call your next
14 witness, Solicitor.

15 MS. MAYES: The State calls Troy Crump.

16 WHEREUPON, TROY CRUMP, being first duly
17 sworn, testifies as follows:

18 CLERK: Have a seat, please, sir. Once you're
19 seated, speak up loud and clear stating your full name on
20 the record.

21 THE WITNESS: Troy Crump.

22 DIRECT EXAMINATION BY MS. MAYES:

23 Q Where are you employed?

24 A Lexington County Sheriff's Department.

25 Q And in what capacity?

1 A I am a crime scene investigator.

2 Q All right. And does that also include the
3 responsibility of maintaining certain evidence that is
4 turned into the Sheriff's Department?

5 A Sometimes, yes.

6 Q Okay. I'm going to show you a document and ask you
7 whether or not you, at any point, were asked to
8 retrieve items in connection with a victim by the name
9 of Victim [REDACTED]

10 A I was. I was asked to retrieve that and to photograph
11 the diapers.

12 Q All right. And I'm going to show you some documents
13 and ask you whether or not you recognize them.

14 MR. FLOYD: Your Honor, we object. We don't
15 think the proper foundation has been laid for the
16 introduction of these documents, these photographs and
17 stuff. There's a gap in the chain.

18 THE COURT: All right. Can we have them marked
19 for identification, please?

20 COURT REPORTER: Your Honor, I've marked 23
21 through 34 for ID.

22 THE COURT: All right. I would sustain the
23 objection at this point.

24 (State's Exhibits Numbers 23 through 34 are
25 marked for purposes of identification.)

1 THE COURT: Solicitor, you may continue.

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

3 Q Now, looking at these particular photographs--- Let me
4 ask you, prior to your opportunity to photograph them,
5 where had they been retrieved from?

6 A Out of the evidence room.

7 Q All right. And what was your location to the evidence
8 room?

9 A We were standing inside the evidence room.

10 Q All right. And who actually retrieved them in your
11 presence?

12 A I believe Candy Kyzer did. One of the evidence
13 custodians. I'm sorry.

14 Q All right. And can you tell us whether or not you can
15 say that bag would have been retrieved and then
16 unsealed to produce the diapers in your presence?

17 A It was. She handed me the bag. It was still sealed,
18 and I cut the seal on it to retrieve the diapers out
19 of the bag.

20 Q Now, when you cut the seal, had there been any
21 indication up to that point that the seal had been
22 broken or tampered with in any way?

23 A No.

24 Q And how do you go about identifying or matching the
25 seal or identification for that bag with this

1 particular case?

2 A Before I cut it?

3 Q Right.

4 A It had a--- I believe that it had a date and someone
5 else's initials on it.

6 Q All right. In other words, the date and initials of
7 the person who had originally sealed the bag.

8 Correct?

9 A Correct.

10 Q All right. Which--- Can you tell us whether or not
11 that's routine for you, for crime scene investigators
12 to do that when you're sealing a bag?

13 A Sometimes, if we don't seal it, the evidence
14 custodians will seal it for us.

15 Q All right. Now, in this particular case, when you
16 unsealed it, can you tell us whether or not the item
17 indicated that it was in relation to **Victim** **██████**
18 and/or Lance Williams? In other words, how do you
19 identify that it's this case?

20 A By the case number.

21 Q All right. Now---

22 MS. MAYES: At this time, Your Honor, we do offer
23 the photographs that have been identified by the witness
24 into evidence with the seal having been broken by him and
25 the items retrieved in his presence.

1 MR. FLOYD: Where's the seal? Where are the bags
2 they were in?

3 THE COURT: All right. Ladies and gentlemen,
4 step out momentarily. Do not discuss the case during this
5 brief recess.

6 (The jury retires to the jury room.)

7 THE COURT: May I see those items, please?

8 MS. MAYES: Your Honor, for health control
9 reasons, we had not intended to offer the diapers into
10 evidence and make them accessible to the jury. They do
11 contain various body fluids. We have them. They are being
12 brought into the courtroom at this point in time. If
13 that's what counsel is asking, for us to actually submit
14 used diapers into evidence, then, in lieu of photographs,
15 then I suppose that is for the Court's discretion.

16 THE COURT: I think, at least my understanding
17 is, Mr. Floyd's objection is that there is no link, the
18 dots have not been connected that these diapers are the
19 diapers that were retrieved from the house by Ms. Harvey
20 that were turned over to Deputy Derrick from Ms. Owens.
21 I'm not sure. Perhaps you can enlighten me, Mr. Floyd.

22 MR. FLOYD: Your Honor, the chain is messed up.

23 THE COURT: I can't hear you. I apologize.

24 MR. FLOYD: Your Honor, the chain is not
25 complete.

1 THE COURT: All right.

2 MR. FLOYD: I think we did have some testimony
3 from LeeAnn that she took some diapers up to the hospital.
4 There was some testimony from somebody at the hospital that
5 they turned them over to the Sheriff's Department. We've
6 got a report from Ms. Derrick who says that she got them
7 from the hospital and they were given to the hospital by
8 the mother, not LeeAnn.

9 THE COURT: Who is that report from?

10 MR. FLOYD: Pardon?

11 THE COURT: Who is that report you're referring
12 to from?

13 MR. FLOYD: This is from Ms. Derrick or the CSI
14 crime scene report, Lexington County Sheriff's Department.

15 THE COURT: All right.

16 MR. FLOYD: We don't have anything--- I think
17 you're supposed to have like a ticket to show the chain of
18 custody of these items. We haven't seen that, and it
19 should have everybody's name on it that, you know, had the
20 items. I don't know how this officer, who just takes them
21 out of the bag and photographs them, can say they're in the
22 same condition they were in when they were received by the
23 Sheriff's Department. He never had seen them before.

24 THE COURT: All right.

25 MS. MAYES: Your Honor, the bag is here. It does

1 have the chain on the outside. The officers, Beth Harmon
2 and Candy Kyzer, are present and prepared to testify
3 concerning the chain if this is being disputed.

4 THE COURT: If what?

5 MS. MAYES: If this is being disputed, the
6 officers are here and prepared to testify.

7 THE COURT: All right. Well, do you want to have
8 Officer Crump step down and be subject to recall and call
9 the chain witnesses?

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

11 THE COURT: All right. Thank you. Officer
12 Crump, you may step down. You're subject to recall. You
13 may not discuss your testimony with anyone.

14 THE WITNESS: Yes, sir.

15 THE COURT: Bring us our jury, please. Bring us
16 our jury, please, Mr. Corley.

17 (The jury returns to the courtroom.)

18 THE COURT: All right. Welcome back, ladies and
19 gentlemen. Solicitor, you may call your witness.

20 MS. MAYES: Yes, sir, Your Honor. The State
21 calls Beth Harmon.

22 THE COURT: All right. Officer Harmon, if you'd
23 come around, please.

24 WHEREUPON, BETH HARMON, being first
25 duly sworn, testifies as follows:

1 CLERK: Have a seat, please, ma'am. Once you're
2 seated, state your full name on the record, please.

3 THE WITNESS: Margaret Elizabeth Harmon, H-A-R-
4 M-O-N.

5 DIRECT EXAMINATION BY MS. MAYES:

6 Q And what is your job description?

7 A I'm an evidence custodian with the Lexington County
8 Sheriff's Department.

9 Q All right.

10 MR. FLOYD: Your Honor, may we approach the bench
11 a moment?

12 THE COURT: Yes, sir. Step out, please, ladies
13 and gentlemen. Do not discuss the case during this brief
14 recess.

15 (The jury retires to the jury room.)

16 THE COURT: All right. Mr. Snell, I'll be glad
17 to hear from you or, Mr. Floyd, I'll be glad to hear from
18 you.

19 MR. FLOYD: What I would do, Your Honor, is pass
20 up to you--- And I will show Ms. Mayes what I'm passing up.
21 This is what I understand because I wasn't involved at the
22 time. This is what I understand is the document that it's
23 basically referring to.

24 THE COURT: All right.

25 MS. MAYES: That's correct.

1 MR. FLOYD: I will pass this up to you to show
2 you.

3 (Hands to Court.)

4 THE COURT: All right. Are there other forms,
5 Solicitor, besides this? It appears this is the form of
6 CSI S. Derrick.

7 MS. MAYES: That is correct, Your Honor. And
8 then, in addition to this, once the items were placed into
9 evidence, they were placed in that bag that the crime scene
10 officer has with her today. That bag contains certain
11 initials and has stapled to it a chain of custody card
12 which is maintained as part of the actual evidence item.
13 And these items are available to be reviewed by the defense
14 or by the State at any occasion if they want to set up an
15 appointment and look at evidence or review it for that
16 purpose. Now, after the items were placed into evidence,
17 the diapers were photographed; and photographs of the
18 diapers that are now, that have now been identified as
19 State's exhibits were provided to Mr. Snell. But there was
20 never any question that there were diapers in evidence at
21 the Sheriff's Department and what those diapers looked
22 like.

23 THE COURT: All right. Then tell me what the
24 objection is then, Mr. Snell or Mr. Floyd.

25 MR. FLOYD: Your Honor, the State's required to

1 give us all the documents that become appropriate at trial,
2 and one of those most important documents is the chain of
3 evidence which they did not disclose. And, since they did
4 not disclose the chain of evidence, then they would need to
5 be precluded from using the chain of evidence. And we
6 would move to, that the photographs be excluded.

7 THE COURT: And, as I look at Rule 5-a-1, little
8 a, 1, big C, documents and tangible objects. Upon request
9 of the Defendant, the prosecution shall permit the
10 Defendant to inspect and copy books, papers, documents,
11 photographs, tangible objects, buildings or places or
12 copies of portions thereof which are within the possession,
13 custody and control of the prosecution and which are
14 material to the preparation of his defense or are intended
15 for use by the prosecution as evidence in chief at the
16 trial or were obtained from or belonged to the Defendant.
17 As I understand what the Solicitor is saying, and perhaps
18 I'm misunderstanding, is that CSI S. Derrick's form was
19 turned over. It indicates, among other items, that she
20 received--- It states, quote, the victim's mother had
21 brought a bag with several soiled diapers to the hospital
22 with her. The bag of diapers was then collected at the
23 time from the mother 4/16/10 at 1245 hours. Then it
24 states, quote, all evidence items were turned into the
25 evidence property room on 4/16/10 at 1550 hours. Evidence

1 collected: Sexual assault kit, white bag of clothing, bag
2 of soiled diapers. Now, as I understand it, that's the
3 only document that the prosecution has that was turned
4 over, but there were also photographs of those items, I
5 take it State's 23 through 34, and copies of those were
6 turned over. These are the actual items. They're not
7 required to be turned over but, of course, the defense can
8 look at them at any time. Now, if there is a flaw there
9 somewhere, I'll be glad to hear it.

10 MR. FLOYD: Well, Your Honor, it's--- I would
11 think they're required to give us all the documents in the
12 case including the documents in the evidence room which
13 show the full chain of custody of the items before they can
14 introduce them at trial.

15 THE COURT: Well, I would think that the defense
16 has the opportunity to review it. The prosecutor doesn't
17 have it, doesn't turn it over. The defense is on notice
18 that the items are in evidence, that they've been turned
19 into the evidence room. You're saying she should've
20 Xeroxed the bag and Xeroxed the tag that's stabled to the
21 diapers?

22 MR. FLOYD: That's correct, Your Honor, at least
23 the tag to show the chain.

24 THE COURT: All right. Solicitor?

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

1 THE COURT: Anything further, Mr. Floyd? I'm
2 sorry.

3 MR. FLOYD: Nothing further, Your Honor.

4 THE COURT: All right. Solicitor?

5 MS. MAYES: Yes, sir, Your Honor. If this
6 item--- Once this item was placed into evidence, it's in
7 evidence; and part of it being in evidence is maintaining
8 that particular card and preserving the pristine nature of
9 that card alongside the evidence. Once they start removing
10 that card from the evidence to photocopy it or for any
11 reason actually that the card would start being removed,
12 then we would have serious problems in actually maintaining
13 the evidence, which is the entire purpose of the evidence
14 room. Now, if this particular bag of items had left the
15 evidence room and, for example, gone to SLED or gone to the
16 FBI or something like that, then there may have been an
17 independent type of chain of custody form done, the type of
18 form that we sometimes see when a sexual assault kit is
19 submitted to the State Law Enforcement Division or when
20 drugs are submitted to the State Law Enforcement Division.
21 But, as it is, it was well documented and they were aware
22 that these items were placed into the evidence room and
23 they remained there in the evidence room in this pristine
24 condition and sealed until they were removed to be
25 photographed while still in the evidence room and then

1 replaced. And they had knowledge of that event occurring.
2 These items can be viewed by defense counsel at any time
3 subject to appointment.

4 THE COURT: All right. Thank you. Anything
5 further, Mr. Floyd?

6 MR. FLOYD: Just, Your Honor, that it's further
7 complicated by the fact that one document says the diapers
8 came from the mother and they put in testimony that the
9 diapers came from or were delivered by LeeAnn.

10 THE COURT: Ms. Harvey.

11 MR. FLOYD: Ms. Harvey.

12 THE COURT: And that's a chain-of-custody issue
13 that you've already objected to, as to whether or not they
14 could lay the foundation in that regard.

15 MR. FLOYD: That's correct, Your Honor.

16 THE COURT: All right.

17 MS. MAYES: Yes, sir, Your Honor. The State is
18 prepared to respond with testimony in that regard as well.

19 THE COURT: All right.

20 (Pause.)

21 THE COURT: All right. This appears to be a tag,
22 evidence, Lexington County Sheriff's Department evidence
23 chain of custody, case number 10-034448. The first name
24 appearing on it is Shelby Derrick printed, then what
25 appears to be a signature--had I not known it was Shelby

1 Derrick, I'm not sure I would have recognized that as the
2 name on the signature--4/16/10 dated 1245, which appears to
3 be the same time and date that is on the form that was
4 turned over. The next appears to be printed Margaret E.
5 Harmon, and then the signature Margaret E. Harmon, 4/16/10,
6 1703. The bag has a case number, 10-034448. I further
7 note, in State's Exhibit Number 23 for identification
8 purposes, you can see the corner of the tag that's on this
9 bag in that photograph. You can also see the bar code
10 that's on the bag in several of these photographs. You can
11 see parts of that also, with that tag, in other
12 photographs. Solicitor, do you have other photographs of
13 these diapers besides 23 through 34 for identification?

14 MS. MAYES: Beg the Court's indulgence.

15 (Pause.)

16 MS. MAYES: Your Honor, the answer to that would
17 be with Troy Crump; and he, I believe, had stepped out of
18 the courtroom subject to recall. My understanding is that
19 he took the photographs and placed them on the DVD, and
20 then we had the DVD printed out. But I don't know that we
21 printed every photograph, but they can be counted. And the
22 DVD we have is the same DVD that was provided to defense
23 counsel.

24 THE COURT: All right. I don't see that as a
25 discovery violation---

1 MR. FLOYD: And, Your Honor---

2 THE COURT: ---in that regard. However--- I
3 don't mean to interrupt you.. However, I'm not ruling at
4 this point on the chain of custody. That is still on the
5 table. I'll be glad to hear you, Mr. Floyd.

6 MR. FLOYD: Well, I was just going to raise one
7 other question, Your Honor.

8 THE COURT: Certainly.

9 MR. FLOYD: You just read off there that the
10 number of the case was 1003448.

11 THE COURT: 34448 is what I, is what's on the
12 bag. That's what's on the tag.

13 MR. FLOYD: Because all of our discovery contains
14 the number, case number 1003444.

15 THE COURT: 8.

16 MR. FLOYD: No, there was no 8.

17 THE COURT: This says 4448.

18 MR. FLOYD: Well, I'm just wondering why we have
19 a different number. I'm just talking about what we get
20 through our discovery has that case number on it.

21 MS. MAYES: The case number on Shelby Derrick's,
22 the crime scene report is 034448.

23 THE COURT: And down at the bottom, page 14 of 68
24 says, LE case number 1003444.

25 MR. FLOYD: And that's where I was getting my

1 444 number from.

2 THE COURT: I was getting it from handwritten,
3 but it's two different---

4 MR. FLOYD: Two different numbers.

5 THE COURT: This is what you handed me.

6 MS. MAYES: Your Honor, that particular number is
7 I believe generated by the Solicitor's Office. That is a
8 code that is entered into the computer by a case manager
9 when they are scanning in a police file to document that
10 they have given the defense the discovery. So that is not
11 part of the original document.

12 THE COURT: The 1003444?

13 MS. MAYES: Yes, sir, Your Honor. That number at
14 the bottom is put on the document by the Solicitor's Office
15 case manager who enters that number when she scans in the
16 discovery.

17 THE COURT: All right.

18 MR. FLOYD: I won't raise that issue then. That
19 was too complicated. I won't go there, with the number.

20 THE COURT: Mr. Floyd, like I say, the chain of
21 custody is still--- That motion is still active.

22 MR. FLOYD: Thank you, Your Honor.

23 THE COURT: I'm going to take about a ten-minute
24 recess. You may step down. Do not discuss your testimony
25 with anyone.

1 (Whereupon, there is a recess.)

2 THE COURT: Anything further, Mr. Floyd, before
3 we bring our jury in?

4 MR. FLOYD: Not from the defense, Your Honor.

5 THE COURT: From the State, Solicitor?

6 MS. MAYES: Yes, sir. During the break, the
7 State did have the opportunity to review the DVD of the
8 diaper photographs. And there are 12 photographs, and I
9 believe that it is the 12 photographs that were ultimately
10 printed and are being offered.

11 THE COURT: All right. Bring us our jury,
12 please, Mr. Corley. Thank you.

13 (The jury returns to the courtroom.)

14 THE COURT: All right. Welcome back, ladies and
15 gentlemen. Solicitor, you may proceed.

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

17 Q Now, a bag of evidence is here. I'm going to ask you
18 whether or not you recognize this item or can identify
19 this item and, if so, how.

20 A Yes, ma'am, I do recognize the item. I can recognize
21 it due to our chain-of-custody card as well as the
22 evidence tag that I placed on them.

23 Q All right. And, when you say that you can recognize
24 it by the evidence tag, what are you referring to? Is
25 there a specific identifying feature?

1 A It's the time chain-of-custody card that's attached to
2 each item of evidence, and it has my name printed and
3 signed on it.

4 Q All right. And your name is what?

5 A Margaret Elizabeth Harmon.

6 Q All right. And do you also go by Beth Harmon?

7 A Yes, ma'am.

8 Q All right. And, specifically, how is a number
9 affiliated with an item of evidence along the way?

10 A Each call for service is issued a call number; that's
11 also their case number. That's issued through the
12 communications department. And every item that is
13 turned into evidence is associated with a unique case
14 number that's unique to that incident itself. Those
15 numbers are not duplicated in any way. Each year they
16 start over at the beginning. The first two numbers
17 indicate the year that that case occurred in, and the
18 following numbers, after the dash, indicate what call
19 number that was for the Sheriff's Department for that
20 year.

21 Q All right. And, in this particular case, what does
22 the evidence indicate to be the date in which you
23 received it from a law enforcement officer by the name
24 of Shelby Derrick?

25 A I received this item April 16th, 2010. It was

1 received in the evidence room at 3:50 in the
2 afternoon, which is 1550 in military time; and I
3 signed it in at 1703 hours which is 5:03 p.m.

4 Q All right. And, when you did that, was the evidence
5 sealed?

6 A Yes, ma'am, it was.

7 Q And where--- How is it maintained in the evidence
8 room?

9 A This particular item was maintained in the
10 refrigerator of the evidence room. Our evidence room
11 is a secure facility that is accessible by three
12 evidence custodians. No one can access that room
13 without our proxy card and our key. The office is not
14 open to anyone unless we're there.

15 Q All right. And, ultimately, does that card indicate
16 that anyone else retrieved the item after you placed
17 it into evidence?

18 A No. This item was maintained in--- It was maintained
19 by the evidence custodians, which means that any of
20 the three of us, at any time, can pull this item for
21 anyone to come and view or to perform any testing if
22 it was requested.

23 Q And is there any further indication of activity?

24 A No. This item was never released from the evidence
25 room. It was maintained in our custody at all times.

1 Q Thank you. Nothing further.

2 THE COURT: Mr. Snell or Mr. Floyd? Mr. Floyd?

3 MR. FLOYD: I just want to ask one question.

4 CROSS EXAMINATION BY MR. FLOYD:

5 Q When was the evidence turned in, Ms. Harmon?

6 A It was turned in April 16th, 2010.

7 Q At what time?

8 A It was received in the evidence room at 1550 hours; it
9 was signed into the computer at 1703 hours.

10 Q Okay. So you got it in like 3:00 in the afternoon?

11 A Yes, sir.

12 Q Between 3:00 and 4:00?

13 A Yes, sir.

14 Q Thank you. No further questions?

15 THE COURT: Redirect?

16 MS. MAYES: No, sir, Your Honor.

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

19 (Witness leaves the witness stand.)

20 MS. MAYES: The State calls Brittany B

21 CLERK: She's under oath, Your Honor.

22 THE COURT: Yes, you're still under oath, Ms.

23 B

24 WHEREUPON, BRITTANY B having been
25 previously duly sworn, continues testifying as follows:

1 DIRECT EXAMINATION BY MS. MAYES:

2 Q Ms. B did you have the opportunity to, at any
3 point in time, have contact, while you were at the
4 hospital, have contact concerning diapers?

5 A Yes, ma'am.

6 THE COURT: Speak up a little bit for me, please,
7 Ms. B.

8 A Yes, ma'am.

9 THE COURT: Thank you.

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

11 Q And, specifically, on April 16th, 2010, which would be
12 the morning or early day hours after this incident
13 occurred, how did you become aware that diapers had
14 been retrieved?

15 A LeeAnn Harvey went to her house and retrieved the
16 diapers, brought them back to the hospital where we
17 were in the hospital room, and I asked her to look at
18 the diapers. She opened the bag for me to look at
19 them. I closed it and handed it to Shelby.

20 Q All right. And, when you say Shelby, you're referring
21 to Shelby Derrick, the officer with the Lexington
22 County Sheriff's Department?

23 A Yes, ma'am.

24 Q All right. And was she--- Were you there and present
25 when LeeAnn arrived in the room with the bag of

1 diapers?

2 A Yes, ma'am, I was.

3 Q And were you there and present when it was turned over
4 to Shelby Derrick?

5 A Yes.

6 Q And, in fact, who is the person that physically handed
7 them to Shelby Derrick after receiving them from
8 LeeAnn Harvey?

9 A Myself.

10 Q And did you have any further contact with them after
11 they were given to Shelby Derrick?

12 A No, ma'am, I did not.

13 MS. MAYES: Nothing further, Your Honor.

14 THE COURT: All right. Mr. Floyd?

15 MR. FLOYD: Thank you, Your Honor. May we
16 retrieve that? That's the only copy of that one
17 document.

18 THE COURT: Oh, yes, sir, certainly.

19 MR. FLOYD: I need to see something.

20 THE COURT: Yes, sir.

21 MR. FLOYD: I apologize.

22 THE COURT: That's all right.

23 MR. FLOYD: No questions, Your Honor.

24 THE COURT: Thank you. Thank you very much, Ms.

25 B You may step down.

1 (Witness leaves the witness stand.)

2 THE COURT: All right. Solicitor, you may call
3 your next witness.

4 MS. MAYES: The State calls Candy Kyzer.

5 WHEREUPON, CANDY KYZER, being first
6 duly sworn, testifies as follows:

7 CLERK: Have a seat, Ms. Kyzer. Speak up loud
8 and clear. Once you're seated, state your full name on the
9 record, please.

10 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

11 DIRECT EXAMINATION BY MS. MAYES:

12 Q All right. And where are you employed and in what
13 capacity?

14 A Lexington County Sheriff's Department as an evidence
15 custodian.

16 Q All right. And, when you talk about being an evidence
17 custodian, what does that mean in the general sense?

18 A We receive evidence in the cases from deputies or
19 investigators that they turn in, and we have to sign
20 it in and log it into the computer system, give it a
21 bar code label and then package it and store it until
22 it's needed for court or testing.

23 Q And can you tell us whether any evidence was turned
24 into the Sheriff's Department and placed into the
25 evidence room from Shelby Derrick?

1 A Yes.

2 Q All right. And, in this particular case, once it's
3 placed into evidence by Shelby Derrick, how is it---
4 How do you make sure that no one else has access to it
5 or tampers with it in any way?

6 A There is only three of us that have access to the
7 evidence room; it's myself, Beth Harmon and Sergeant
8 McMullen. We have keys to get into the office and
9 warehouse, and also our scan cards let us in. And,
10 once it's stored, we're the only ones that have access
11 to that.

12 Q All right. And this particular item of evidence in
13 this case having been placed into evidence by Shelby,
14 by Shelby Derrick or by Beth Harmon, for what purpose
15 did you come into contact with the evidence?

16 A Crime Scene Investigator Troy Crump came over and
17 requested to get the diapers out to have pictures
18 taken, and so I ended up going and pulling the item
19 out of the refrigerator for them to take pictures of
20 it.

21 Q All right. And you say refrigerator. Why is the
22 refrigerator sometimes used for storage?

23 A Anything that has to be preserved for maybe possible
24 testing we have to stick into a refrigerator that's
25 either in our office or one that's in the warehouse.

1 Q All right. And, in this particular case, did you
2 provide the evidence to Investigator Crump?

3 A Yes, I did.

4 Q All right. And that was for the purpose of
5 photographing?

6 A Yes, it was.

7 Q All right. And do you know the date on which, the
8 date in which that occurred?

9 A It was March 23rd.

10 Q Of this year?

11 A Yes, ma'am.

12 MS. MAYES: Nothing further, Your Honor.

13 THE COURT: Thank you, Solicitor. Mr. Floyd, Mr.
14 Snell?

15 CROSS EXAMINATION BY MR. FLOYD:

16 Q So, Ms. Kyzer, the pictures were taken last week,
17 March 23rd?

18 A Yes, sir.

19 Q And that's when somebody came and opened it?

20 A Yes, sir. Crime Scene Investigator Troy Crump came
21 over and opened the sealed package at that time.

22 COURT REPORTER: The what package?

23 A Sealed package.

24 Q And was it resealed after that?

25 A Yes, it was.

1 Q And who opened it?

2 A Crime Scene Investigator Troy Crump.

3 Q In your presence?

4 A Yes, I was present.

5 Q Thank you.

6 MR. FLOYD: No further questions.

7 THE COURT: Thank you. Redirect, Solicitor?

8 MS. MAYES: No, sir, Your Honor.

9 THE COURT: Thank you very much, Ms. Kyzer. You
10 may step down. Any objections to the officer being
11 excused?

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

13 MR. FLOYD: None from the Defense, Your Honor.

14 THE COURT: All right. Thank you. You may be
15 excused.

16 (Witness leaves the witness stand.)

17 MS. MAYES: The State calls Troy Crump.

18 THE COURT: All right. Solicitor?

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

20 WHEREUPON, TROY CRUMP, having been
21 previously duly sworn, continues testifying as follows:

22 DIRECT EXAMINATION BY MS. MAYES:

23 Q I believe, when you were previously on the stand, I
24 was asking you about whether or not you had the
25 opportunity to photograph some diapers that had been

1 placed into evidence.

2 THE COURT: All right. And let me stop you a
3 minute. You understand you're still under oath.

4 A Yes, sir.

5 THE COURT: All right. Thank you. You may
6 continue, Solicitor.

7 A I was asked to photograph some diapers, yes.

8 Q All right. And do you have those photographs with
9 you?

10 A I do now.

11 Q If you could please review those photographs, and I'm
12 going to ask you whether or not you recognize them.

13 A Yes. Those were the diapers that were found in that
14 brown paper bag right there.

15 Q All right. Do those photographs appear to be a fair
16 and accurate representation of the diapers as you
17 observed them to be?

18 A Yes, they are.

19 Q Would every diaper have been photographed?

20 A Yes.

21 MS. MAYES: Your Honor, at this time the State
22 would offer these items into evidence. I believe they are
23 23 through 34.

24 THE COURT: All right. Mr. Floyd?

25 MR. FLOYD: Your Honor, we don't think there's

1 been a proper foundation laid to introduce the photographs.

2 THE COURT: All right. Thank you, Mr. Floyd.
3 Subject to defense objections, State's 23 through 34 are in
4 evidence.

5 (States Exhibits 23 through 34 are marked for
6 purposes of the record.)

7 Q I'm going to start by asking you what we are looking
8 at here.

9 A That is a picture of a plastic bag that was found
10 inside of that bag that contained all the diapers.

11 THE COURT: What number was that first one,
12 Solicitor?

13 MS. MAYES: Yes, sir, Your Honor, 34.

14 THE COURT: Thank you.

15 Q This is State's Exhibit 29. Did there appear to be
16 any feces indicating this to be a dirty diaper?

17 MR. FLOYD: Your Honor, I object unless he's got
18 any expertise in recognizing feces in a diaper.

19 THE COURT: All right.

20 MS. MAYES: I can rephrase that, Your Honor.

21 THE COURT: You would have to lay a foundation
22 for that or rephrase the question, Solicitor.

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

24 THE COURT: I would sustain the objection,
25 Mr. Floyd.

1 Q So there is a photograph, number 29, and who took that
2 photograph?

3 A I did.

4 Q And photograph number 28, who took that photograph?

5 A I did.

6 Q Photograph number 27, who took that photograph?

7 A I did.

8 Q Photograph number 26, who took that?

9 A I did.

10 Q Photograph 25, did you take that photograph as well?

11 A Yes.

12 Q Photograph 24, did you take this photograph?

13 A Yes.

14 Q Photograph 23, did you take that photograph?

15 A Yes.

16 Q Now, in this particular photograph, there is what
17 appears to be some additional type of material located
18 along this portion. Can you tell us what that
19 appeared to be?

20 MR. FLOYD: Your Honor, I object unless he's got
21 some kind of expertise.

22 THE COURT: Sustained.

23 Q Was that a separate diaper or was it---

24 MR. FLOYD: Your Honor, I object. She's
25 leading.

1 MS. MAYES: Well, I can rephrase that, Your
2 Honor.

3 THE COURT: All right. Thank you.

4 Q The item that I am pointing at here in State's Exhibit
5 23, how did you come into contact with that particular
6 item?

7 A When the diaper was unrolled, it was there.

8 Q Okay. And, as to the photograph number 30, these
9 particular items?

10 A The same. When the diaper was unrolled, it was
11 visible.

12 Q In State's Exhibit Number 31, you are holding an item
13 in your hand. What is that?

14 A It appeared to be tissue paper that was found inside
15 of that diaper.

16 Q Okay. State's Exhibit 32?

17 A Again, it appeared to be tissue paper that was rolled
18 up inside the diaper.

19 Q And then the last photograph is State's Exhibit 33.
20 And who took that photograph?

21 A I took it.

22 Q And do these photographs accurately depict each and
23 every diaper that you unfolded and observed?

24 A Yes.

25 MS. MAYES: Nothing further, Your Honor.

1 THE COURT: Thank you. All right. Mr. Floyd?

2 CROSS EXAMINATION BY MR. FLOYD:

3 Q Detective Crump, was this your only involvement in
4 this case?

5 A Yes, sir, it was.

6 Q All you did was go over there and open a bag, or have
7 them open the bag, and take pictures.

8 A Yes, sir.

9 Q And that was last week sometime.

10 A Yes, sir.

11 Q Thank you.

12 MR. FLOYD: No further questions?

13 THE COURT: Redirect, Solicitor?

14 MS. MAYES: Nothing further, Your Honor.

15 THE COURT: Thank you. Thank you very much,
16 Detective Crump, for being with us this afternoon. Any
17 objections to the officer being excused?

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

19 MR. SNELL: None from the defense, Your Honor.

20 THE COURT: Thank you. You're excused.

21 (Witness leaves the witness stand.)

22 THE COURT: All right. Solicitor, you may call
23 your next witness.

24 MS. MAYES: Your Honor, at this time, the State
25 rests.

1 THE COURT: All right. Thank you. Thank you
2 very much. All right. Ladies and gentlemen, I must take
3 up a matter outside of your presence. I'm going to give
4 y'all a 15-minute recess while I take this matter up.
5 Please do not discuss the case during this brief recess.
6 I'll also find out where we're at administratively. Thank
7 you very much. You may now go with your bailiff.

8 (The jury retires to the jury room.)

9 THE COURT: All right. Thank you, Mr. Corley.
10 Mr. Snell or Mr. Floyd, any motions?

11 MR. SNELL: Yes, Your Honor.

12 THE COURT: All right.

13 MR. SNELL: Your Honor, first---

14 THE COURT: Would you mind coming around to the
15 podium for me, Mr. Snell.

16 MR. SNELL: Not at all, Your Honor. I'll try to
17 speak up.

18 THE COURT: Thank you.

19 MR. SNELL: Your Honor, the Defendant would make
20 initially a motion for directed verdict on the indictment
21 for unlawful neglect of a child. Your Honor, in the
22 indictment, the State alleges that the Defendant, while
23 having been responsible for the welfare of the child, did
24 or caused to be done unlawfully or maliciously bodily harm
25 to the child so that the life or health of the child is

1 endangered---

2 COURT REPORTER: I'm sorry. Back up, please.
3 For the welfare of the child, did or caused to be done
4 unlawfully or maliciously---

5 MR. SNELL: Any bodily harm to the child so that
6 the life or health of the child is endangered or likely to
7 be endangered, to wit, did strike the victim causing
8 bruises to several areas of her body, and then references
9 the statute 63-7-20, as well as 63-5-70. Now, Your Honor,
10 assuming the facts presented, taken in the light most
11 favorable to the State, Brittany [B] the mother of
12 [Victim] [REDACTED] and the Defendant, Lance Williams, had been
13 dating for only approximately four months. During the time
14 that they'd been dating, Brittany primarily lived with her
15 father, Kevin. A few weeks before the incident of April
16 15th, Brittany moved in with her friend, LeeAnn Harvey.
17 Lance Williams was staying, according to testimony, with
18 Brittany [B] three or four overnights per week. Lance
19 Williams was not the biological father of [Victim] [REDACTED]
20 Lance Williams did not have legal custody of [Victim] [REDACTED]
21 [REDACTED] Another man, identified as Adam Cooper, was known
22 to be the father of [Victim] [REDACTED] and he paid a hundred
23 dollars a week in child support. Lance Williams had not
24 been unsupervised with [Victim] [REDACTED] prior to April 15th.
25 This was his first direct supervision of the child. Now,

1 the language, responsible for a child's welfare, is taken
2 from 63-7-20, subpart 16, which states that a person
3 responsible for a child's welfare includes the child's
4 parent, guardian, foster parent and operator, employee or
5 caregiver, as defined by Section 63-13-20, of a public or
6 private residential home, institution, agency or childcare
7 facility, or an adult who has assumed the role and
8 responsibility of parent or guardian for the child but who
9 does not necessarily have legal custody of the child. A
10 person whose only role is as a caregiver and whose contact
11 is only incidental with the child, such as a babysitter or
12 a person who has only incidental contact, may not be a
13 caregiver, has not assumed the role or responsibility of a
14 parent or guardian. Illustratively, I think what this
15 language means, as far as another adult who assumes the
16 role or responsibility of a parent or guardian, the
17 reference, one of the few references made by the Court, the
18 State Supreme Court, in *Ex parte: Morris*, which is 367
19 S.C. 56, a 2006 case--and this is a case dealing with a
20 family court action based on the standing of a custodian--
21 the Court commented that the Legislature contemplated non-
22 relatives often may play a crucial and important role in
23 the life and well-being of a child, particularly when the
24 parents---

25 THE COURT: I'm sure my court reporter is not

1 getting this down, Mr. Snell.

2 COURT REPORTER: May play a crucial and---

3 THE COURT: All right. You may continue.

4 MR. SNELL: May play a crucial and important role
5 in the life and well-being of a child, particularly when
6 parents or relatives turn away from the child. So, in this
7 case, there is no evidence that either parent or relative
8 had turned away from **Victim** or had abandoned her.
9 She lived with her mother, and she had contact and a
10 relationship with her father and the extended family.
11 There is no evidence that Lance Williams provided financial
12 support or assumed any other role as a caregiver or other
13 responsibility. So we make a motion for directed verdict
14 in that, as written by the statute, we're entitled to a
15 directed verdict as a matter of law in that Lance Williams
16 was not a person responsible for a child's welfare as it
17 triggers 63-5-70 and this indictment for unlawful neglect
18 of a child.

19 THE COURT: All right. Do you have other
20 motions, Mr. Snell?

21 MR. SNELL: Yes, Your Honor. Your Honor, with
22 regard to the other charge of criminal sexual conduct with
23 a minor in the first degree, the statute states, 63--excuse
24 me--16-3-655, that a person is guilty of criminal sexual
25 conduct with a minor if the actor engages in a sexual

1 battery with a victim who is less than 11 years of age.
2 Sexual battery is defined, under 16-3-651, as sexual
3 intercourse, cunnilingus, fellatio, anal intercourse or any
4 intrusion, however slight, of any part of a person's body
5 or of any object into the genital or anal openings of
6 another person's body except when such intrusion is
7 accomplished for medically recognized treatment or
8 diagnostic purposes. Your Honor, taking the evidence
9 presented in the light most favorable to the State,
10 **Victim** had abrasions on her labia minora as well as
11 a bruised hymen. The medical testimony has been that the
12 hymen is outside of the genital opening or the vaginal
13 opening of the child. So there's been no evidence
14 presented of any penetration into the opening.

15 THE COURT: Into what opening?

16 MR. SNELL: Into **Victim** genital
17 opening.

18 THE COURT: Genital opening?

19 MR. SNELL: Yes, Your Honor.

20 THE COURT: All right.

21 MR. SNELL: The testimony is that it was a
22 bruised hymen and the hymen sits on the outside of the
23 vaginal canal, which would be the genital opening.
24 Everything---

25 THE COURT: What are you defining as the genital

1 opening?

2 MR. SNELL: The vagina.

3 THE COURT: All right. So there's no vaginal
4 penetration.

5 MR. SNELL: Right, Your Honor.

6 THE COURT: All right.

7 MR. SNELL: Only a bruised hymen. And, based on
8 the statute defining what sexual battery is, there is no---
9 I mean, the warrant and the indictment doesn't allege
10 sexual intercourse, doesn't allege cunnilingus, does not
11 allege fellatio, does not allege anal intercourse. And,
12 simply, we have an allegation of a digital contact
13 resulting in a bruised hymen which sits on the outside of
14 the vaginal canal. So, taking this evidence in the light
15 most favorable to the State, there is no evidence of a
16 sexual battery as defined by the statute. So we make a
17 motion for directed verdict on those grounds for the charge
18 of criminal sexual conduct with a minor in the first
19 degree.

20 THE COURT: Thank you. Thank you very much. Any
21 other motions, Mr. Snell?

22 MR. SNELL: Nothing further, Your Honor.

23 THE COURT: All right. Thank you. Solicitor, if
24 you would take them in the same order in which Mr. Snell
25 argued them.

1 MS. MAYES: Yes, sir, Your Honor. May it please
2 the Court. In reference to the first motion for directed
3 verdict concerning the charge of unlawful conduct towards a
4 child, there is no requirement under the statute that the
5 Defendant or that any defendant have legal rights or legal
6 custody of a child. It's whether they assumed the role or
7 responsibility of a parent or guardian for the child in the
8 sense of becoming responsible for their welfare beyond that
9 of a babysitter or a person with only incidental contact.
10 And, in this particular case, it has been established,
11 through witnesses as well as, I submit, by the Defendant's
12 own statement, that his involvement with [Victim] was
13 beyond that of a babysitter or a person with incidental
14 contact. It has been established that his relationship
15 with Brittany [B] was a romantic relationship, that they
16 were a couple and that, as a couple, they were getting to
17 the point, as Brittany [B] explained, of making plans for
18 the future, of moving in together. At this point in time,
19 they were acting as a family unit, which would be Brittany
20 [B] Lance Williams and the child, [Victim] [redacted]
21 There's also testimony that occasionally the Defendant's
22 daughter would also come over and spend time with the three
23 of them. His contact at the home was more than incidental;
24 it was contact that began when she resided at her father's
25 home which occurred with him spending the night several

1 nights a week. And then, when she moved into the second
2 home, the home of LeeAnn Harvey, he, again, continued this
3 pattern of staying over in the home several nights a week
4 as the mother's paramour. And, throughout this time, as
5 the testimony has established, he took on various, various
6 roles with [Victim] He took some degree of discipline
7 with her. The testimony of Brittany [B] was that he
8 would provide verbal or constructive type discipline to her
9 as well as she provided as the parent. And then, by his
10 statement to the officer, he indicated that he disciplines
11 [Victim] and those were his words. And his statement was
12 that he spansks her. And he further stated that, on this
13 particular occasion, he elected to discipline her by
14 striking her. And, in addition to that, according to his
15 statement, he was providing some type of medical care for
16 her concerning the application of some type of cream or
17 lotion although the State certainly has a question as to
18 the validity of that particular statement. But, be that as
19 it may, Your Honor, his intent where [Victim] is concerned
20 has been established by the circumstances and, I submit,
21 can ultimately be inferred by the circumstances of what his
22 intentions were. It's clear that he was acting in another
23 form, as more than just an incidental caregiver. He was
24 providing a bath to [Victim] not just on this occasion but
25 also the night before and other occasions and that he also

1 helped dress her. I believe, on this particular day, the
2 testimony was that they woke up, he assisted in dressing
3 **Victim** none of that out of the ordinary because he had,
4 as I submit has been established through the testimony,
5 taken on the role or responsibility of a parent or guardian
6 or akin to a parent or guardian, more than mere incidental
7 contact and more than a mere babysitter, as a result of his
8 relationship with the mother and with the child.

9 THE COURT: All right. And then the second
10 indictment, Solicitor?

11 MS. MAYES: Your Honor, this particular charge,
12 the definition of sexual battery includes any intrusion,
13 however slight, into the vaginal opening. It's the State's
14 position that Dr. Luberoff was clear, unmistakably clear,
15 that this was a penetrating injury into the vaginal opening
16 of the child and that she had bruising all around the hymen
17 area and that that particular structure, the location of
18 that structure, and the force necessary to cause the
19 bruising was diagnostic of a penetrating injury. And, by
20 penetrating, she described that being penetration into the
21 vaginal opening, through the labia where she had noted
22 there to be abrasions.

23 THE COURT: Thank you, Solicitor. Do you care
24 to respond, Mr. Snell?

25 MR. SNELL: Just briefly, Your Honor. There is

1 no evidence. I think, again, the Solicitor is trying to
2 rely upon some testimony that Brittany [B] may have had
3 about she had future plans with Mr. Williams to begin a
4 family or have a long-term relationship. That is something
5 that was a future event. That hasn't happened, certainly
6 no ring or no date. He had not--- There was no evidence or
7 testimony that he ever did anything as far as her care or
8 supervision until the 15th unless it was simply incidental,
9 such as I think there might have been some testimony that
10 he would watch her while the other, Brittany or another
11 adult was in the house or while they cooked dinner a time
12 or two. He's not taking her to the doctor; he's not doing
13 anything else that a parent or someone responsible for a
14 child would tend to do. He's only in the house halftime,
15 and I don't believe that would be sufficient under the
16 statute. And, simply as a matter of law, he is not a
17 legally responsible person. With regard then to the issue
18 of the CSC, there is no testimony. The evidence and
19 testimony is that we did not go into, or Mr. Williams did
20 not go into the vaginal opening, only in the exterior
21 portion, in an area where the exterior would be ancillary
22 and incidental to a diaper change. There's no evidence of
23 anything beyond that that would give rise to a sexual
24 battery or trigger the CSC statute.

25 THE COURT: Thank you. Thank you, Mr. Snell. As

1 to the first issue, in the analysis under a review of
2 63-7-20, as the defense attorney points out, subsection 16,
3 they found their motion for directed verdict on the
4 interpretation of person responsible for the welfare of a
5 child. That particular subsection reads that it includes
6 the child's parent which Mr. Williams is not, the child's
7 guardian which he is not, the foster parent which he is
8 not, operator, employee, or caregiver as defined by section
9 63-13-20 of a public or private residential home,
10 institution, agency or childcare facility which he is not,
11 or an adult who has assumed the role or responsibility of a
12 parent or guardian for the child but who does not
13 necessarily have legal custody of the child. A person
14 whose only role is as a caregiver and whose contact is only
15 incidental with a child, such as a babysitter or a person
16 who has only incidental contact, may not be a caretaker,
17 has not assumed the role or responsibility of a parent or a
18 guardian. Listening to the testimony of Ms. [REDACTED] B Ms.
19 Harvey and Ms. Hutto, taking the motion in the light most
20 favorable to the State, I think there is direct evidence
21 and substantial circumstantial evidence for the case to go
22 to the jury for the determination of whether or not Mr.
23 Williams is a person responsible for the welfare of the
24 child, i.e., an adult who has assumed the role or
25 responsibility of a parent or guardian for the child but

1 who does not necessarily have legal custody of the child.
2 He is clearly more than a babysitter or a person who has
3 only incidental contact. He stays overnight at the house.
4 He shares that house more than, or that trailer, more than
5 four out of seven days. That's more than 50 percent. If
6 it's three out of seven, that's 40 percent or whatever the
7 numbers come out to be. Further, there is testimony that
8 he bathes the child, that he disciplines the child, that he
9 feeds the child, that he changes the child's diapers, that
10 he interacts with the child while the mother of the child
11 is cooking supper or doing other types of duties. So
12 that's clearly more than a babysitter that typically is one
13 that's paid X for so many hours when the parent or parents
14 go out for an evening or go to some other location just for
15 a brief period of time. He's clearly more than a person
16 who has only incidental contact. Again, that's giving the
17 standard I must apply at this time, looking at the motion
18 in the light most favorable to the State as I must do at
19 this time. Further, I looked at *In Re: Morgan*, and another
20 case; I believe it was *State v. Foster* or *South Carolina*
21 *DSS v. Foster* I believe. As to second indictment, as to
22 criminal sexual conduct and the issue of penetration, there
23 is testimony by Dr. Luberoff that the genital area of the
24 child was bruised, it was not normal, it was bruised
25 outside, the hymen was bruised, there was torn tissue. It

1 was diagnostic, in her testimony on direct, of vaginal
2 penetration. There is further testimony, based on the
3 vaginal bleeding, that it would have to be an extreme
4 injury, very deep and internal injury with penetration.
5 When I look at 16-3-655-H, which is the definitional
6 standard of sexual battery under our Code, it reads, quote,
7 sexual battery means sexual intercourse, cunnilingus,
8 fellatio, anal intercourse or any intrusion, however
9 slight, of any part of a person's body or of any object
10 into the genital or anal openings of another person's body
11 except when such intrusion is accomplished for medically
12 recognized treatment or diagnostic purposes. I look then
13 to *State v. Morgan*. *State v. Morgan* was a criminal sexual
14 conduct case with a minor that involved cunnilingus. It
15 defines the genital organs not to be only the vagina, and
16 it held that vaginal penetration is not required to be
17 convicted of criminal sexual conduct with a minor. Now,
18 again, that's the sexual battery of cunnilingus. In that
19 case, there was not allegations of digital penetration. So
20 I think, if you look at the plain meaning of the statute,
21 our Legislature did not intend intrusion to be only vaginal
22 penetration but genital because that is the term they use,
23 any object into the genital opening of another person's
24 body. Based on the doctor's testimony and the statement
25 given by the Defendant to the officer, I think it's a

1 question for the jury in looking at it in the light most
2 favorable to the State at this point as I must do. I think
3 there's substantial--- I think there's substantial direct
4 and substantial circumstantial evidence in the case in that
5 regard. Further, I reviewed two cases, one, *People v.*
6 *Quintana*, Q-U-I-N-T-A-N-A, Court of Appeals, First
7 District, Division IV, out of the State of California, a
8 2001 case; and I also reviewed another case. I'm going to
9 read from it before I cite it because I have it keyed up.
10 It used--- This statute used the term sexual penetration as
11 opposed to sexual battery; however their language is the
12 same. Sexual penetration is defined to include any
13 intrusion, however slight, of any part of the actor's body
14 into the genital or anal openings of the victim's body.
15 Furthermore, genital openings means the internal or
16 external genitalia, including, but not limited to, the
17 vagina, the labia majora, the labia minora, L-A-B-I-A M-I-
18 N-O-R-A, the vulva, V-U-L-V-A, the urethra, U-R-E-T-H-R-A,
19 or the perineum, P-E-R-I-N-E-U-M. This was a digital
20 penetration case in which the Defendant argued the
21 conviction should be reversed because the State failed to
22 demonstrate that some penetration occurred. That Court
23 disagreed with that defendant. That cite is the *State of*
24 *New Hampshire v. Flynn*, 855 Atlantic 2d 1254, a 2004 case.
25 So, given that, I would deny the motion for directed

1 verdict. All right. Does the Defendant intend to produce
2 any evidence or testimony, Mr. Floyd, Mr. Snell?

3 MR. SNELL: Your Honor, we would need to discuss
4 that with the Defendant if we may.

5 THE COURT: When?

6 MR. SNELL: If we may discuss--- We request an
7 opportunity to discuss that with the Defendant.

8 THE COURT: All right. Do you want to do that
9 now?

10 MR. SNELL: Yes, Your Honor.

11 THE COURT: Well, we'll take about a 15-minute
12 recess.

13 (Whereupon, a recess is taken.)

14 THE COURT: All right. Mr. Williams, would you
15 and Mr. Floyd and Mr. Snell come around to podium, please?
16 Madame Clerk would you place Mr. Williams under oath?

17 CLERK: Yes, sir.

18 WHEREUPON, LANCE AUSTIN WILLIAMS, is
19 first duly sworn.

20 THE COURT: Mr. Williams, I need to go over some
21 things with you. I have to do this with everyone who's on
22 trial, and I need your responses to be under oath. That's
23 why I placed you under oath. Do you understand?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: How old are you?

1 THE DEFENDANT: Twenty-five.

2 THE COURT: How much education do you have?

3 THE DEFENDANT: I have a high school diploma.

4 THE COURT: We've reached the stage of the trial
5 where the State has rested and your side, the defense, now
6 has the opportunity to present evidence for the jury to
7 consider. Do you understand where we're at in the trial?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: In that regard, you may call
10 witnesses to testify. If you choose to testify yourself,
11 you may do so. Do you understand?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: No one can force you to testify. You
14 have an absolute right to remain silent; and, if you choose
15 not to testify, I will tell the jury that they cannot hold
16 your silence against you in any way. I will tell them they
17 are not to even discuss the fact that you did not testify
18 in the jury room. Do you understand?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: If your side offers no evidence at
21 all, in other words, if neither you nor anyone on your
22 behalf testifies or offers any exhibits, then your attorney
23 will get to make the last argument to the jury. Otherwise,
24 the prosecutor gets to make the last argument. Do you
25 understand?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Solicitor, does Mr. Williams have any
3 prior criminal history that would subject him to
4 impeachment under Rule 609?

5 MS. MAYES: No, sir, Your Honor.

6 THE COURT: All right. The decision about
7 whether you testify or not is your decision to make and
8 yours alone. I expect that you have conferred with your
9 attorneys or with others whose opinions you value on
10 important decisions, but the decision about whether you
11 testify or not is your call, your decision. Do you
12 understand?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Has anyone exercised any undue
15 influence over you to get you to choose to testify or not
16 to testify?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Today, are you under the influence of
19 any drugs, alcohol, medication or anything that negatively
20 affects your thinking ability?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Do you suffer from any physical,
23 emotional, mental or nervous problem that negatively
24 affects your thinking ability today?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Do you have any questions that you
2 would like to ask me about your right to testify or not to
3 testify?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Do you have any questions that you
6 would like to ask me about where we're at in the trial at
7 this time?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: All right. Have you made your
10 decision at this time or not?

11 THE DEFENDANT: Yes, I have, Your Honor.

12 THE COURT: Is that correct, Mr. Floyd?

13 MR. FLOYD: He's made his decision, yes, Your
14 Honor.

15 THE COURT: All right. And whatever decision
16 you've made, is that your decision?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Of your own free will and accord?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And what is your decision?

21 THE DEFENDANT: My decision is to testify, Your
22 Honor.

23 THE COURT: All right. Thank you. Thank you
24 very much, Mr. Williams. You may be seated?

25 THE DEFENDANT: Thank you, Your Honor.

1 THE COURT: All right. I find that the Defendant
2 has made a decision to testify and that decision is made
3 freely, knowingly and voluntarily. With that being said, I
4 believe I'll bring the jury out and release them for the
5 evening hours, and we will start back in the morning. Any
6 objections to that, Solicitor?

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

8 MR. SNELL: None from the Defendant, Your Honor.

9 THE COURT: All right. Bring us our jury,
10 please.

11 (The jury returns to the courtroom.)

12 THE COURT: All right. Mr. Archie?

13 JUROR: Yes, sir.

14 THE COURT: Raise your hand. All right. That's
15 correct. I thought that was Mr. Archie. Mr. Archie, I'm
16 going to appoint you as the foreperson of this jury. We
17 had an election while y'all were out a few minutes ago.
18 And, although there are many fine candidates--and I will
19 tell you it's a great field of candidates for foreperson--
20 but I'm going to appoint you as the foreperson of the jury.
21 Momentarily, I'm going to release y'all from your jury
22 service for the evening hours. Upon your return, I'm going
23 to ask you if you'll take this first seat where this young
24 lady is sitting, and you'll be the jury's spokesperson here
25 in courtroom and responsible for writing and signing the

1 verdicts. I will explain more to you about that in my
2 remarks to the jury. The State has rested its case and its
3 case in chief. Given that, I believe we'll take our
4 evening recess at this time. We'll start back fresh in the
5 morning. Please remember several things: First, the State
6 is the party that has the burden of proving its case beyond
7 a reasonable doubt. A defendant in a criminal case, no
8 matter the seriousness of the charges, is presumed to be
9 innocent and does not have to present any evidence or
10 testimony or prove himself or herself innocent. I remind
11 you, during this evening recess, you're not to discuss this
12 case with others including your fellow jurors, family,
13 friends or anyone else. Do not read, listen to or watch
14 any news reports of the case. Do not use your computer,
15 cellular phone or other electronic device with
16 communication capabilities or any other method to disclose
17 any information about case. Information, of course,
18 includes, but is not limited to, information about a party,
19 a witness, an attorney or a court officer, any news
20 accounts of the case, any information collected through
21 your research on any topics raised or testimony offered by
22 any witness or any information that you, on research on any
23 topic, that you might think would be helpful in deciding
24 the case. As I told you earlier in the week, that you
25 would probably be able to repeat that before the trial was

1 over. You have to decide the case based on the evidence
2 and the testimony you hear presented in this courtroom from
3 the witnesses testifying under oath from the witness stand
4 and any other documents or exhibits that are presented into
5 evidence. Remember to keep an open mind. Do not begin
6 your deliberations until you've heard all the evidence, all
7 the testimony, the closing arguments by the attorneys and
8 the instruction on the law by the Court. Since we're
9 quitting early today, I would like to start early in the
10 morning if that's possible. 8:30? Does anyone have a
11 problem with 8:30, child care problems, anything of that
12 nature? All right. If there're no problems then, if y'all
13 would please be back in your jury room promptly at 8:30
14 a.m. You're now excused for the evening hours. I hope
15 y'all have a pleasant evening. Thank you. Thank you very
16 much.

17 (The jury is excused for the day at 6:34 p.m.)

18 THE COURT: Mr. Floyd, Mr. Snell, do y'all need
19 to confer with your client tonight at the detention center?

20 MR. SNELL: Yes, Your Honor.

21 THE COURT: Sheriff, could you make sure they get
22 that message and make arrangements? And what time would
23 you like Mr. Williams over here in the morning?

24 MR. SNELL: 8:00 a.m.

25 THE COURT: All right. Can you also make

1 arrangements for that, Sheriff, so that Mr. Williams is
2 here promptly to confer with his attorneys at 0800 hours?

3 Anything further, Solicitor?

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

5 THE COURT: Mr. Snell?

6 MR. SNELL: Nothing further, Your Honor.

7 THE COURT: Any requests to charge?

8 MS. MAYES: Not at this time, Your Honor, and I
9 will review that tonight.

10 MR. SNELL: Same thing, Your Honor.

11 THE COURT: Has anyone thought of a lesser-
12 included offense on CSC?

13 MR. FLOYD: We have thought of that, Your Honor.

14 THE COURT: All right. Thank you very much.
15 Court will be in recess until the 8:30 in the morning. I
16 hope y'all have a pleasant evening.

17 (Whereupon, the proceedings were concluded for
18 March 31, 2011.)

19 (The following proceedings were reported on April
20 1st, 2011.)

21 THE COURT: All right. Anything from the State
22 before we bring in our jury, Solicitor?

23 SOLICITOR: Yes, sir, Your Honor. In regard to a
24 potential defense witness, Mr. Selman Watson.

25 THE COURT: That's Watson?

1 MS. MAYES: Mr. Watson, yes, sir, Your Honor.

2 THE COURT: Mr. Watson?

3 MS. MAYES: Yes, sir. If he is going to testify
4 as an expert, the State would request to know exactly what
5 issues he may be proffered on concerning his expertise.

6 THE COURT: Mr. Snell?

7 MR. SNELL: Yes, Your Honor. And, Your Honor,
8 the State was provided with kind of a summary dated January
9 of 2011. However, we're not anticipating calling Dr.
10 Watson as a witness.

11 SOLICITOR: Okay. Well, it's not an issue.

12 THE COURT: All right. Anything further,
13 Solicitor?

14 SOLICITOR: No, sir, Your Honor.

15 THE COURT: Anything from the defense before we
16 bring in our jury?

17 MR. SNELL: No, Your Honor.

18 THE COURT: Thank you. Bring us our jury,
19 please.

20 (The jury returns to the courtroom at 8:40 a.m.)

21 THE COURT: All right. Our jury is present in
22 the courtroom. Good morning, ladies and gentlemen.
23 Welcome back. I hope y'all had a pleasant evening. As you
24 recall, the State has rested in its case in chief. The
25 defense may now call witnesses and put up testimony if the

1 defense chooses to do so. You will recall that the State
2 is the party that has the burden of proving its case beyond
3 a reasonable doubt. The Defendant is presumed to be
4 innocent, never has to prove himself innocent, does not
5 have to present any evidence or testimony whatsoever.
6 However, the Defendant may present evidence and testimony
7 if he chooses to do so. So, with that being said, we will
8 now direct our attention to Mr. Snell and Mr. Floyd and
9 ask. Do you intend to call any witnesses, Mr. Snell, Mr.
10 Floyd?

11 MR. SNELL: We do, Your Honor.

12 THE COURT: All right. If you would call your
13 first witness, please.

14 MR. SNELL: Your Honor, the defense calls Ms.
15 Mildred Moore.

16 THE COURT: All right. Ms. Moore, if you'd come
17 around and be sworn for us, please.

18 WHEREUPON, MILDRED MOORE, being first
19 duly sworn, testifies as follows:

20 CLERK: Have a seat, please, ma'am. Once you're
21 seated, please speak up loud and clear stating your full
22 name on the record.

23 THE WITNESS: My name is Mildred Logan Moore.

24 DIRECT EXAMINATION BY MR. SNELL:

25 Q Ms. Moore, I'm Jim Snell. I'm standing back here so I

1 can remind each of us to talk loud enough for the jury
2 to hear and for the court reporter to take us down.

3 Could you state--- First of all, tell the jury who you
4 work for?

5 A I work for Lexington County Department of Social
6 Services.

7 Q And what's your occupation there?

8 A I'm a Human Service Specialist II which is, in
9 essence, a child protective services investigator.

10 COURT REPORTER: I'm sorry. Which is a what?

11 A A child protective services investigator.

12 Q Is that similar to like a social worker or caseworker.

13 A Yes.

14 Q Now, did you have an opportunity to investigate the
15 abuse allegations involving **Victim** **██████████**

16 A I did.

17 Q From April 15th, 2010?

18 A Yes.

19 Q Okay. And were you able to determine whether or not
20 your Agency had jurisdiction over this case?

21 A Yes, we did. Yes, I was.

22 Q And what was that determination?

23 A We closed our case Category II. The case was
24 unfounded, Category II, because we determined that Mr.
25 Williams was not acting *in loco parentis*.

1 Q And is that because of the limited contact he had with
2 [redacted] Victim

3 A At the time, that's what we knew, yes.

4 Q And so the dismissal had nothing to do with the
5 physical allegations about what happened to [redacted] Victim
6 only about Mr. Williams' status with regard to her.
7 Is that correct?

8 A Yes.

9 Q Thank you. No other questions?

10 THE COURT: Thank you, Mr. Snell. Solicitor?

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

12 CROSS EXAMINATION BY MS. MAYES:

13 Q Good morning, Ms. Moore.

14 A Good morning.

15 Q Just to kind of fill us in a little bit, your role as
16 a DSS caseworker is to respond when there are
17 allegations of abuse. Correct?

18 A Correct.

19 Q And, in this particular case, y'all got a call when
20 [redacted] Victim was in the hospital. Correct?

21 A Yes.

22 Q And she was at Richland Memorial Hospital, and I think
23 you actually came out there yourself. Right?

24 A I did.

25 Q And you came out there, and you had a chance to look

1 at [redacted] and see her injuries.

2 A Yes, I did.

3 Q And, at that time, y'all went ahead and opened the
4 case. Correct?

5 A Well, it was opened prior to me going out there.

6 Q Okay. Because somebody had called it in.

7 A Yes.

8 Q And do you have your file with you today?

9 A I do.

10 Q And I believe--- Would it have been called in by
11 someone there at the hospital or by law enforcement?

12 A I believe the hospital called law enforcement, and
13 then they called us and made the report.

14 Q Okay. And that's pretty much standard procedure when
15 a child is injured in her home environment. Correct?

16 A Correct.

17 Q Because, when a child is injured in their home
18 environment, it's pretty much a given that it's going
19 to be someone with close access to the child who's
20 committed those acts against her or him. Correct?

21 A Yes.

22 Q And so that's why DSS gets involved.

23 A Yes.

24 Q And, when y'all first received the information, y'all
25 used a term for Mr. Williams, and that's called a

1 paramour. Correct?

2 A Yes.

3 Q And with DSS, that's a common DSS term. Correct?

4 A Yes.

5 Q All right. And, when you talk about a paramour, that
6 basically means when mom has, or dad in some
7 situations, has a significant other and that
8 significant other, as a result of being a paramour, is
9 involved in the home life. Correct?

10 A Yes.

11 Q And so there are sometimes situations where there
12 might be a mom and there might be a dad but, if mom
13 gets a boyfriend or paramour and then he becomes
14 involved, that's something that DSS would look at as
15 well.

16 A Yes.

17 Q And, in the initial information--- I believe that
18 intake date was 4/16/2010, so that's the day after
19 **Victim** was injured. At that point in time,
20 according to your records, there was a specific
21 allegation of abuse and neglect at that point.
22 Correct?

23 A Yes.

24 Q And the alleged perpetrator, which, at that point in
25 time, Mr. Lance Williams was identified as a caretaker

1 of the child. Correct?

2 A Yes.

3 Q Okay. And y'all proceeded to look further into it and
4 by that, you know, trying to determine whether Mr.
5 Williams might have future access to [Victim]

6 Correct?

7 A Yes.

8 Q Why is that so important, to determine whether an
9 alleged perpetrator might have future access to that
10 child that's been injured?

11 A Well, at the time when I went out to the hospital and
12 spoke with Ms. [B] we had no information about her.
13 Some of the parents we deal with aren't protective.
14 And so we did not know whether or not she would be
15 protective even though, you know, we're there. And so
16 we implemented a safety plan that said that [Victim]
17 was to have no contact with Mr. Williams; and that was
18 simply because, like I said, we did not know if Ms.

19 [B] would continue to be protective. A lot of
20 times, we get moms who get back with their boyfriends.
21 You know, they're protective at the time. They get
22 sweet talked, and they get back with their paramour.

23 Q Okay. And, in fact, that's unfortunately quite
24 common in some child abuse cases that you've seen as a
25 DSS caseworker. Correct?

- 1 A Yes.
- 2 Q Especially in a situation where the boyfriend and the
3 mom might have other children in common and he's going
4 to be involved in the future. Correct?
- 5 A Correct.
- 6 Q And there's always that threat that his future
7 involvement with the mom might result in him
8 reoffending against that same child. Correct?
- 9 A Correct.
- 10 Q And, in this particular case, once Brittany **B**
11 signed that safety plan and agreed to have no future
12 contact with Mr. Williams, you were satisfied, as the
13 caseworker, that he was out of **Victim**'s life for
14 good. Correct?
- 15 A Correct.
- 16 Q All right. Because they didn't have any other
17 children in common.
- 18 A Correct.
- 19 Q And he was not living in the home with **Victim** and
20 Brittany. Correct?
- 21 A Correct.
- 22 Q And they were not married.
- 23 A Correct.
- 24 Q And he didn't have any legal rights to **Victim**
25 Correct?

1 A Yes.

2 Q And do you have a copy of that safety plan with you
3 today or do you have the safety plan with you today
4 that Brittany [B] signed agreeing that she wouldn't
5 have any future contact with Mr. Williams?

6 A I do.

7 Q Okay. And what is the date that she signed that
8 safety plan?

9 A She signed it on the 16th of April, 2010.

10 Q All right. And can I see that, please?

11 A (Witness complies.)

12 Q And, when the safety plan is signed, one thing you
13 inform that mother of is, hey, look, we're going to
14 stay on you, we may make future visits, we might make
15 future phone calls, just to make sure he's not around.
16 Correct?

17 A Correct.

18 Q And that was put in your safety plan as well.

19 Correct?

20 A Exactly, yes.

21 Q All right. And there was never any indication, after
22 she signed that safety plan, that she would violate it
23 in any way and be back in contact with Mr. Williams.

24 Correct?

25 A Correct.

1 Q All right. And, in a situation like this where
2 there's no reason to believe there's going to be
3 future contact, this isn't a situation, is it, where
4 DSS would then pursue a family court action of any
5 kind?

6 A Correct.

7 Q There is no need for further action. Correct?

8 A Correct.

9 Q Because you were satisfied that she was in compliance
10 and that he was out of the picture.

11 A Correct.

12 Q And, as a result of that, in May, the case was closed.
13 Correct?

14 A Yes, it was.

15 Q And it wasn't closed because there was a lack of
16 evidence that [Victim] was abused. Correct?

17 A Correct.

18 Q It was closed ultimately because, under your
19 determination, he was not living in the home and a
20 current threat to [Victim] Correct?

21 A Correct, and that he wasn't acting *in loco parentis*.

22 Q All right. And, when you use the term acting *in loco*
23 *parentis*, one of the things that you looked at there
24 was that he was not living in the home. Correct?

25 A Correct.

1 Q And, for certain things that--- In your initial
2 contact, y'all didn't--- It's not on your form to
3 follow up and ask exactly what level of involvement he
4 had with [Victim] on a daily basis. Correct?

5 A Correct.

6 Q For example, when you met with Brittany in the
7 hospital, you were mainly concerned about assessing
8 the injuries and determining if he lived in the home.
9 Correct?

10 A Correct.

11 Q But there wasn't specific information about how
12 involved he was with [Victim] in terms of being
13 present for family events.

14 A Correct.

15 Q Their plans as a family, meaning he and Brittany and
16 [Victim] their plans to live together as a family and
17 interact as a family is something you weren't aware of
18 at that time. Correct?

19 A I was not.

20 Q All right. And you weren't aware of small things,
21 such as how much he might bathe her.

22 A I was not.

23 Q Okay. Or do anything like that on a daily basis.
24 Correct?

25 A Correct.

1 Q And y'all weren't aware that his daily interaction
2 with [Victim] was at a higher level than the
3 interaction he was having with his own biological
4 daughter. Correct?

5 A Correct.

6 Q All right. So you were looking at defining *in loco*
7 *parentis* in terms of him actually living in the home.
8 Correct?

9 A Correct.

10 MS. MAYES: Nothing further.

11 THE COURT: Redirect, Mr. Snell?

12 REDIRECT EXAMINATION BY MR. SNELL:

13 Q Ms. Moore, if DSS had found that Lance Williams was a
14 person responsible for the welfare of [Victim] [redacted]
15 pursuant to the statute, would you have closed the
16 case?

17 A Ask me that again, please. I'm sorry.

18 Q If DSS had determined that Lance Williams was a person
19 responsible for [Victim] [redacted] pursuant to the
20 statute, would y'all have closed the case?

21 A I don't know if I understand what you're asking.

22 Q DSS--- Were you able to determine if Lance Williams
23 was a person responsible for the welfare of [Victim]
24 [redacted] pursuant to the controlling statute?

25 A Well, as far as when I investigated, it looked as if

1 he was not responsible for her at the time. That day
2 he was because mom asked him to. But, from what I
3 determined in my investigation, he was not an ongoing
4 caregiver.

5 Q Would he have been like a babysitter?

6 A To me, that's what it appeared. That's what--- From
7 my investigation, that's what I perceived.

8 Q Thank you.

9 MR. SNELL: No other questions.

10 THE COURT: Recross, Solicitor?

11 SOLICITOR: Yes, sir, Your Honor.

12 RECROSS EXAMINATION BY MS. MAYES:

13 Q And, again, Ms. Moore, when you talk about your
14 investigation, it was limited in this particular case,
15 more limited than it is in a lot of your other cases.
16 Correct?

17 A Yes, it was.

18 Q I believe you had the initial visit out at the
19 hospital where you spoke with Ms. [B] Correct?

20 A Correct.

21 Q And, at that point in time, there was a lot of other
22 stuff going on because Ms. [B] was being interviewed
23 by law enforcement.

24 A Uh huh (indicating affirmative response).

25 Q And the primary concern was her daughter who was

1 hospitalized at that time. Correct?

2 A Correct.

3 Q And, over the course of the next four days, Victim
4 remained hospitalized there at Palmetto Health. And
5 did you get the opportunity to go back out to Palmetto
6 Health and talk to her at that point?

7 A I do not think I saw her again at the hospital. I
8 think I saw her at her father's house.

9 Q All right. And that follow-up contact was mainly to
10 make sure that she had, was not in contact with Mr.
11 Williams from that point on. And she assured you
12 that she was not and that he was out of her life.
13 Correct?

14 A Correct.

15 Q And that was pretty much the extent of it. In other
16 words, when you used the word investigation, it's not
17 as thorough as some of the other child protective
18 services investigations where it's known that a
19 perpetrator has direct involvement in a child's life
20 and they're going to continue to be involved in the
21 future because they're a biological parent or
22 something of that nature. Correct?

23 A Correct.

24 Q So you would admit, in this case, there was certain
25 information that DSS did not have about his level of

1 involvement. Correct?

2 A Correct.

3 MS. MAYES: Nothing further.

4 THE COURT: Thank you. Thank you very much for
5 being with us this morning, Mr. Moore.

6 THE WITNESS: Thank you.

7 THE COURT: And you may step down. Any
8 objections to Ms. Moore being excused?

9 MR. SNELL: None from the Defendant, Your Honor.

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

11 THE COURT: And you are excused.

12 THE WITNESS: Thank you.

13 (Witness leaves the witness stand.)

14 THE COURT: All right. Mr. Snell, you may call
15 your next witness.

16 MR. SNELL: Yes, Your Honor. The defense calls
17 Mr. Lance Williams.

18 THE COURT: All right. Mr. Williams, if you
19 would come around and be sworn, please.

20 WHEREUPON, LANCE AUSTIN WILLIAMS, being
21 first duly sworn, testifies as follows:

22 CLERK: Have a seat, please, sir. Once you're
23 seated, speak up loud and clear stating your name on the
24 record.

25 THE WITNESS: Lance Austin Williams.

1 DIRECT EXAMINATION BY MR. SNELL:

2 Q Mr. Williams, can you tell the jury what your date of
3 birth is?

4 A [REDACTED] [REDACTED] [REDACTED].

5 Q And how old are you today?

6 A I'm 25 years old.

7 Q And, just like with Ms. Moore, I'm going to stand back
8 here to remind us to talk loud enough for the jury to
9 hear and the court reporter to take down. Okay?

10 A Okay.

11 Q Now, Lance, how old are you today?

12 A Twenty-five.

13 Q And can you tell the jury--- First of all, where were
14 you born?

15 A I was born at Baptist Hospital in Montgomery, Alabama.

16 Q And who raised you when you were young?

17 A My grandmother and my mom both raised me whenever I
18 was younger. And then my mother actually raised me
19 from then on.

20 Q Is your grandmother in the courtroom?

21 A Yes, she is. She's sitting over there (indicating).

22 Q Is your mother in the courtroom?

23 A She's sitting next to my grandmother.

24 Q Now, how long did you live in Alabama?

25 A I lived in Alabama from birth to the age of 11.

1 Q And where did you go after you left Alabama?

2 A My mother and I, we moved to Tampa, Florida.

3 Q And how long did you live in Tampa?

4 A From age 11 to 19.

5 Q And, when you left Tampa, where did you go?

6 A I came here to Swansea, South Carolina.

7 Q How old were you when you moved to Swansea?

8 A I was 19 years of age.

9 Q And how far have you gone in school?

10 A I have a 12th grade education, high school diploma.

11 Q Now, do you have any specific job training or post-
12 high school training?

13 A Well, with my job, I held certain certifications like
14 OSHA training, heavy equipment training. I was able
15 to train people to be able to operate forklifts and
16 certify them.

17 Q And what kind of work have you done since high school?

18 A When I first graduated down in Tampa, I went into
19 plumbing. I did that for about a year and a half.
20 And, when I moved here to South Carolina, I got a job
21 with FedEx Ground, and I worked loading trucks. I
22 also did a route during the day. I went to Mesa; and,
23 in September of 2005, I went to work in the aviation
24 warehouse in maintenance, actually with the aircraft,
25 dealing directly with the mechanics that work on

1 airplanes. And then, from Mesa Airlines, on February
2 1st 2010, I went to ASA Airlines.

3 Q Okay. And where was your job at ASA Airlines? Where
4 did you report to work?

5 A I reported to work at the airport, Columbia
6 Metropolitan.

7 Q And what did you do there?

8 A The same thing I did at Mesa, warehousing, receiving
9 parts, entering them into the system, inventorying
10 them, distributing them to the maintenance mechanics.

11 Q Now, when you moved to Swansea, who did you live with?

12 A When I moved to Swansea, I lived with my mother.

13 Q What other family do you have?

14 A I have a three-year-old daughter; I have my
15 grandmother; I have a father that lives in Deatsville,
16 Alabama; I have a step-grandfather. I have many
17 relatives that live in [Victim] Alabama.

18 Q And who's the mother of your daughter?

19 A Heather Rogers sitting over there.

20 Q Can you tell the jury, I guess, how long have you
21 known the [B] family?

22 A I have known the [B] since '04. That's whenever I
23 met Christopher [B] which is the son of Kevin [B]
24 and is the brother of Brittany [B]

25 Q And were you and Chris friends?

1 A Yes.

2 Q Approximately how old is he? How old is he?

3 A I believe Chris is 24 years old.

4 Q Now, when did you get to meet the rest of the family,
5 including Brittany [B]

6 A I met Chris at an outing, and then me and Chris began
7 to hang out. And that's whenever he brought me to his
8 father's house and I was introduced to Kevin [B] I
9 was introduced to Sharon [B] and Brittany [B]

10 Q And who is Sharon [B]

11 A Sharon [B] is sitting over there in front of Kevin
12 [B] over there.

13 Q Now, how long had you known Brittany before y'all
14 started dating?

15 A I've known Brittany since 2004, so I'd probably known
16 her roughly six years.

17 Q All right. And when did y'all start dating?

18 A December 1st, 2010 or 2009.

19 Q And when was the first time you met [Victim]

20 A I met [Victim] shortly after she was born.

21 Q And did you know who [Victim]'s father was?

22 A Yes, I do.

23 Q Who is that?

24 A It's Adam Cooper.

25 Q And do you know members of the Cooper family?

1 A I know of them. I've met them on certain occasions,
2 like dropping [Victim] off or certain outings.

3 Q Now, up to this point, how have you gotten along with
4 the [B] and Cooper families?

5 A Like, with the Coopers, I didn't really have much
6 contact with them. Like I said, we'd just do the
7 transportation of [Victim] With the [B] I was,
8 more or less, like a family member with them. I
9 considered them family too.

10 Q How much time did you spend with them?

11 A I spent a significant amount of time with Kevin [B]
12 and actually a lot more with him than I did with my
13 own mother.

14 Q Now, do you have any history of treatment of any type
15 of anger problems?

16 A I spent a lot of time when I was younger being--- Dr.
17 Renfro did evaluations on me. I was placed on
18 Ritalin when I was younger. My mother took me off of
19 it about two years ago. I did a test through my
20 doctor, and I was placed on Lexapro.

21 Q And how long did you take that medication?

22 A I took the medication probably for about three months.
23 I didn't like the way it affected me. It left me
24 feeling the same always. Whether I slept for ten
25 hours or slept for two hours, I always felt the same.

1 I didn't like it.

2 Q Now, on April 15th, 2010, which was a Thursday, were
3 you regularly scheduled to work that day?

4 A I was.

5 Q And did you go to work?

6 A No, I did not.

7 Q Can you tell the jury why not?

8 A On Monday, I had worked so I could replace schedules.
9 Somebody else said they'd work for me on Friday so I
10 could take a trip to Alabama. While at work, I backed
11 one of our company vehicles into another company
12 vehicle, so I was required to leave work and go take a
13 drug test, and I could return to work upon the drug
14 test results. So the drug test results didn't come
15 back until Thursday afternoon; and they, of course,
16 were negative, nothing.

17 Q Was that a standard requirement at your job if there
18 was an accident like that?

19 A Yes, it was.

20 Q And can you tell us where were you going in Alabama
21 and what was the purpose?

22 A I was going to McKenzie, Alabama; and it was my second
23 cousin's wedding. She was getting married, and I was
24 taking my daughter. My mother and I were going with
25 Mark who's sitting over there by my mom, which is, I

1 guess you could call him my stepdad.

2 Q Now, when were you--- When did you first find out that
3 you weren't going to be at work on Thursday?

4 A I found out that Monday. They had me go take the drug
5 test. And, like I said, they told me I could return
6 upon the results of the test.

7 Q Now, during this week, where was Brittany **B**
8 living?

9 A She was living with LeeAnn Harvey in Swansea.

10 Q And who was living with--- Who else was living with
11 Brittany?

12 A **Victim** **Victim** Kaylee, Carlie and LeeAnn's son.

13 Q And Kaylee and Carlie, are those LeeAnn's children?

14 A Yes, those are both her daughters.

15 Q So how many children total were in the home?

16 A Four.

17 Q And can you tell us the ages of the other children?

18 A At the time, **Victim** was 15 months old; Carlie, I
19 believe, was going on three; and I believe Kaylee was
20 going on, I think she was three going on four; and
21 the son, he was, I believe, six months old or five
22 months old. He was a newborn.

23 Q And what was the relationship between Brittany and
24 LeeAnn?

25 A LeeAnn's two girls, Kaylee and Carlie, is Brittany

1 B nieces.

2 Q And who is their father?

3 A Christopher B

4 Q Okay. Now, when was the decision made for you to
5 watch Victim on that Thursday?

6 A That Wednesday, April 14th, that night.

7 Q And where was Brittany going?

8 A She was going to go help her father build a fence that
9 he had to put up.

10 Q What kind of fence?

11 A A privacy fence. He had to put it up because he owns
12 a tow truck service and he parks his tow truck at his
13 house so--- And it's not allowed to be visible from
14 the road in a residential area, so he had to keep them
15 behind a fence so you can't see them.

16 Q Now, why did Brittany want to put up that fence
17 instead of sending you?

18 A She said that she wanted to spend time with her father
19 and she didn't want to cancel on spending time with
20 him. So she went.

21 Q Now, how long were you supposed to have Victim that
22 morning or that day?

23 A The prior agreement was that, when she got through,
24 she would come and get Victim and then she would do
25 the dropping off.

1 Q About what time were you expecting her back?

2 A Sometime in the afternoon between 1:00 and 2:00.

3 Q Now, had you ever kept or watched [Victim] before?

4 A One other time, but Kaylee and Carlisle and my own
5 daughter were present, and it was for about an hour.

6 Q All right. And when was that?

7 A About two weeks prior to April 15th.

8 Q Okay. And where did Brittany and LeeAnn go?

9 A They went to the grocery store and the gas station.

10 Q Now, when they got back, were there any issues as far
11 as how the children were?

12 A None.

13 Q Now, even though this was the first time you had kept
14 [Victim] by yourself, was there--- Was it unusual for
15 Brittany to use a babysitter?

16 A Not--- It wasn't unusual, I mean, no.

17 Q Why not?

18 A A lot of times--- She had [Victim] solely; she raised
19 [Victim] solely by herself. She had a lot of time
20 that she dedicated to [Victim] and sometimes she
21 needed a break.

22 Q Now, on Wednesday night, who all was at the trailer?

23 A LeeAnn Harvey, [Victim] myself, Kaylee, Carlisle and
24 LeeAnn's son.

25 Q And what did you and Brittany do that night?

1 A We--- I believe we watched a movie.

2 Q Y'all stayed in?

3 A Correct.

4 Q And what time you did y'all go to bed?

5 A Between 11:00 and 12:00 o'clock.

6 Q And what time did Brittany get up in the morning?

7 A It was around 7:30.

8 Q And what time did you wake up?

9 A I actually woke up around 10:30, but I was awake
10 whenever Brittany left the house at 7:30.

11 Q Now, did Brittany do anything for [Victim] that
12 morning before she left?

13 A Not to my recollection, no.

14 Q Okay. When Brittany left, where was she headed to?

15 A She was headed to her father's house to help him erect
16 the fence.

17 Q And who did she take with her?

18 A Just herself.

19 Q So, when Brittany left, who did she leave at the
20 trailer?

21 A [Victim] [REDACTED]

22 Q And who else was there?

23 A Myself, LeeAnn and Carlie and her son.

24 Q Now, what happened after you got up that morning?

25 A Carlie was actually the first one to wake up, and she

1 woke [Victim] up. And that's when myself and LeeAnn
2 got up. LeeAnn fed [Victim] and, while feeding
3 [Victim] Carlie was sitting at her princess table;
4 and she had asked that I feed her since LeeAnn was
5 feeding [Victim] So I fed Carlie.

6 Q Now, what time did LeeAnn leave?

7 A It was around 11:30.

8 Q And did she take her children with her?

9 A She did.

10 Q And, when LeeAnn left, who was left in the trailer?

11 A [Victim] [redacted] and myself.

12 Q And what did you and [Victim] do at that time?

13 A After LeeAnn left, I went outside with [Victim] in the
14 front yard.

15 Q Now, what did you take her outside for?

16 A To get out of the house, to play.

17 Q And where did you take her?

18 A To the front yard.

19 Q And what happened when you took her outside?

20 A We were outside for a little while; and, while
21 outside, she tripped and fell. And that's when she
22 bumped her head.

23 Q Now, the front yard, that's the side away from the
24 other house and the other buildings on the property?

25 A Correct.

1 Q Did [Victim] get hurt when she was outside?

2 A Ask the question again.

3 Q Did [Victim] get hurt when she was outside?

4 A Yes, she did.

5 Q Tell the jury exactly what happened.

6 A She was outside towards the front yard where the front
7 steps are. It's actually where the cars are parked,
8 and there's ruts where the tires had been. And that's
9 where she had fell and bumped her head.

10 Q How did she fall?

11 A She was running; and, when she was running, she
12 tripped and fell.

13 Q And where were you at that time?

14 A In the front yard with her.

15 Q How far away from her were you when she fell?

16 A I wouldn't say maybe--- Six feet maybe.

17 Q You were trying to keep up with her?

18 A Correct.

19 Q Now, how bad did it look? How hurt did she look at
20 that time?

21 A It was just a red mark on her head at the time.

22 Q And was she crying after that?

23 A She cried for a little while, but it's not--- She
24 didn't continue to cry. I mean, I wiped her off and
25 dusted the dirt off of her, and that's when she

1 stopped.

2 Q And when did you tell Brittany? Well, did you ever
3 tell Brittany about the bump on her head?

4 A I did. Around 12:00 or 12:30 when she contacted me is
5 whenever I told Brittany about her falling and hurting
6 her head.

7 Q And what did Brittany--- How did Brittany contact you?

8 A She called me on my cell phone.

9 Q And what did she call you for?

10 A She had called me to check on [Victim] And at that
11 time was whenever she explained to me that I'd be
12 dropping [Victim] off to be with [Victim] s
13 grandparents on her father's side and also retrieving
14 her child support for her.

15 Q And how did Brittany respond when you told her about
16 the head bump?

17 A She just asked me if it was bad. She asked if she was
18 okay. And then that's when she had asked me to take a
19 picture of her and send it to her.

20 Q Did you do that?

21 A Not immediately, no.

22 Q Now, when did LeeAnn come back?

23 A LeeAnn came back around 1:00 o'clock.

24 Q And what were you doing when LeeAnn came back?

25 A When she came back, I was coming from the bathroom on

1 the right side of the trailer.

2 Q And what were you doing?

3 A I had just got through blow drying [Victim] hair.

4 Q Why?

5 A I had given her bath because I had laid her down for a
6 nap. And I had taken a nap too. The air conditioning
7 was off. There is no central heating and air in the
8 trailer. There's two window units, one in the master
9 bedroom and one in the living room. Neither one of
10 them was on. And, in the room [Victim] was in, there
11 is no window unit and it was hot. And I woke up
12 sweating myself. She was fully dressed and under a
13 blanket. And I took it upon myself to bathe her.

14 Q Now, why were the air conditioners off?

15 A Because, at the time in the morning, it wasn't hot in
16 the house.

17 Q Did it heat up?

18 A Yes, it did.

19 Q Now, when LeeAnn got there, how did she react to your
20 blow drying her hair or giving [Victim] a bath?

21 A She didn't say anything. She just asked what I was
22 doing, and I explained what I was doing.

23 Q Now, did LeeAnn ask you to do her any favors at that
24 time?

25 A At the time is whenever she--- Carlie was not feeling

1 good, and she laid Carlie down for a nap. And that's
2 when she went back over to her mother's shop to get
3 her--- She came to the house originally to get her
4 son's bottle so she could feed him.

5 Q Now, how old is Carlie?

6 A At that time, I believe she was two and a half.

7 Q When she laid her down, where did she lay her?

8 A In her bed in her room.

9 Q So you agreed to keep Carlie?

10 A I agreed to keep an eye on her, yes, but she was
11 asleep the whole time she was there.

12 Q And where--- What did LeeAnn leave to go do?

13 A She went back to her mother's shop to feed her son and
14 to associate with Tommi's, her mother's, clients.

15 Q Now, how did you feel when Brittany had told you that
16 she wasn't coming back that early afternoon and was
17 planning on you staying all day?

18 A I originally didn't--- I mean, I didn't mind. I had
19 agreed to watch **Victim** until early afternoon. When
20 I found out that I was watching her until 6:00 o'clock
21 at night, I mean, I guess I felt like I was being
22 used.

23 Q And when--- What happened when LeeAnn came back to the
24 trailer after she left Carlie with you?

25 A She came back and got Carlie and she got the rest of

1 her stuff, and then they left to go meet Brittany for
2 the makeup appointment.

3 Q Where was the makeup appointment at?

4 A If I'm not mistaken, they were at Columbiana Mall over
5 in Harbison.

6 Q And what time--- Who all had makeup appointments?

7 A Brittany [B] Heather Thompson and LeeAnn Harvey.

8 Q What time was Brittany's appointment?

9 A I believe hers was--- I don't recall which one hers
10 was. I know that there was three separate
11 appointments and each one of them had three separate
12 appointments and they all wanted to go together. So
13 that's why they all left at the same time.

14 Q What time did LeeAnn leave?

15 A She left around 3:00 o'clock, 2:45, 3:00 o'clock.

16 Q Now, when you were left with [Victim] this day, was
17 there anyone else there with you, any other adults to
18 help you take care of her?

19 A No.

20 Q So you were responsible for everything.

21 A Correct.

22 Q And did that include giving her drinks?

23 A It includes everything.

24 Q Did you have an occasion or a need to change her
25 diaper?

1 A Yes, I did.

2 Q And tell us what kinds of diapers you had to change.

3 A In the morning, I changed diapers that were just wet.
4 Towards the afternoon is whenever I did change the
5 dirty diaper, the messy one that had poop in it.

6 Q All right. And can you describe it?

7 A It was a messy diaper, diarrhea, runny.

8 Q And how did you know she needed to be changed?

9 A Because I'd been---

10 COURT REPORTER: I'm sorry. What did you say?

11 Q How did you know she needed to be changed?

12 A Because I could smell it. I mean, I could smell
13 the---

14 Q Now, had you ever changed [Victim] before?

15 A I had prior to that, yes.

16 Q Can you tell the jury about when you changed her, what
17 time you changed her before?

18 A At Kevin [B] house, at her father's house, when I
19 would help Brittany with [Victim] I would change her
20 diaper.

21 Q Now, when you took this particular diaper off, could
22 you tell the jury where she was dirty?

23 A There was poop like on the back side of her, almost
24 towards the top of the diaper, and all the way up the
25 front towards the top of the diaper.

1 Q And did that include going up inside her private
2 areas?

3 A Yes. It was a very messy diaper.

4 Q Okay. And, when you found out you had to change her,
5 what was the first thing you did?

6 A I laid her on her back--this is in the, actually in
7 LeeAnn's son's room--on the floor, and I resumed to
8 change her diaper.

9 Q And can you describe to the jury what steps you used?
10 I mean---

11 A When I was changing the diaper, I laid her on her
12 back, pulled her shorts down, took her diaper off.
13 There was poop that was on the back side of her, so I
14 lifted her up and cleaned the back side of her off
15 before I sat her back down. And then that's whenever
16 I moved to the front and cleaned the front side of her
17 off.

18 Q Now, what did you use to clean her off?

19 A Baby wipes.

20 Q Where did you get them? Where did you get them?

21 A Out of [Victim] diaper bag.

22 Q And can you show the jury how do you--- When you took
23 the wipe, how did you hold it and clean her?

24 A Like that (indicating).

25 Q Okay. And did you have to hold her legs during this