

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

R. Scott Sprouse, Circuit Court Judge

MAXWELL E. SIPES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000231

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 5-9, 2007	1
APPLICATION FOR POST-CONVICTION RELIEF	617
RETURN.....	624
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 9, 2016	631
ORDER REGARDING APPLICANT'S EXHIBIT #1	807
APPLICANT'S EXHIBIT # 2 (OPINION 2009-UP-540)	810
ORDER OF DISMISSAL.....	812
INDICTMENT.....	831

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

MAXWELL SIPES,)

DEFENDANT.)

2005-GS-04-0381

MARCH 5 - 9, 2007

TRANSCRIPT OF RECORD

VOLUME I

BEFORE:

THE HONORABLE ALEXANDER MACAULAY, JUDGE

APPEARANCES:

MINDY HERVEY, ESQUIRE
ASSISTANT SOLICITOR FOR 10TH JUDICIAL CIRCUIT
ATTORNEY FOR THE STATE

DAVID STODDARD, ESQUIRE
ATTORNEY FOR THE DEFENDANT

RENEE H. TOLLISON
CIRCUIT COURT REPORTER

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Dolford F. Payne, M.D.				
Hervey	57		79	
Stoddard		75		
Garland James Major, Jr.				
Hervey	81			
Minor				
Hervey	108		176	
Stoddard		141		
Tina Goodwin				
Hervey	183		212	
Stoddard		191		214
Allison Foster DeFelice, MD				
Hervey	218		274	
Stoddard		253		282
Carl Lund, MD				
Stoddard	290		318	
Hervey		300		320
Donna Bailey Burney				
Stoddard	322		328	
Hervey		324		
Ouida Blackburn				
Stoddard	342			
Hervey		349		
Cindy B. Stichnoth				
Stoddard	355		396, 411	
Hervey		367		406, 411
Lorena Sipes				
Stoddard	416			
Hervey		418		
Jeffrey Charles Burney				
Stoddard	430		438, 440	
Hervey		432		439
Maxwell Eugene Sipes				
Stoddard	442		499, 504	
Hervey		465		504

<< INDEX >>

	PAGE
Batson	5
Jury Voir Dire	6
Opening Statements	45
Hervey	53
Stoddard	
Closing Statements	511
Stoddard	531
Hervey	557
Charge	600
Verdict and Sentencing	612
Certificate of Reporter	

EXHIBITS

No	DESCRIPTION	ID	EV
D-1	Letter from Michelle Matthews of 11/18/03	172	
D-2	Letter from Michelle Matthews of 5/3/04	172	
D-3	Affidavit of Service 10/26/2003	412	507
C-1	Jury Question	575	
C-2	Jury Note	584	

VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defend.	
146	Dean Williams	B	M				x
50	William Edwards	W	M			x	
30	Terry Chastain	W	M			x	
132	David Taylor	W	M		x		
113	James Pepper	W	M			x	
T-1	Marla Fuller	W	F			x	
6	Jimmy Andrews	W	F				x
135	Mary Thompson	B	F				x
45	Lance Dubaere	W	M				x
T-14	Lessie Pruitt	W	F			x	
81	Brittany Key	W	F				x
111	Hugh Parker, Jr.	W	M			x	
T-13	Katherine Patterson	W	F				x
T-7	Scott Humphrey	W	M				x
28	Hampton Cason	W	M				x
3	Charles Allen	W	M		x		
114	Theodore Parna	W	M		x		
115	Fred Pickens, Jr.	B	M		x		
73	Sandra Huey	W	M			x	
104	John Miller (foreman)	W	M				x
41	Kathy Davis	W	F			x	
T-3	Carolyn Carpenter	W	F				x
118	Deborah Pressley	W	F			x	
110	Philip Osborne	W	M			x	
85	Cynthia Lockaby	W	F				x
107	Jean Moulder	W	F				x
Alt #1							
T-4	Sara Farr	W	F				x
Alt #2							
T-10	Matthew Lusk	W	M			x	
79	Mary Jones (not present)						
92	Terrence Mack		M				x

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

4 THE COURT: Is the State ready to proceed?

6 THE COURT: Is the Defense ready to proceed, Mr.
7 Stoddard?

9 THE COURT: Ladies and gentlemen, this is a term
10 of General Sessions Court. It's sometimes called criminal
11 court. Its purpose is to resolve questions of alleged
12 criminal conduct arising between the State of South Carolina
13 and the Defendant in a fashion which will ensure that
14 justice under the law is accomplished.

25 I might note further that if any person should talk to

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

7

1 you or attempt to talk to you about any case that might be
2 scheduled or pending in this court for this week, it would
3 be your solemn duty to immediately report that matter to the
4 Court. You are now the sworn jurors for the Court of
5 General Sessions for Anderson County, and no one is to
6 interfere with your exercise of your duties as jurors.

7 We will now begin the jury selection process in the
8 first case. Madam Solicitor, you may call your case.

9 MS. HERVEY: May it please the Court, Your Honor.
10 The State calls 2005-GS-04-382, the State of South Carolina
11 versus Maxwell Eugene Sipes, indicted for criminal sexual
12 conduct in the first degree.

13 THE COURT: Ladies and gentlemen of the petit jury
14 panel, we're about to commence the trial of the State of
15 South Carolina versus Maxwell ...

16 Is it Eugene Sipes?

17 MS. HERVEY: Yes, Your Honor.

18 THE COURT: Maxwell Eugene Sipes, 2005-GS-04-0381,
19 who is charged in the indictment with criminal sexual
20 conduct in the first degree. Ms. Hervey, Assistant
21 Solicitor for Anderson County, will represent the State, and
22 Mr. Stoddard would represent the Defendant.

23 Ms. Hervey, if you would, please, stand and introduce
24 yourself and any members of your staff or anyone else that
25 might assisting you in the trial of this case.

1 MS. HERVEY: My name is Mindy Hervey. I'm an
2 Assistant Solicitor here in Anderson and Oconee Counties. I
3 work for Solicitor Chrissy Adams. Normally she is here, but
4 she gave birth to a new baby two weeks ago. So I will be
5 here representing the State of South Carolina. You will see
6 seated beside me Investigator Garland Major with the
7 Anderson County Sheriff's Office. You will occasionally see
8 my investigator, Tammy Kerlee. I am also assisted by Denise
9 Hagy, my victim witness person who is here to assist me in
10 getting these witnesses to and from court in a timely
11 fashion. Thank you.

12 THE COURT: Thank you, ma'am.

13 Now, the Defendant, Maxwell Eugene Sipes, is
14 represented by Mr. Stoddard.

15 Mr. Stoddard, if you'd please stand and introduce
16 yourself and your client.

17 MR. STODDARD: Yes, sir.

18 I am David Stoddard. I'm an attorney here in Anderson
19 in a solo practice. This is my client, Max Sipes.

20 Stand up, Max.

21 Maxwell Sipes, also known as Max Sipes. I do ---

22 THE COURT: Very good.

23 MR. STODDARD: I do have an assistant in the
24 courtroom that you may see from time to time, Lynzette
25 Alexander, who will -- she's on the back row -- who will

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

9

1 from time to time -- stand up, Lynzette -- help me get
2 witnesses in and out of the courtroom.

3 THE COURT: Thank you very much.

4 Now, ladies and gentlemen of the jury panel, is there
5 any member of the jury panel related by blood or marriage
6 now or formerly or a close personal friend or business
7 associate of the Defendant, Maxwell Eugene Sipes? If so,
8 please stand.

9 (No response.)

10 THE COURT: Now, I'm going to read some potential
11 witnesses in this case. When I say potential witnesses,
12 those names will be of witnesses who may be called. They do
13 not have to be called, but they may be called in this case.
14 And if they're in the courtroom as their names are called,
15 if they would please stand, I would appreciate it.

16 Garland Major, Anderson County Sheriff's Department,
17 Dolford F. Payne, M.D., Michelle Matthews, Denise Houston,
18 Eddie Colbert, Terese M. Degrandi, M.D., Allison DeFelice,
19 M.D., Ernest Martin, Ted Buckenham, B-U-C-K-E-N-H-A-M, Minor
20 Minor, Taylor Sipes, Tina -- thank you, ma'am -- Tina
21 Goodwin. Thank you, ma'am. Ouida Blackburn. Thank you,
22 ma'am. Donna Burney, Mae Dutton, Harley Spearman, Ashley
23 Spearman, Carl Lund, M.D., Jay White, Penney Kelly, Corey
24 Sipes, Robert Dickert, Lorene ...
25 Is it Lorene or Lauren Sipes?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

10

1 MR. STODDARD: Lorene.

2 THE COURT: Lorene Sipes.

3 MR. STODDARD: I'm sorry. Lorena.

4 THE COURT: Lorena Sipes? Thank you very much,
5 ma'am.

6 Is any member of the jury panel related by blood or
7 marriage now or formerly or close personal friend or
8 business associate of Garland Major of the Anderson County
9 Sheriff's Department, Dr. Dolford F. Payne, Michelle
10 Matthews, Denise Houston, Eddie Colbert, Dr. Terese M.
11 Degrandi, Dr. Allison DeFlice (phonic) or Felice (phonic).

12 MS. HERVEY: DeFelice, Your Honor.

13 THE COURT: Felice?

14 MS. HERVEY: DeFelice.

15 THE COURT: DeFelice. Dr. Allison DeFelice,
16 Ernest Martin, Ted Buckenham, Minor .

17 MS. HERVEY: Minor .

18 THE COURT: Minor . Excuse me. I apologize.

19 Minor , Taylor Sipes, Tina Goodwin, Ouida
20 Blackburn, Donna Burney, Mae Dutton, Harley Spearman, Ashley
21 Spearman, Dr. Carl Lund, Jay White, Penney Kelly, Corey
22 Sipes, Robert Dickert, Lorena Sipes. If there's any member
23 of the jury panel related by blood or marriage or close
24 personal friend or business associate of any of the
25 potential witnesses in this case, if you would please stand

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

11

1 at this time.

2 Yes, sir, your name, please?

3 JUROR: Charles Allen.

4 THE COURT: Yes, sir?

5 JUROR: I have ministered in this area, and I am a
6 friend of Robert Dickert.

7 THE COURT: All right. Would that in any way
8 interfere with your ability to give both the State and the
9 Defendant a fair and impartial trial in this case?

10 JUROR: No, sir.

11 THE COURT: Very good. Thank you, sir.

12 Anyone else?

13 (No response.)

14 THE COURT: Now, was any member of the jury panel
15 a member of the Grand Jury that found and returned the
16 indictments in this case? If so please stand.

17 (No response.)

18 THE COURT: Has any member of the jury panel
19 formed or expressed an opinion about this case or any matter
20 that might be concerned in this case? If so please stand.

21 (No response.)

22 THE COURT: Does any member of the jury panel have
23 a relative who is a law enforcement officer? If so please
24 stand. Any member of the jury panel who has a relative who
25 is a law enforcement officer?

1 All right. We'll start on this side. If you would,
2 please, ma'am, your name?

3 JUROR: Jean Moulder.

4 THE COURT: Yes, ma'am?

5 JUROR: I have a nephew that's a police officer.

6 THE COURT: All right. Is it here in Anderson
7 County?

8 JUROR: Laurens.

9 THE COURT: Laurens County?

10 JUROR: (Nodded head up and down in the
11 affirmative.)

12 THE COURT: Now, would that in any way interfere
13 with your ability to give both the State and the Defendant a
14 fair and impartial trial in this case?

15 JUROR: No.

16 THE COURT: Very good. Thank you, ma'am.
17 Yes, ma'am?

18 JUROR: I had a son-in-law who was with the
19 Anderson County Sheriff's Department.

20 THE COURT: Would that in any way -- your name,
21 please?

22 JUROR: Darlene Lockaby.

23 THE COURT: All right. Would that in any way
24 interfere with your ability to give both the State and the
25 Defendant a fair and impartial trial in this case?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

13

1 JUROR: No.

2 THE COURT: Very good. Thank you, ma'am.

3 Yes, ma'am?

4 JUROR: Lessie Pruitt. My brother is a U.S.
5 Marshall.

6 THE COURT: Would that in any way interfere with
7 your ability to give both the State and the Defendant a fair
8 and impartial trial in this case?

9 JUROR: No, sir.

10 THE COURT: Very good. Thank you, ma'am.

11 Yes, sir?

12 JUROR: Yes, sir. My son-in-law is an
13 investigator with the Anderson County Sheriff's Department.

14 THE COURT: All right. Would that in any way
15 interfere with your ability to give both the State and the
16 Defendant a fair and impartial trial in this case?

17 JUROR: No, sir.

18 THE COURT: Very good. Thank you, sir. Did I get
19 your name? I'm sorry. I think I forgot to get your name.

20 JUROR: It's Fred Bowen.

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

22 Is there any member of the jury panel a member or a
23 contributor to certain victim rights organizations such as
24 CAVE or any other victim's rights organization? If so
25 please stand. Any member of the jury panel a member of CAVE

1 or any other victim's rights organization? If so please
2 stand. Member or contributor to CAVE or any other victim's
3 rights organization? If so, if you would please stand.

4 (No response.)

5 THE COURT: Now, the next question I'm going to
6 ask you to -- if you think it applies to you or even if you
7 have a question about the question itself, I'm going to ask
8 you to stand and then come forward individually to speak
9 privately with me in front of the courtroom.

10 Has any member of the jury panel or a member of their
11 immediate family ever been a victim of assault or other
12 violent crime? If so please stand. Has any member of the
13 jury panel or members of their immediate family ever been
14 the victim of an assault or other violent crime? If so
15 please stand.

16 Yes, ma'am. If you would please, come forward. We
17 might need a bailiff.

18 (WHEREUPON, the following was held on the record, in
19 the presence of the jury panel, but out of the hearing of
20 the jury panel.)

21 THE COURT: Yes, ma'am, your name, please?

22 JUROR: Mary Dunford.

23 THE COURT: Yes, ma'am?

24 JUROR: My son was robbed in his apartment ...

25 THE COURT: Uh-huh (affirmative).

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

15

1 JUROR: ... in New York and bound and a gun held
2 to his head.

3 THE COURT: Uh-huh (affirmative).

4 JUROR: Fortunately he was not hurt.

5 THE COURT: Wonderful. All right. Now, when did
6 that happen?

7 JUROR: It was ...

8 THE COURT: Recently?

9 JUROR: It was in the summer of 2003.

10 THE COURT: All right. Has it been resolved?

11 JUROR: They did not find the ...

12 THE COURT: All right. Now, would that in any way
13 interfere with your ability to give both the State and the
14 Defendant a fair and impartial trial in this case?

15 JUROR: (No response.)

16 THE COURT: Now, if you have any reservations, let
17 me know.

18 JUROR: I think it just might be emotional for me.

19 THE COURT: Well, I'm going to excuse you because
20 that's one of the reasons -- I'll explain to the jury panel
21 -- one of the reasons -- it's just on this case. But I
22 don't want people to have to -- you didn't ask to be here,
23 so I don't want to put you in a position where you would be
24 emotionally or maybe some reservation about it.
25 Uncomfortable in any way.

1 JUROR: I don't know what's happened, so it might
2 be hard to hear some things.

3 THE COURT: All right. Well, that's why I'm going
4 to excuse you.

5 JUROR: For this case?

6 THE COURT: Just for this case.

7 JUROR: All right.

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

9 JUROR: So I stay here for now?

10 THE COURT: Yes, ma'am, if you would please stay
11 with us. Thank you.

12 Good morning, sir. Or afternoon now. I'm sorry.

13 JUROR: Ken Hellams.

14 THE COURT: Yes, sir?

15 JUROR: My wife was raped at the age of fourteen.

16 THE COURT: All right. And that obviously has
17 been resolved? I mean ...

18 JUROR: It was never prosecuted.

19 THE COURT: Never prosecuted? All right. Would
20 that in any way interfere with your ability to give both the
21 State and the Defendant a fair and impartial trial in this
22 case?

23 JUROR: I have no idea, sir.

24 THE COURT: I'm going to excuse you. I think
25 that's too close to home and all that. But I want to thank

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

17

1 -- you stay with us, but it will just be on this case, okay?

2 JUROR: Okay. Do I stay now?

3 THE COURT: Yes, sir, you stay with us, and I'll
4 excuse you later.

5 Yes, ma'am?

6 JUROR: Juror number 118, Deborah Pressley.

7 Attempted arson and breaking into a motor vehicle.

8 THE COURT: Uh-huh (affirmative).

9 JUROR: The attempted arson was on my home.

10 THE COURT: Has that been resolved?

11 JUROR: He's in prison.

12 THE COURT: Now, would that in any way interfere
13 with your ability to give both the State and the Defendant a
14 fair and impartial trial in this case?

15 JUROR: No, sir. But I was involved in the South
16 Carolina victim's protection during that time.

17 THE COURT: All right. Again, would that in any
18 way interfere with your ability to give both the State and
19 the Defendant a fair and impartial trial in this case?

20 JUROR: No, sir.

21 THE COURT: Very good. Thank you for coming
22 forward.

23 MR. STODDARD: What was that crime again?

24 THE COURT: Arson.

25 JUROR: And breaking into motor vehicle.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

18

1 THE COURT: Very good. Thank you.
2 Yes, sir?
3 JUROR: Brent Coffie.
4 THE COURT: Yes, sir?
5 JUROR: Was your question any ---
6 THE COURT: A victim.
7 JUROR: A victim?
8 THE COURT: Yes, sir. Of a violent crime.
9 JUROR: Or a relative?
10 THE COURT: Right.
11 JUROR: She actually is -- I had a sister deliver
12 the violent crime. Is that the same thing?
13 THE COURT: Committed one, you mean?
14 JUROR: Yeah.
15 THE COURT: Not exactly. But tell me about it
16 anyway. Would that in any way interfere with your ability
17 to give both the State and the Defendant a fair and
18 impartial trial in this case?
19 JUROR: No, not at all.
20 THE COURT: Okay. Very good.
21 JUROR: I just wanted to mention it.
22 THE COURT: Thank you. Appreciate it.
23 Anyone else?
24 (WHEREUPON, the Court resumed the bench and the
25 following was held on the record in open court.)

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

19

1 THE COURT: Is any member of the jury panel aware
2 of any interest, bias or prejudice towards either the
3 Defendant or the State of South Carolina? If so please
4 stand.

5 (No response.)

6 THE COURT: Does any member of the panel know of
7 any reason whatsoever why he or she could not give both the
8 State of South Carolina and the Defendant a fair and
9 impartial trial? If so please stand.

10 (No response.)

11 THE COURT: Any additional questions from the
12 State?

13 MS. HERVEY: None from the State, Your Honor.

14 THE COURT: From the Defendant?

15 MR. STODDARD: None from the Defendant.

16 THE COURT: Very good.

17 Ladies and gentlemen of the jury, the way that we draw
18 a jury in General Sessions Court is that as you'll note, the
19 Clerk has a drum in front of her -- at one time -- and it's
20 -- and the drum had capsules in it, and each of those
21 capsules contained one of your names. And from that drum
22 the capsules were drawn and the name was drawn. And so as
23 your name, if it happened to be the name in that capsule, is
24 called, if you would come forward and stand at the front of
25 the courtroom.

1 Dr. Graham, if you could, show them where to stand.

2 And stand at the front of the courtroom facing towards
3 the back.

4 All right. Very good. Madam Clerk ...

5 Oh, by the way, ten and five.

6 MS. HERVEY: Five and ten.

7 THE COURT: Or five and ten, whichever. But we
8 all know that ... Very good. Thank you very much.

9 MADAM CLERK: Ladies and gentlemen, as I call your
10 name, if you'll please come forward and present yourselves
11 to the two tables.

12 Juror number 146, Dean Williams, number 146.

13 What say you for the State?

14 MS. HERVEY: Present the juror.

15 MADAM CLERK: What say you for the Defendant?

16 MR. STODDARD: Seat Mr. Williams.

17 MADAM CLERK: Have a seat, please, Mr. -- Mr.

18 Williams, right over here, sir, in the jury box. Thank you.

19 Number 50, William Edwards, number 50.

20 What say you for the State?

21 MS. HERVEY: Present Mr. Edwards.

22 MADAM CLERK: What say you for the Defendant?

23 MR. STODDARD: Strike the juror.

24 MADAM CLERK: You may return to your seat. Thank
25 you, Mr. Edwards.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

21

1 Juror number 30, Terry Chastain, number 30.
2 What say you for the State?
3 MS. HERVEY: Present Mr. Chastain.
4 MADAM CLERK: What say you for the Defendant?
5 MR. STODDARD: Strike the juror.
6 MADAM CLERK: You may return to your seat. Thank
7 you, sir.
8 132, David Taylor, number 132.
9 What say you for the State?
10 MS. HERVEY: Please excuse Mr. Taylor.
11 MADAM CLERK: You may return to your seat. Thank
12 you, Mr. Taylor.
13 Number 113, James Pepper, number 113.
14 What say you for the State?
15 MS. HERVEY: Present Mr. Pepper.
16 MADAM CLERK: What say you for the Defendant?
17 MR. STODDARD: Excuse Mr. Pepper.
18 MADAM CLERK: You may return to your seat. Thank
19 you, Mr. Pepper.
20 Transfer number 1, Marla Adams Fuller, transfer number
21 1.
22 What say you for the State?
23 MS. HERVEY: Present Ms. Fuller.
24 MADAM CLERK: What say you for the Defendant?
25 MR. STODDARD: Excuse Ms. Fuller.

1 MADAM CLERK: Thank you.

2 Number 6, Jimmy Andrews, number 6.

3 What say you for the State?

4 MS. HERVEY: Present Mr. Andrews.

5 MADAM CLERK: What say you for the Defendant?

6 MR. STODDARD: Seat Mr. Andrews.

7 MADAM CLERK: If you'll have a seat in the jury

8 box right up there, please, Mr. Andrews.

9 Number 135, Mary Thompson, 135.

10 What say you for the State?

11 MS. HERVEY: Present Ms. Thompson.

12 MADAM CLERK: What say you for the Defendant?

13 MR. STODDARD: Seat Ms. Thompson.

14 MADAM CLERK: Ms. Thompson, if you'll have a seat

15 right over here in the jury box, please, ma'am. Thank you.

16 Number 45, Lance Dubaere, Number 45.

17 What say you for the State?

18 MS. HERVEY: Present Mr. Dubaere.

19 MADAM CLERK: What say you for the Defendant?

20 MR. STODDARD: Seat Mr. Dubaere.

21 MADAM CLERK: Have a seat in the jury box, please,

22 sir.

23 Transfer number 14, Lessie Pruitt, transfer 14.

24 What say you for the State?

25 MS. HERVEY: Present Ms. Pruitt.

State of South Carolina v. Maxwell Eugene Stipes 2005-GS-04-0381
Jury Voir Dire

23

1 MADAM CLERK: What say you for the Defendant?

2 MR. STODDARD: Excuse Ms. Pruitt.

3 MADAM CLERK: You may return to your seat. Thank
4 you, Ms. Pruitt.

5 Number 81, Brittany Key, number 81.

6 What say you for the State?

7 MS. HERVEY: Present Ms. Key.

8 MADAM CLERK: What say you for the Defendant?

9 MR. STODDARD: You can seat Ms. Key.

10 MADAM CLERK: Seat Ms. Key, did you say?

11 MR. STODDARD: Yes, seat her.

12 MADAM CLERK: If you'll have a seat in the jury
13 box, please, Ms. Key.

14 111, Hugh Parker, Jr., number 111.

15 What say you for the State?

16 MS. HERVEY: Present Mr. Parker.

17 MADAM CLERK: What say you for the Defendant?

18 MR. STODDARD: Excuse the juror.

19 MADAM CLERK: You may return to your seat. Thank
20 you, Mr. Parker.

21 Transfer number 13, Katherine Patterson, transfer 13.

22 What say you for the State?

23 MS. HERVEY: Present Ms. Patterson.

24 MADAM CLERK: What say you for the Defendant?

25 MR. STODDARD: Please seat Ms. Patterson.

1 MADAM CLERK: Have a seat, please, Ms. Patterson,
2 in the jury box.

3 Transfer 7, Scott Humphrey, transfer 7.

4 What say you for the State?

5 MS. HERVEY: Present Mr. Humphrey.

6 MADAM CLERK: What say you for the Defendant?

7 MR. STODDARD: Seat Mr. Humphrey.

8 MADAM CLERK: Have a seat in the jury box, please,
9 Mr. Humphrey.

10 Number 28, Hampton Cason, number 28.

11 What say you for the State?

12 MS. HERVEY: Present the juror, please.

13 MADAM CLERK: What say you for the Defendant?

14 MR. STODDARD: Seat Mr. Cason.

15 MADAM CLERK: If you'll have a seat in the jury
16 box, please, Mr. Cason.

17 Juror number 3, Charles Allen, number 3.

18 What say you for the State?

19 MS. HERVEY: Please excuse Mr. Allen.

20 MADAM CLERK: You may return to your seat. Thank
21 you.

22 Number 114, Theodore Parna, number 114.

23 What say you for the State?

24 MS. HERVEY: Please excuse Mr. Parna, please.

25 MADAM CLERK: You may return to your seat. Thank

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

25

1 you.

2 Number 115, Fred Pickens, Jr., number 115.

3 What say you for the State?

4 MS. HERVEY: Please excuse Mr. Pickens.

5 MADAM CLERK: You may return to your seat. Thank

6 you, Mr. Pickens.

7 Number 73, Sandra Huey, number 73.

8 What say you for the State?

9 MS. HERVEY: Please present Ms. Huey.

10 MADAM CLERK: What say you for the Defendant?

11 MR. STODDARD: Strike Ms. Huey.

12 MADAM CLERK: You may return to your seat. Thank

13 you, Ms. Huey.

14 Number 104, John Miller, Jr., number 104

15 What say you for the State?

16 MS. HERVEY: Present Mr. Miller.

17 MADAM CLERK: What say you for the Defendant?

18 MR. STODDARD: Seat Mr. Miller

19 MADAM CLERK: Have a seat in the jury box, please,

20 Mr. Miller.

21 Number 41, Edna Davis -- Kathy Davis, number 41, Kathy

22 Davis.

23 What say you for the State?

24 MS. HERVEY: Present Ms. Davis.

25 MADAM CLERK: What say you for the Defendant?

1 MR. STODDARD: Excuse Ms. Davis.

2 MADAM CLERK: You may return to your seat. Thank
3 you, Ms. Davis.

4 Transfer number 3, Carolyn Carpenter, transfer 3.
5 What say you for the State?

6 MS. HERVEY: Present the juror.

7 MADAM CLERK: What say you for the Defendant?

8 MR. STODDARD: Seat Ms. Carpenter.

9 MADAM CLERK: If you'll have a seat in the jury
10 box right over here.

11 Juror number 118, Deborah Pressley, 118.

12 What say you for the State?

13 MS. HERVEY: Present Ms. Pressley.

14 MADAM CLERK: What say you for the Defendant?

15 MR. STODDARD: Excuse Ms. Pressley.

16 MADAM CLERK: You may return to your seat. Thank
17 you, Ms. Pressley.

18 Number 110, Philip Osborne, number 110.

19 What say you for the State?

20 MS. HERVEY: Present Mr. Osborne.

21 MADAM CLERK: What say you for the Defendant?

22 MR. STODDARD: Excuse Mr. Osborne.

23 MADAM CLERK: Thank you, Mr. Osborne.

24 Number 85, Cynthia Lockaby, number 85.

25 What say you for the State?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

27

1 MS. HERVEY: Present Ms. Lockaby.
2 MADAM CLERK: What say you for the Defendant?
3 MR. STODDARD: Excuse Ms. Lockaby.
4 MADAM CLERK: I believe ---
5 THE COURT: Let's see. Have we -- I think we --
6 cause did you say? I think we have ten.
7 MR. STODDARD: Yes, for cause. I thought I had
8 nine. Seat the juror.
9 MADAM CLERK: Have a seat in the jury box, please,
10 Ms. Lockaby.
11 THE COURT: All right. We'll have two alternates.
12 Two and one on the alternates.
13 MADAM CLERK: Let's see. I believe we need one
14 more.
15 THE COURT: Oh, I'm sorry.
16 MADAM CLERK: Yes, sir. I believe we do.
17 THE COURT: Now I'm losing track.
18 MADAM CLERK: Number 107, Jean Moulder, 107.
19 What say you for the State?
20 MS. HERVEY: Present Ms. Moulder.
21 MADAM CLERK: What say you for the Defendant?
22 MR. STODDARD: Excuse Ms. Moulder.
23 MADAM CLERK: Ms. Moulder, if you'll have a seat
24 in the jury box, please.
25 MR. STODDARD: Two and one?

1 MADAM CLERK: This is ---

2 THE COURT: No. I'm sorry. I was wrong. We
3 didn't have the twelve. Now we have the twelve. Now we go
4 to the alternates. This will be the first alternate, two
5 and one.

6 MADAM CLERK: Transfer number 4, Sara Farr,
7 transfer 4.

8 What say you for the State?

9 MS. HERVEY: Present Ms. Farr.

10 MADAM CLERK: What say you for the Defendant?

11 MR. STODDARD: Present Ms. Farr.

12 MADAM CLERK: Have a seat in the jury box, please,
13 Ms. Farr.

14 THE COURT: All right. Alternate two.

15 MADAM CLERK: Transfer number 10, Matthew Lusk,
16 transfer 10.

17 What say you for the State?

18 MS. HERVEY: Present the juror.

19 MADAM CLERK: What say you for the Defendant?

20 MR. STODDARD: Excuse Mr. Lusk.

21 MADAM CLERK: You may return to your seat. Thank
22 you, Mr. Lusk.

23 Number 79, Mary Jones, number 79.

24 MS. HERVEY: I think the Judge excused her, Cathy.

25 THE COURT: Is that one of those we transferred?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

29

1 MS. HERVEY: She had previously served.

2 MADAM CLERK: That was Maria Cook.

3 MS. HERVEY: Okay.

4 MADAM CLERK: Number 92, Terrence Mack.

5 What say you for the State?

6 MS. HERVEY: Please present this juror.

7 MADAM CLERK: What say you for the Defendant?

8 MR. STODDARD: Seat Mr. Mack.

9 MADAM CLERK: Have a seat right over here in the
10 jury box. You'll be our second alternate.

11 THE COURT: What did we do with 79?

12 MADAM CLERK: Ms. Jones, Your Honor, she never was
13 here. I'm sorry.

14 THE COURT: Oh, okay.

15 MADAM CLERK: Yes, sir. Sorry.

16 THE COURT: All right. Is there any reason this
17 jury cannot be sworn for the trial of this case, from the
18 State?

19 MS. HERVEY: Did you resolve that issue, or do you
20 want to wait till after lunch?

21 MR. STODDARD: Excuse me. I was conferring with
22 my client. What was that again?

23 THE COURT: In there any reason this jury cannot
24 be sworn for the trial of the case? In other words, any
25 motions?

1 MS. HERVEY: I don't have any motions as to the
2 drawing of the jury. I just didn't know if based on Mr.
3 Stoddard's pretrial motion we wanted to wait for that
4 document issue to be resolved after the lunch just out of an
5 abundance of caution.

6 THE COURT: Well, I'm just talking about this jury
7 right now. I'm not going to swear the jury until after
8 lunch.

9 MR. STODDARD: Oh.

10 THE COURT: But I just need to know if there's any
11 objection.

12 MR. STODDARD: No objection to the jury.

13 THE COURT: All right. Very good. Thank you.

14 Mr. Miller, I'm going to ask you to serve as foreman of
15 this jury. So when we come back -- and actually we're going
16 to be coming back to the third-floor courtroom. I'm going
17 to ask the bailiff to take y'all down to the jury room that
18 you'll be using on the fourth -- on the third floor from the
19 fourth floor. And when you come back, it's a two-row jury
20 box. You'll be in the front -- first row on the front, and
21 -- or to the -- at the end. The two alternates -- I can't
22 remember how ...

23 BAILIFF: One is right at the back, and the other
24 one is one chair. It's split.

25 THE COURT: All right. So in other words the two

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

31

1 alternates will sit on the back row at either end of that
2 row. Everyone else can sit wherever they would.

3 Now, I'm going to -- after you go to the jury room, I'm
4 going to excuse you until, let's say, two o'clock because
5 there's some things I need to take up with the attorneys
6 before we start the trial of the case. But my instructions
7 throughout the trial of this case is going to be that you're
8 not to undertake a discussion of the case among yourselves
9 or permit anyone to discuss it with you. That includes even
10 personalities or anything else. The reason for that, of
11 course, is you don't know what's going to be the most
12 important part of the case to you. It could be the opening
13 statements. It could be the first witness, the last
14 witness, closing arguments or the charge on the law. And so
15 throughout the trial of the case, you need to keep an open
16 mind. In order to do that, you have to just keep your mind
17 completely on something else other than the trial. Once you
18 have all the testimony, the evidence, the charge on the law
19 and the arguments by counsel, then the case will be given to
20 you for your consideration. But until then, do not even
21 discuss the case among yourselves. And particularly, do not
22 permit anybody to discuss it with you.

23 With that I'll excuse you until two o'clock. But go
24 with the bailiff and he'll show you the jury room that
25 you'll be using. Very good.

1 Everyone else remain seated while the jury retires from
2 the courtroom.

3 (WHEREUPON, the jury exited the open court at
4 approximately 12:34 p.m.)

5 THE COURT: All right. Ladies and gentlemen of
6 the ...

7 Have we got the -- wonderful.

8 Ladies and gentlemen of the jury panel that were not
9 selected on the trial of this case, the Clerk of Court is
10 handing out a sheet of paper that has a telephone number
11 highlighted on that paper. Each of the jurors are to have
12 this telephone number. It is a -- it's an answering machine
13 that will have a message after six o'clock this afternoon.
14 Ms. Phillips, your Clerk of Court, has made it possible so
15 that you don't have to come in each day. And the only time
16 you need to be here is when you have to be here. And that's
17 when there's something for you to do. As you know, we've
18 drawn the jury on the first case, so I'm going to ask you to
19 call tonight after six o'clock that number and do what the
20 message says. It will either say call back tomorrow night
21 after six or maybe it says come in in the morning at a
22 certain time. But whatever that message says, follow the
23 message, if you would, please.

24 Again, it's an answering machine, so it's on all night
25 long. If you don't get through the first time, call back.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

33

1 I would recommend -- if you do not get the message from the
2 machine, you'll have to be here in the morning at nine
3 o'clock to get the message from me. But I think you'd
4 rather get it from the machine. So keep calling it until
5 you finally get the message. Now, does everyone have the
6 paper with the phone number on it? Anybody that doesn't
7 raise your hand.

8 (No response.)

9 THE COURT: Now, does everybody understand what to
10 do? Any questions about calling this number after six
11 o'clock until you get the message and then do what the
12 message says?

13 (No response.)

14 THE COURT: All right. With that, I'll excuse
15 you. But I do want to thank you for your patience with the
16 Court today, and I look forward to working with you this
17 week.

18 Everyone else remain seated while the jury retires from
19 the courtroom.

20 (WHEREUPON, the jury panel was excused.)

21 THE COURT: All right. I understand that there
22 are some motions. You want to be back at one thirty? Or
23 let's say a quarter till two. Very good. Third-floor
24 courtroom, so you need to move down there.

25 All right. With that, I'll see ---

1 MS. HERVEY: I just wonder ...

2 THE COURT: I'm not going to take Judge Drew's, I
3 promise you.

4 MR. STODDARD: One matter.

5 THE COURT: Yes, sir.

6 MR. STODDARD: There was another facility. We
7 faxed an order, I think, to that one facility in Greer.
8 There was one in Columbia that I had no letter or call from,
9 and my assistant was ---

10 THE COURT: Well, y'all confer and tell me what
11 you

12 MR. STODDARD: She got a hold of somebody. It
13 says, "has to be court-ordered, fax Keith Jones, Director."
14 Let me get the name of the facility.

15 THE COURT: All right.

16 MS. HERVEY: Judge, if we could just have the
17 victim go ahead and exit the courtroom first. Both families
18 were on the same side during the drawing of the jury. And
19 they can go ahead and go to lunch.

20 THE COURT: Yeah, we're at ease now.

21 All right. We'll stand at ease until one forty-five.
22 Very good. Thank you.

23 (WHEREUPON, court stood at recess for a lunch break.)

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

25 MS. HERVEY: Just one pretrial motion. And I

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

35

1 discussed this with Mr. Stoddard prior to us beginning. I
2 run RAP sheets on all my witnesses. We really only have
3 three truly civilian witnesses. The rest are medical or law
4 enforcement professionals. We would ask that he provide us
5 with the date of birth and Social Security number on his
6 witnesses so that we can run RAP sheets on them and be able
7 to cross-examine them. He did indicate that he's not in
8 contact with all of them and able to provide those to us
9 today. But to prevent us having to stop with every witness
10 and give me the time to do that, I would ---

11 THE COURT: Well, I understand that we might have
12 a little break in this case.

13 MS. HERVEY: The State would like to make that
14 motion on the record to obtain that information.

15 THE COURT: Any reason not to provide that?

16 MR. STODDARD: Within my ability. Like I say, I
17 don't have that information right now. I'll try to call or
18 contact the witnesses tonight.

19 THE COURT: All right. Have somebody work on it.

20 MR. STODDARD: Now, some witnesses might object to
21 giving their Social Security number, and I'm not sure they
22 should have to. I think that's one of those things that ---

23 MS. HERVEY: It's being provided solely to law
24 enforcement. They're not going to -- and it's just going to
25 be ---

1 MR. STODDARD: I understand. I just don't know if
2 the witness will.

3 MS. HERVEY: And I can ask them that on the stand
4 and -- it may not be an issue, date of birth. It may come
5 up enough that we don't. But usually if you get two John
6 Smiths who were both born around the same times, those
7 Social Security numbers will be different.

8 THE COURT: I have found that people have more
9 Social Security numbers than they do dates of birth.

10 MR. STODDARD: Hopefully, none of them will have
11 to ---

12 THE COURT: All right. We'll see about it. The
13 only thing is if he doesn't have it, then we'll have to
14 acquire it if it's not something within the Defendant's
15 control.

16 All right. Anything else from the State?

17 MS. HERVEY: Nothing from the State.

18 THE COURT: Anything from the Defendant?

19 MR. STODDARD: Nothing from the Defendant.

20 THE COURT: All right. You do understand we'll
21 have to swear the witness -- I mean, the jury before we
22 begin.

23 MS. HERVEY: Yes, Your Honor, that's fine.

24 THE COURT: All right. Oh, one other thing.
25 What's your thoughts about taking notes? My preference is

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

37

1 not.

2 MR. STODDARD: I have no preference either way.

3 MS. HERVEY: I'm in accordance with the Court.

4 THE COURT: Very good. Thank you.

5 MS. HERVEY: Cathy, do you have the -- did you
6 bring the indictment downstairs?

7 THE COURT: I've got them up here, it looks like.
8 You can have them. Oh, it's just one, isn't it?

9 MS. HERVEY: Yes, Your Honor.

10 THE COURT: Okay. The other one is ---

11 MS. HERVEY: 382?

12 THE COURT: Yeah. The other one has been -- not
13 proceeding on that one today?

14 MS. HERVEY: No, Your Honor. It's a different
15 victim. And just to avoid a lot of complications, we opted
16 not to.

17 THE COURT: Okay.

18 MS. HERVEY: Thank you.

19 THE COURT: All right. Again, just so there's no
20 question about it, it's my understanding after a conference
21 with the attorneys there's a certain scheduling problem or
22 consideration, let's say -- not necessarily a problem, but
23 consideration -- that the attorneys have agreed to meet by
24 maybe an earlier termination of the day so they might
25 consider the information that's come to them over the lunch

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

38

1 hour. Is that correct, Madam Solicitor?

2 MS. HERVEY: Yes, Your Honor.

3 THE COURT: Very good.

4 MR. STODDARD: Yes, sir.

5 THE COURT: All right. Very good.

6 Ask the jury to join us, please.

7 (WHEREUPON, the jury entered the open court at
8 approximately 2:07 p.m.)

9 THE COURT: Let the record reflect the jury and
10 alternates are in the jury box. Before we swear you, Mr.
11 Foreman, you're sitting in the right place. Ms. Farr,
12 you're the first alternate, so if you'd sit in that place.
13 And Mr. Mack, you're the second alternate, if you'd sit in
14 that place each time. Those are the only three people I
15 need to know where they are. The others, as I say, can move
16 around as they would. You don't have to sit in the same
17 place at all. But if I have -- can identify the foreman and
18 the first and second alternate, then it will help the Court.

19 All right. With that, Madam Clerk, if you would,
20 please, swear the jury.

21 MADAM CLERK: Thank you, Your Honor.

22 Mr. Foreman, ladies and gentlemen of the jury, if
23 you'll please stand and raise your right hand to take the
24 jury oath.

25 (WHEREUPON, the jury was duly sworn.)

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

39

1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury, I'm sure that each of you now fully appreciates
3 that this court, the Court of General Sessions for Anderson
4 County, exists for the purpose of resolving questions of
5 alleged criminal conduct arising between the State of South
6 Carolina and the Defendant. It is a guaranteed right of
7 every citizen that a charge of criminal conduct be presented
8 in an open court according to certain rules of procedure.

9 The State has not only an equal right, but the duty to
10 present a charge of criminal conduct in open court according
11 to the same rules of procedure. Each of the parties
12 therefore, both the State and the Defendant, then have an
13 equal right to the opportunity of this judicial proceeding
14 and to have you, as the jury, selected and now sworn for the
15 trial of this case.

16 One of the most important aspects of your duty as the
17 jury lies essentially in the oath that you have now taken,
18 to well and truly try and determine the facts of this case.
19 That oath, in a very essential way, says that you are the
20 sole judges of the facts of this case.

21 Obviously, any case tried in court will involve a
22 question about what happened or how something came to happen
23 or whom, if anyone, did anything in a particular occurrence
24 or circumstance. From this point on, then no one concerned
25 with this trial has any right to decide any question of fact

1 in the trial or the truth of it except you, the jury.

2 The facts then are for your resolution and your
3 decision and yours alone. And after you hear all of the
4 evidence in the case, then it will be your duty by your
5 mutual and joint discussions to determine the truth of this
6 case by deciding the weight and the believability of the
7 facts of each part of the evidence and by applying the law
8 of the case thereto.

9 As the trial judge, I am the judge of the law in the
10 case. It is also my responsibility, among other duties, to
11 preside over this trial, to rule on the admissibility of
12 evidence offered during the progress of the trial and to
13 state to you, the jury, the law applicable to the case.

14 The Constitution of South Carolina mandates that I, as
15 the trial judge, cannot directly or indirectly comment about
16 the facts in this case. The process of a verdict then is
17 simply that you, the jury, first determine what is the truth
18 of the facts and then apply to that true state of facts that
19 principle of law applicable, and by that process determine
20 and report to this Court your final verdict in the case,
21 speaking the truth of the case as you determine it.

22 Now, I will explain more fully and completely the
23 principles of law applicable to the issues in this case
24 before it is submitted to you for your decision. However,
25 there are certain principles of law applicable to the

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

41

1 framework of every case in General Sessions Court. In a
2 very basic fashion I will outline several of these
3 principles to you for your guidance.

4 The Defendant has entered a plea of not guilty to the
5 charge contained in the indictment. Now, remember the
6 indictment in a case is not evidence. It is simply the
7 written instrument that contains the charge against the
8 Defendant, and it serves as the formal document by which
9 this case is processed into this court.

10 The plea of not guilty places upon the State the burden
11 of proof in this case. As to what is meant by the term
12 burden of proof, the Defendant is presumed in law innocent
13 of all charges contained in the indictment. The burden of
14 proof requires the State to prove guilt beyond a reasonable
15 doubt. And therefore, consistent with that burden, the
16 Defendant or the accused party shall be presumed innocent.
17 And that presumption of innocence is sufficient to compel a
18 verdict of not guilty or a verdict of acquittal unless you,
19 the jury, conclude that the State has satisfied its
20 obligation to prove the Defendant's guilt beyond a
21 reasonable doubt. The term reasonable doubt means the kind
22 of doubt that would cause a reasonable person to hesitate to
23 act.

24 Now, this case will be opened by the Solicitor, after
25 which the same opportunity will be afforded to the Defendant

1 to make an opening statement. When all of the evidence has
2 been received by the Court, counsel for the State and
3 counsel for the Defendant will state to the jury their
4 respective positions, after which the Court will fully state
5 the applicable law in the case.

6 Obviously, all parts of the case are important. You do
7 not know which witness in a case will most impress you,
8 whether the first witness or the last witness. In reaching
9 your final conclusion you will need the guidance and the
10 judgment of the other jurors. You will need the guidance of
11 the principles of law that will be stated to you by the
12 Court.

13 For all of these reasons then if we have any recess
14 periods when you retire to your jury room or during the
15 overnight or meal recess, I instruct you that you must not
16 undertake to discuss this case among yourselves or permit
17 anyone to discuss it with you. You will not even discuss it
18 until the case is finally given to you for your
19 deliberations. As I say, you are not to discuss it, nor are
20 you to permit anyone to discuss the case with you. If they
21 should try to do so, you will report them and I'll take the
22 appropriate action.

23 Now, there are a few other things I need to mention
24 before we begin. As I said earlier, although I am the only
25 person who can tell you what the law is, you and you alone

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jury Voir Dire

43

1 are the only ones who can determine the facts. I do not
2 have the right to indicate how I may feel about the evidence
3 presented. And throughout this trial my intention will be
4 to act impartially towards each party.

5 Second, from time to time an attorney may object to
6 some bit of testimony or evidence which the other side is
7 seeking to present. As in sports or any other structured
8 activity, there are certain rules that both sides must obey
9 in presenting evidence. These rules have a definite
10 purpose. They ensure that the information you receive is
11 the most trustworthy and reliable evidence available.

12 An objection is the procedure we use for an attorney to
13 call a possible violation of the rules to the Court's
14 attention. For this reason, you should not hold an
15 attorney's objection against his or her client, nor should
16 you conclude from my ruling on the objection that I favor
17 one side or the other.

18 Finally, I would ask that you pay the closest attention
19 as possible to the evidence presented to you. I will also
20 ask you not to take notes. For if the note-taker makes an
21 error, those notes can be more detrimental than helpful
22 during the deliberations. The reason I suggest that you do
23 not take notes is it's been my experience if we take notes
24 we have a tendency to concentrate on the note rather than
25 what is happening at the time. In other words be sure that

1 we accurately put down what we think we hear as well as the
2 semantic or spelling even. You know, the note itself. In
3 doing so we are distracted from what is occurring at the
4 time. And your decision must be made on the testimony from
5 the sworn witnesses on the witness stand as well as the
6 other exhibits and evidence introduced in this courtroom.
7 So you should concentrate on what's happening at the time
8 and not, what is it, trying to take a note as to what you
9 think you recall.

10 I might note when I say "think you recall" or "you
11 might think you heard," there's a reason for that. If you
12 take a note, those notes become more impressive. In other
13 words, it's something physical rather than the recollection.
14 And if you make an error in the note -- for example you
15 might miss just one little word in what you think you heard.
16 And I use the word 'not.' It makes the note entirely
17 different. And so if somebody has written down or left out
18 the word 'not' where it should be, then it becomes more
19 detrimental than helpful in your deliberations.

20 Now, having said that, I do take notes. Now, it's not
21 one of those do as I say, not as I do. You and I have
22 different purposes in this courtroom. You are the only ones
23 that can weigh or evaluate the testimony and evidence. I'm
24 not concerned about the value of the testimony or the
25 evidence, I am only concerned whether certain things happen

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Opening Statement by Ms. Hervey

45

1 or occur when they're supposed to. So therefore, I am
2 jotting down just what is happening, not the significance of
3 it. That is for you to decide.

4 With that, I'll now recognize the Solicitor for her
5 opening statement.

6 MS. HERVEY: Thank you, Your Honor.

7 Good afternoon, ladies and gentlemen of the jury. As I
8 introduced myself to you earlier today, my name is Mindy
9 Hervey, and I'm an assistant solicitor here in Anderson and
10 Oconee Counties. In short, what you might see on TV, a
11 prosecutor, a State's attorney, a district attorney. And
12 that's what I do. We do call them assistant solicitors here
13 in the state of South Carolina. It's an old English term
14 that we retained, and that's where that term comes from. I
15 explain it to you because sometimes it is confusing.

16 When I graduated from law school and told my father who
17 had built ejection molds all his life that I was going to be
18 an assistant solicitor, he was upset that he had contributed
19 so much to my college education, me being an assistant door-
20 to-door salesman all of a sudden for some reason. But when
21 I explained to him what I did and what I would be doing here
22 in the Upstate, then he felt a little bit more reassured
23 about paying for my college education.

24 What I do here in Anderson and Oconee County is I work
25 with law enforcement, both in terms of their investigatory

1 process, advising them on the law, updates in the law,
2 search warrants and those type things, and then working on
3 the cases once they come to trial. It is my duty to meet
4 with witnesses to evaluate the strength and the weaknesses
5 of the cases, the potential defenses an individual might
6 have, and then how to proceed best to trial in a way that
7 would convince you, a jury of our community, that the
8 defendant is guilty of a crime beyond a reasonable doubt.
9 And that is in essence what I do.

10 And you'll see that happening over the next several
11 days. The State will call witnesses that we feel will
12 convince you of the Defendant's guilt. There will be some
13 breaks, and there may be a little bit of waiting. I
14 appreciate your indulgence in that. Sometimes I tell people
15 that my job is a lot like herding cats, trying to get twelve
16 people who all have different jobs and lives and those kind
17 of things, in here to testify before you today.

18 In particular we do have a couple of medical or
19 psychiatric witnesses who will testify before you. And
20 always working with a doctor's schedule is a work of art
21 sometimes in my job. So I do beg your indulgence in doing
22 that.

23 You have been selected in a very difficult case. I
24 will be very up-front with you about that. This is probably
25 a subject matter that most of you, if you have given thought

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Opening Statement by Ms. Hervey

47

1 to, don't want to give a great deal of thought to. This is
2 a case that involves subject matter that is not pleasant.
3 It's not pleasant to conjure. It's not pleasant to think
4 about. And it's not going to be a pleasant deliberation in
5 the jury room.

6 The Defendant is charged with criminal sexual conduct
7 in the first degree. There's various degrees of crimes here
8 in the state of South Carolina. Criminal sexual conduct in
9 the first degree is one that is broken down like that.
10 Criminal sexual conduct in the first degree, just to define
11 it for you, is what the Defendant is charged with in this
12 indictment. And this is not evidence. This is just the
13 charging paper that puts the Defendant on notice of what
14 crime that we have charged him with and what he will be
15 asked to defend. That Maxwell Eugene Sipes did in Anderson
16 County on or about between March 1st, 2002 and May 1st, 2003,
17 unlawfully engaged in sexual battery with Minor -- that's
18 Minor -- by using aggravated force or forcible
19 confinement. And when you go through these terms and break
20 down this indictment -- because you're about to hear some
21 evidence that I think will be a little foreign to you, most
22 of you not having dealt with this subject matter. And I
23 want you to kind of have an idea of the area where we're
24 going.

25 First it says that a crime occurred between March 1st,

1 2002 and May 1st, 2003. This is a case involving a pattern
2 of conduct, a pattern of sexual abuse. And for that reason,
3 people don't remember with certainty that it happened on
4 such and such a date. If we ask adults how many times you
5 went to Bi-Lo this year, most of year that you may go once a
6 week and usually go on a Tuesday or Wednesday, but you don't
7 remember the dates. Especially with children -- and **Minor**
8 was fifteen to sixteen when this happened. She's not
9 remembering those dates. And that's why the time frame is
10 so big. You know, the jury won't be asked to pick a date
11 within over that year time frame. Instead you may find that
12 this conduct occurred at some point within that time frame.

13 Murders and burglaries are different. We find a body.
14 We know what happened. We know how long they've been dead.
15 Sexual abuse is an ongoing pattern of conduct that lends
16 itself to a little bit of a different type of proof. And
17 because of that, the State is allowed to prove things in
18 that kind of open time frame.

19 Sexual battery, that he unlawfully engaged in a sexual
20 battery. What is sexual battery? What does that mean?
21 Some people say that lawyers love big words, and why don't
22 we just spit out what we really mean sometimes? But it's an
23 all-encompassing term that for the most part is defined as
24 penetration of some orifice of some kind with some object.
25 Something going in the mouth, the vagina, the anus. A

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Opening Statement by Ms. Hervey

49

1 finger, penis, tongue, foreign object. All those kind of
2 things.

3 We're going to narrow the field for you. The Defendant
4 is charged with in this case and the testimony that you will
5 hear and that you will focus on is that he engaged in
6 forcible sodomy with **Minor**, his adopted daughter, who
7 was living in the house with him at the time. That's what
8 this case will focus on. That ongoing pattern of conduct
9 that happened during that period of time. That is what you
10 will hear about. And that is why I told you that this is
11 going to be a complicated case.

12 It goes further than that though. It says that he
13 engaged in the sexual battery and accomplished it by means
14 of aggravated force or forcible confinement. What does that
15 mean? Aggravated force means some type of force used to
16 accomplish the crime, not just a threat. It means holding
17 someone down, pinning them down, tying them up. Those kind
18 of things. Forcible confinement means keeping them in a
19 room, carrying them off somewhere, holding them in a car.

20 For the most part, the testimony that you will hear
21 over the next couple of days will be that he pinned her
22 down, that he held her down on the bed, that he would cover
23 her mouth, that he may have covered her head with a pillow
24 or pushed her head into a pillow. That's that aggravated
25 force, that forcible confinement.

1 It will be different than the woman raped in the woods
2 because you're her daughter. And he is home all the time.
3 Their confinement is much more subliminal, but it's
4 nonetheless much more forceful. To put yourself in that
5 victim's shoes and what she's going through in that period
6 of time. That is the question that you will be asked to
7 answer at the end of this trial. Did Maxwell Sipes forcibly
8 sodomize **Minor** during that period of time? That is
9 what is in that indictment.

10 I must prove these things to you beyond a reasonable
11 doubt. The Judge charged you that that is beyond a doubt
12 that would cause a reasonable person to hesitate to act.
13 That doesn't mean go back in the jury room and think about
14 these things or a hesitation to deliberate about these
15 things because they're so foreign and unknown to you. But
16 what it means is after you listen to all the evidence, after
17 you've deliberated with your fellow jurors, after you've
18 talked about what you hear on the witness stand, do you then
19 still hesitate to think that Maxwell Sipes committed these
20 crimes against his adopted daughter **Minor**

21 I embrace that burden. I am asking you to convict
22 someone of a very serious crime in our own community, and I
23 need to be able to prove that to you beyond a reasonable
24 doubt to ask you to convict him of this crime.

25 The testimony you will hear, the bulk of which will

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Opening Statement by Ms. Hervey

51

1 come from **Minor** herself. She'll talk to you about the fact
2 how her mom originally married Mr. Sipes, that he wasn't her
3 biological father. That her biological father had given up
4 rights to her when she very young. That originally when
5 Maxwell Sipes came into her life, he was like a father that
6 she never had. That she was very enthralled with him that
7 she finally had a father.

8 But then things gradually turned from good to bad.
9 You'll hear that her mother and Mr. Sipes divorced, that
10 they were apart for a period of time. That **Minor** returned
11 to Georgia where her mother's family is from. And that at
12 some point shortly before this happened, her mother and Mr.
13 Sipes got back together, so much so that her mother even
14 became pregnant by Mr. Sipes and that they had twins
15 together as a result of that. And you will hear that the
16 bulk of this sexual abuse, this forcible sodomy, happened
17 while her mother was pregnant with those twins. And I tell
18 you this just so you understand the family dynamic. But you
19 will need to hear these words from **Minor** herself.

20 You'll also hear the testimony of Dr. Dolford Payne.
21 He's a colo-rectal surgeon and proctologist from Georgia who
22 treated her for injuries associated with this incident.
23 You'll hear from Garland Major, the local investigator who
24 investigated the crime here locally. You may hear from
25 individuals from Georgia who investigated the crime there.

1 And you'll hear from a Dr. Allison DeFelice, a psychiatrist
2 from Columbia who is familiar with the symptoms of sexual
3 abuse and what children like this go through.

4 There's no doubt about it, that **Minor** had a very
5 troubled childhood. There is no doubt that she experienced
6 things above and beyond what any child should have to go
7 through. There's no doubt about that those things
8 manifested themselves in different ways.

9 Mr. Stoddard will probably talk about -- a lot about
10 her troubled past. But I ask you to listen to it with the
11 right frame of mind and ask yourself if a girl was going
12 through this, would she be going to school every day, making
13 straight A's, showing no signs of stress, showing no signs
14 of trauma, not crying out for help in extraordinary and
15 unusual ways. And that's what Dr. DeFelice will talk about.

16 You will be asked to evaluate the credibility of these
17 witnesses, the credibility of any witnesses the Defense may
18 call, although they have no obligation to do so. I must
19 prove to you beyond a reasonable doubt the Defendant's guilt
20 of this crime.

21 I ask you to listen to the witnesses and not make up
22 your mind until the very end. You will need all the pieces
23 of the puzzle to put this one together. It's a very
24 difficult puzzle, and it's not a very pretty picture. Your
25 service here on this jury is the only way these things can

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Opening Statement by Mr. Stoddard

53

1 be resolved. And that is why jury service is so important.
2 That is why the State of South Carolina, [Minor] her mom, her
3 sister and her family and the Defendant himself appreciate
4 the sacrifice that you all are going to make over the next
5 couple of days and coming in here and bearing witness to
6 this crime and deciding what occurred between [Minor] and Max.
7 In deciding whether or not Maxwell Sipes forcibly sodomized
8 his adopted daughter here in Anderson County back in 2002
9 and 2003.

10 Thank you for your time and patience. We do appreciate
11 it.

12 THE COURT: Mr. Stoddard?

13 MR. STODDARD: May it please the Court.

14 I have been introduced -- well, I introduced myself
15 earlier. I'm David Stoddard. I am representing Maxwell
16 Sipes. He's here. I think his mother is sitting in the
17 back of the courtroom, and his current wife is in the back
18 of the courtroom. You may see them from time to time, and
19 sometimes you wonder who are all these people.

20 I have to comment on what Ms. Hervey said in the
21 beginning about the definition of what a solicitor is. I,
22 too, was an assistant solicitor for years, and I can
23 certainly concur with what she said. I used to always wish
24 they would call them in South Carolina DA's because
25 everybody knows what an assistant DA is. But she's correct.

1 When you say assistant solicitor, people don't know what
2 that is. So I kind of -- I can relate to that because I
3 used to do that and had that same title.

4 This type of case, criminal sexual conduct -- I know
5 the charge isn't with a minor. But essentially that's what
6 we're talking about, criminal sexual conduct with a child
7 that's fifteen or sixteen. Another attorney once told me in
8 that type of case when you're representing someone, he
9 actually has to prove his innocence. That that's what you
10 have to do. It's that kind of case. Even though we all
11 know that's not the law, the Judge is going to charge you
12 the law. And I think everybody pretty much knows the State
13 has the burden of proof. But what he was saying as a
14 practical matter is the defendant in these cases has to
15 prove his innocence. And obviously that's not the law.

16 Ms. Hervey talked about the burden of proof and said
17 she embraces that burden. It's my hope in this case that
18 Mr. Sipes will not have to prove his innocence. And I'm
19 going to -- aside from that's the law and that's what the
20 Judge is going to instruct you to do is to require the State
21 to prove this case beyond a reasonable doubt rather than Mr.
22 Sipes prove his innocence, I'm going to give you a couple of
23 practical reasons in a case like this.

24 As a practical matter it is nearly impossible to prove
25 your innocence. It's going to be impossible for me to come

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Opening Statement by Mr. Stoddard

55

1 in here with evidence that says this didn't happen. And Ms.
2 Hervey gave you one of the reasons for that. The indictment
3 has him charged over a span of months, many months, that it
4 happened sometime between these months. It happened years
5 ago. It happened sometime before he was even charged. So
6 the State's come in accusing a man of this span of time you
7 did these things. You can't come in with evidence I was
8 somewhere else because it happened over such a span of time.

9 The nature of criminal sexual conduct cases is pretty
10 much one person said this happened and you said it didn't
11 happen. It's not the kind of thing that you have witnesses
12 to. It's not the kind of thing I can bring in a witness to
13 say I didn't see it that way. So it's nearly impossible to
14 prove your innocence. And that's one reason I will ask that
15 you follow the Judge's instruction and give Mr. Sipes that
16 presumption of innocence that the law says he's entitled to.
17 I know in most cases like this, it almost seems like when
18 you come in the jury room the people look at the defendant
19 and say, oh, he did this. He must have done this.

20 Another practical reason is in this type of situation,
21 we know that sometimes children make false allegations of
22 sex abuse. It happens. You've heard of it. You know it
23 happens. So just because someone's charged does not mean he
24 did it. So I ask that you listen to the evidence and give
25 him that presumption of innocence to which he's entitled.

1 Now, I'm going to tell you some of the evidence I
2 expect you'll be hearing in this case. She told you a
3 little bit of it. Max Sipes at one time married the alleged
4 victim, [Minor] -- married her mother and at some point
5 adopted [Minor]. Later, sometime I think around 1999, they
6 got divorced and separated and were apart for a couple of
7 years. I may get these dates wrong in here. But I think
8 around 2000 or 2002 they reconciled. They didn't remarry,
9 but they were living again together with [Minor] a little
10 sister, Taylor, and during that time had twins together.
11 That's when these allegations are supposed to have occurred.

12 Around September of 2003 the parties separated again,
13 and [Minor] mother Tina moved to Georgia. Around October or
14 during October -- not around October, during October of 2003
15 Max Sipes served Family Court papers on [Minor] mother
16 seeking custody of [Minor] Taylor -- seeking custody of the
17 children. After that these allegations arose. As I told
18 you, sometimes false allegations are made. They're made for
19 various reasons. We can't prove what's going on inside
20 [Minor] head. We don't have -- it's not our burden to
21 prove what the motive is in his case. But sometimes there
22 are false allegations. So I'd ask that you listen to the
23 evidence very carefully.

24 They told you that you're going to hear medical
25 evidence that injuries were inflicted on [Minor] Listen

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Dolford F. Payne, M.D. - Direct Examination by Ms. Hervey

57

1 very carefully to determine whether those conditions could
2 have happened in other ways. It is somewhat of a
3 complicated case. In some ways it's somewhat simple. It's
4 one person's word against the other. Some medical evidence.
5 It comes down to whether there's reasonable doubt. It's not
6 do we think he did it or do we think he most probably did
7 it. Is there a reasonable doubt? She defined it very well.
8 Is there a hesitation in convicting him? If you find that
9 at the end of the case, the answer is simple. It would be
10 not guilty, reasonable doubt.

11 I thank you for your attention.

12 THE COURT: Ms. Hervey, you may call your first
13 witness.

14 MS. HERVEY: Thank you, Your Honor. The State
15 calls Dr. Dolford Payne, Your Honor.

16 DOLFORD F. PAYNE, M.D.

17 Being first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. HERVEY:

20 Q. Dr. Payne, I'm going to ask that you speak into this
21 microphone -- it's a smaller courtroom, but the jury is a
22 little bit elongated -- so these last jurors can hear you.

23 Dr. Payne, with whom are you currently employed?

24 A. I'm employed by myself in solo practice in Atlanta.

25 Q. And in what kind of solo practice? What do you do for

1 a living, Dr. Payne?

2 A. I'm a colon and rectal surgeon.

3 Q. And how long have you been so employed?

4 A. I've been employed approximately twenty years.

5 Q. And has that twenty years been spent in colo-rectal
6 surgery or treating colo-rectal problems?

7 A. Yes, it's all colo-rectal surgery.

8 Q. And have you always been a solo practitioner or did you
9 ever work -- were you ever affiliated with any other
10 practices?

11 A. When I first came out of practice, I was -- I had a
12 partner. And then that partnership dissolved about 1990.

13 Q. And prior to becoming engaged in the practice of being
14 a colo-rectal surgeon, what was your educational and
15 training background?

16 A. I graduated from Arkansas State, and then I did a year
17 of fellowship in pharmacology at Duke. At that time we were
18 engaged in the Vietnam War. And I didn't want to get
19 drafted, so I went into the Air Force in fuel air refueling
20 tankers for six years.

21 MR. STODDARD: I don't have an objection. But if
22 it's helpful, I do stipulate to his being an expert in colo-
23 rectal surgery.

24 MS. HERVEY: Thank you.

25 THE COURT: Just a moment.

1 Mr. Foreman, ladies and gentlemen of the jury, as you
2 will find out, witnesses are usually limited to what they
3 know from the exercise of their senses. In other words,
4 what they see, feel, smell, things of that nature. However,
5 if a witness, by reason of background, training and
6 experience, has an expertise in a certain area, then he
7 might or she might be declared an expert witness. At that
8 time they are permitted to give their opinion. In other
9 words, not what they directly observe, but what they
10 conclude based on their training, background, experience and
11 what's presented to them in that area. And in this case,
12 the witness has been qualified as an expert in colo-rectal
13 surgery and will be permitted to give his opinion on such
14 matters. However, always remember regardless the witnesses'
15 testimony, expert or otherwise, is for your evaluation.

16 You may proceed.

17 MS. HERVEY: Thank you.

18 Q. Dr. Payne, you said that you were in the Air Force for
19 approximately six years. And then did you return to your
20 medical education at some point after that?

21 A. Correct. After that I went into medical school at the
22 Medical College of Georgia. When I finished that, then I
23 did a general surgery residency at Georgia Baptist Hospital
24 in Atlanta. That was for five years. Then I did a one-year
25 fellowship in colon and rectal surgery at Bethesda Hospital

1 in Maryland.

2 Q. And then you returned to -- I believe you're in the
3 northern Atlanta area or northern Georgia area in your solo
4 practice?

5 A. Currently, yes.

6 Q. And just briefly -- we may all be familiar with colo-
7 rectal and those terms. But what do you do? What on a
8 daily basis is the focus of your practice?

9 A. The focus of my practice is anything to do with the
10 small intestine down through the colon down through the
11 rectum.

12 Q. And just so we're all on the same page, could you tell
13 us where -- I know the small intestine seems obvious. But
14 when you talk about colon and rectum, what part of the body
15 are we referring to?

16 A. That's the large intestine and the rectum is the lower
17 portion before you have evacuation.

18 Q. And what type of surgery and those type of things are
19 you normally working on or doing on a daily basis?

20 A. The number one surgery or diagnostic dilemma is
21 hemorrhoids. After that then we do routine screening for
22 colon cancer. We do now laparoscopic surgery for the colon,
23 and there's about three or four different kinds of
24 treatments that we now do surgically for hemorrhoids.

25 Q. And are you the one doing the colonoscopies that a lot

1 of people may be screened for in their day-to-day life, or
2 are you doing more advanced surgeries?

3 A. I'm doing that plus I am doing surgery as opposed to a
4 gastroenterologist who's limited to the endoscopy portion
5 only.

6 Q. And when you say endoscopy, is that meaning what?

7 A. That means looking into the bowel with a colonoscopy or
8 upper endoscopy meaning through the stomach and esophagus,
9 which is what they do. And I do not do that.

10 Q. And approximately how many colo-rectal surgeries have
11 you performed in your twenty-year tenure if you can
12 approximate?

13 A. I really have no idea.

14 Q. Hundreds? Thousands?

15 A. Thousands.

16 Q. And did you have the occasion to treat **Minor**
17 Sipes?

18 A. Yes, I did.

19 Q. And was she referred to you by someone in particular,
20 or by another practice?

21 A. She was a referral from the emergency room.

22 Q. And when you -- did you examine her?

23 A. Yes, I did.

24 Q. And just generally, what was her diagnosis? What was
25 the problem that she was referred to you to investigate?

She was referred to me to investigate what we call
identia. In layman's terms what that means is rectal
3 prolapse.

4 Q. And in -- rectal prolapse isn't really still a layman's
5 terms for most of us. What does ~~rectal prolapse mean?~~

6 A. Normally when we have a bowel motion, you don't have
7 anything coming out from inside the body. When you have
8 rectal prolapse, ~~what is happening is the entire rectum is~~
9 ~~coming in on itself and then coming outside the body.~~

10 Q. How is this different than hemorrhoids?

11 A. Hemorrhoids and mucosa prolapse, which is just the
12 lining, just involves the blood vessels of the lining. And
13 it's only involved in the last few inches of the rectum
14 whereas rectal prolapse involves the entire rectum and the
15 most distal portion of the large intestine called the
16 sigmoid colon.

17 Q. So approximately just in terms of emergency hemorrhoid
18 and those other type things, when you say it's coming out of
19 the body, how much material are we talking about or how much
20 of the rectum or colon are we -- is coming out?

21 A. It can vary. In her case it was just a slight amount
22 of about two or three inches, but we've seen as much as
23 twelve inches.

24 Q. And is -- how old, if you recall, approximately was
25 **Minor** when you saw her and treated her?

1 A. She was in her middle late teenage years.

2 Q. And is this normally someone who we see with this type
3 of diagnosis of a rectal prolapse?

4 A. No. The -- when you have rectal prolapse, there are
5 two main groups where we see it in. The first group is very
6 young children up to age about two. And they're treated
7 very conservatively. The reason for it is usually some kind
8 of neurologic problem. The second group where we majorly
9 see it in is women above the age of fifty with the peak age
10 being sixty. Now, the predisposing factors for that is that
11 they will have what's called a long mesentery. What that
12 means is think of the colon like this would be the blood
13 vessels and the colon will be attached on top. If it's
14 short, then there's not much room for the colon to flop,
15 pull down. Where if it's long, then there is.

16 The second factor that involves women is the fact that
17 they have a deep pelvis which means that the muscle has
18 dropped down further. So what happens is when you have this
19 long mesentery, everything can drop down.

20 Now, the third instance where we see -- it's not a big
21 incident, but does occur -- occurs in children again late
22 ~~teenage, early twenties, that have psychological problems.~~
23 ~~This is more like autism, mental retardation.~~ And they
24 ~~usually have a very long history of being on drugs of~~
25 ~~psychologic therapies and very much have a long history of~~

1 ~~power problems. And she didn't fall into any of those~~
2 ~~problems.~~

3 Q. So what medically were you able to offer as an
4 alternative cause of Minor rectal prolapse?

5 A. While things can happen -- and when Minor did present,
6 she was on a number of different drugs. So it is possible
7 that that could be, you know, ~~a contributing factor to her~~
8 ~~problem. But given the history that she really didn't~~
9 ~~present with a lot of constipation problems, I didn't feel~~
10 ~~like that was medically the reason for her to have her true~~
11 ~~rectal prolapse.~~

12 Q. Is there any other -- some foreign cause for an
13 individual this age having this symptom?

14 A. There -- ~~if you have rectal trauma or these objects to~~
15 ~~stimulate the rectum and it's in a forceful manner, then it~~
16 ~~is possible that that can cause it.~~ And the way that that
17 does that is as opposed to in the gay population where
18 everything -- the muscles are all relaxed, now you're
19 talking about a traumatic event where the muscles are tense.
20 And when that occurs, there's a tearing. And what happens
21 is the rectum tears from its normal attachments. And then
22 with repeated episodes and then there's some straining that
23 normally occurs after this, then the rectum, because it's
24 not now attached, can fall down and slide out.

25 Q. And was there anything that you indicated in terms of

1 her otherwise, evaluation or looking into her, that
2 corroborated that this could have been from forcible sodomy?
3 A. No, there really was not because at that time she had
4 just given me that that was the history that she had.

5 Physically you can't really see anything. One of the things
6 that you can say on patients who have had rectal intercourse
7 is that the rectal muscle, it will dilate slightly. And on
8 exam you can see that because it doesn't come back as
9 quickly as it would in a normal person. However, with her,
10 because she didn't have true prolapse, that it was already
11 coming out, you could not make that distinction.

12 Q. And why would ~~forcible sodomy~~ versus consensual sodomy
13 that you discussed in the homosexual community, why is that
14 so much more traumatic to the rectum versus normal anal
15 intercourse?

16 A. Well, you have to kind of think of it like if you had a
17 tube. And we have two different kinds. They both have
18 centers that are open, but they are made out of -- one is
19 made out of something that's very compliant, and the other
20 is made out of something that's not as compliant. With the
21 compliant, i.e. you're relaxed, when you have penetration,
22 what happens is it just dilates. Whereas in the
23 noncompliant, what happens is that the force will push in
24 and it will just slowly but surely tear its normal
25 attachments. Something has to give when you're real tense

1 and you're bearing down and you don't want penetration.

2 Q. And with an individual who is enduring this, would they
3 experience any type of pain or other symptoms during or
4 after this event?

5 A. During the event they will experience pain. Sometimes
6 they can have bleeding afterwards. Usually for a short time
7 after having forcible penetration, they will have difficulty
8 having bowel motions.

9 Q. Can the rectal prolapse that you saw in **Minor** -- is
10 that occurring from one isolated incident of forcible
11 trauma, or is it more associated with a more chronic or
12 long-term pattern?

13 A. Well, it has to be long-term.

14 Q. And when you say that, do you mean years or just more
15 than once within a year?

16 A. Oh, it's multiple times. But over what time period,
17 that I can't give you.

18 Q. Did you see anything in her that indicated it was
19 something that had come on more perhaps in the past year to
20 two years, or did you see anything that led you to believe
21 that it had been going on longer than that?

22 A. Again, because when I'm looking inside, I also do
23 what's called a flexible sigmoidoscopy which is to look up
24 inside because on rare cases you can have a polyp or some
25 kind of other lesion that could cause a rectal prolapse.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Dolford F. Payne, M.D. - Direct Examination by Ms. Hervey

67

1 And we didn't see that. And in her we just saw what's
2 called a solitary ulcer. And what that is, is that's an
3 area about halfway up into the rectum wherein the rectum
4 falls in on itself like that because it's a vascular area
5 that is not very good. Then you develop an ulcer because of
6 -- because the vascular supply is limited. But the problem
7 is that you can't make a statistical analysis to say that
8 this is happening, you know, twenty times, thirty times.
9 You know, I cannot give that to you.

10 Q. And you mentioned also or you just explained that
11 further to the jury -- is this the type of stomach ulcers or
12 esophageal ulcers that most of us are familiar with?

13 A. No. Those are related to acid. This is an ulcer
14 that's related to the fact that the blood supply has been
15 compromised because of the bend. When it bends, it
16 stretches the vessels. And the vessels are thin in the
17 front to begin with, and that's the reason why you get an
18 ulcer in that area.

19 Q. So is it more medically appropriate to say that the
20 ulcer was caused by the things causing the rectal prolapse
21 or from the rectal prolapse, but that the ulcer didn't cause
22 the rectal prolapse?

23 A. The ulcer did not cause the rectal prolapse. It was a
24 result of the prolapse.

25 Q. Did you see anything in your evaluation of her that

1 indicated that this rectal prolapse was the result of any
2 gastrointestinal problems or any diet issues or those type
3 of things?

4 A. No, we did not because, again, she had no real history
5 of having, you know, chronic constipation problems. She was
6 on medication, and the medication that she was on does have
7 a tendency to slow bowel function. Any psychotic drugs slow
8 bowel function down. But she gave no history to lead us to
9 conclude that that was a major contribution to it.

10 Additionally, approximately two years prior to my
11 seeing her, by history she had had a barium enema which is
12 an x-ray study. They take barium, they put it into the
13 colon and rectum, and then they take different pictures.
14 And that did not show any lesions. And you can say, well,
15 did she have -- start her rectal prolapse then? Well, the
16 answer is barium enemas won't show you that. In order for
17 that to occur, you have to have a specific test called a
18 defagram. And that's the only test radiologically that will
19 show it.

20 Q. Could they have been looking for things that weren't
21 even associated with this issue, with the rectal prolapse?

22 A. That is correct.

23 Q. So she could have had other issues just by history that
24 coincidentally both involve the colon but weren't
25 necessarily related in any way?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Dolford F. Payne, M.D. - Direct Examination by Ms. Hervey

69

1 A. But she could have had, you know, nonspecific abdominal
2 pain for which they would do an upper G.I. and lower G.I.
3 just to see if they would see anything. Those barium
4 studies of both the upper stomach, small intestine, and the
5 lower G.I. meaning the barium study of the colon.

6 Q. Did you see anything about her -- in terms of the
7 rectal prolapse if it doesn't go treated, what happens?
8 What is the outcome for the patient if they ignore the
9 symptom or that kind of thing?

10 A. Because the rectum is coming out, if it constantly
11 comes out and it -- you know, you're -- I'm sorry. If your
12 colon and rectum are coming out, it's fairly large. So with
13 repeated penetrations of the colon coming out, what happens
14 is that the muscles in the rectum slowly but surely dilate
15 and stay dilated. So as a result of that, you can become
16 incontinent. You would not have the ability to control
17 liquid stool and gas.

18 Q. Was **Minor** presenting with those symptoms?

19 A. No, she did not.

20 Q. Did that give you reason to believe that this rectal
21 prolapse had started more recently in the future versus
22 being -- having gone on longer like that?

23 A. That is correct. Also at that time, as I stated, she
24 had fairly good muscle tone which meant that she could pull
25 it up in part and it did come back to its normal position.

1 This would indicate that this was not a chronic ongoing
2 problem.

3 Q. So she was not experiencing, at least from medically
4 you're able to say, that chronic constipation that you say
5 may cause it in older age groups or younger children?

6 A. That is correct.

7 Q. And in terms of the -- was there anything -- you stated
8 earlier that her rectal prolapse was about two inches versus
9 some patients where you see it much more. Does that limited
10 length give you any medical evaluative ability in terms of
11 how long she'd been having this problem?

12 A. It can. But again, most of the time the length is
13 really predicated on how much length that you have in your
14 blood vessels that go to the lower portion of the colon and
15 the upper portion of the rectum because those vessels come
16 from one part inside the body.

17 Q. And you stated because her rectum still had good muscle
18 tone, that she didn't appear to have the chronic
19 constipation that you do see otherwise in kids presenting in
20 her age group?

21 A. That is correct.

22 Q. How rare is it to find a 15- or 16-year-old presenting
23 with this problem who doesn't have that chronic constipation
24 or the autism and the mental retardation psychological
25 factors?

1 A. I've been in practice for twenty years, and I
2 two patients that are like her.

3 Q. And this other patient, would that also have been the
4 result of a forcible sodomy type event?

5 A. Yes, it was.

6 Q. What happens with a -- you stated what happens to the
7 rectum and eventually they lose muscle tone. Is a more
8 invasive surgery required if a rectal prolapse continues for
9 a longer period of time?

10 A. Oh, absolutely. You first have to do the surgery that
11 we did on her which is to come in and re-sect a portion of
12 the colon and the upper portion of the rectum. Then you
13 bring the rectum up and you fix it to the tail bone so it
14 cannot possibly slide back down. By removing that extra
15 length of colon, again, there's no redundancy so it is
16 impossible for it to come back. Now, if they have lost
17 control of the sphincters, then you have to do surgery on
18 the sphincters to tighten them up and to do what's called
19 biofeedback which is electrically try and stimulate them so
20 the patient can get a better feel for what's going on.

21 Q. You stated that Minor was in the hospital and had this
22 surgery. Do you remember approximately when this surgery
23 was?

24 A. This was in December of '03, I believe.

25 Q. And how long after -- assuming that forcible sodomy was

1 the traumatic event that brought on this rectal prolapse, is
2 there a length of time when you see the symptoms develop?
3 Is it automatic? Does it happen over time? Is there a time
4 frame associated with it?

5 A. No, there is no particular time frame associated with
6 it. It just depends on the patient and, you know, number of
7 times, you know, psychologic bowel problems, medications.
8 So I cannot give you a particular time period with that.

9 Q. So some type of prolonged or it didn't occur or she
10 didn't reveal the symptoms for months, is that unusual or
11 typical with people experiencing ---

12 A. That would be typical.

13 Q. And in terms of Minor surgery, did it go fairly well,
14 fairly typical with what you found?

15 A. Yes, it did. It went just like what we had planned.

16 Q. And once you -- and you said that you did surgery. How
17 invasive of a surgery are we discussing?

18 A. At that time it was pretty much before we were using
19 laparoscopic. And so what she had was a very long incision
20 from belly button down. And then what you have to do is you
21 remove approximately ten inches of the colon and about three
22 inches of the rectum. And then you take the colon and hook
23 it back to the rectum. And as stated, you put stitches into
24 your tail bone. The covering of the tail bone is very thick
25 and hard. And if you put stitches into it, it doesn't give.

1 And so you put stitches into that and into the rectum so it
2 cannot come back down.

3 Q. Is this a fairly painful surgery?

4 MR. STODDARD: I object to relevance.

5 MS. HERVEY: I mean, it's just ---

6 THE COURT: I'm going to permit the question.

7 Overruled.

8 A. It's -- colon surgery is quite painful for the first
9 couple of days. And then after that, it really isn't. The
10 discomfort that patients feel after this particular kind of
11 operation is secondary to the fact that what you have
12 originally is you have the colon dropped down now into the
13 pelvis because it's -- and the body has a certain feel that
14 that's the way we're dealing with it. And that's what we're
15 going to use to have a bowel motion. Then after surgery
16 what happens is everything is pulled back up, so there's a
17 whole new feel. And a lot of patients have some discomfort
18 secondary to this trying to get used to the new way that the
19 plumbing is working.

20 Q. And did **Minor** experience those type of symptoms of
21 postoperative discomfort?

22 A. Yes, she did.

23 Q. But that's typical of people that are going through
24 this surgery?

25 A. Yes, it is. It's very typical of this surgery.

And what's the long-term prognosis for Minor

Very good. She should have no problems from this.

3 MS. HERVEY: Just briefly, Your Honor?

4 THE COURT: Certainly.

5 (Pause.)

6 Q. When Minor first presented to you as a patient, did you
7 have any suspicions as to what was causing her rectal
8 prolapse?

9 A. Well, again, I have to -- you know, what I have is I
10 have a diagnosis of rectal prolapse in the emergency room.
11 And then what I do is I sit down and talk with the patient.
12 And so the patient at that point told me that that's what
13 had occurred. Then my job is to try and exclude some other
14 possibility that would instantly allow me another diagnosis
15 as to why that occurred. And I could not do that.

16 Q. And why is that?

17 A. Because her history wasn't significant, and also we had
18 done the flexible sigmoidoscopy which did not show any other
19 cause of it to be coming from the colon or rectum.

20 Q. ~~So that was medically the only cause that you knew was~~
21 ~~to confirm her complaint of this forcible sodomy in her~~
22 ~~past?~~

23 A. ~~That is correct.~~

24 Q. And you were able to rule out the other causes that you
25 normally see in patients presenting with this symptom?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Dolford F. Payne, M.D. - Cross Examination by Mr. Stoddard

75

1 A. We were able to pretty much exclude them. ~~Can I a~~
2 ~~hundred percent exclude them? The answer to that is no~~
3 ~~because she was also on psychologic medication.~~ But she did
4 not have the symptoms of normal people with having
5 psychological medications.

6 Q. And you stated those -- is it any psychological
7 medication, or does it focus on a certain subgroup of
8 psychological problems?

9 A. No. It's almost any one. And most all of them can do
10 it.

11 Q. But you stated that normally if it is people
12 experiencing that as a result of taking psychiatric
13 medications, they have that, those other problems with the
14 rectum, the lack of medical tone, that are more consistent
15 with that chronic type use; is that correct?

16 A. That is correct. And the number one thing is chronic
17 constipation.

18 Q. And that's just a side effect of the drug?

19 A. That is correct. That's a side effect of the drug.

20 MS. HERVEY: Nothing further of this witness at
21 this time, Your Honor.

22 THE COURT: Cross examination?

23 MR. STODDARD: Yes, sir.

24 CROSS EXAMINATION

25 BY MR. STODDARD:

1 Q. When you said ---

2 A. Can you hold on one second and let me get some water?

3 (Pause.)

4 A. I'm sorry. Go ahead.

5 Q. When you stated that is what the patient told you --

6 because obviously what the patient described to you had

7 happened; is that right?

8 A. That is correct.

9 Q. Was that at the time you did the surgery and still in
10 recovery, or was that sometime later?

11 A. No, sir. That was ahead of time.

12 Q. Ahead of time prior to the surgery?

13 A. That is correct.

14 Q. All right. Did you bring any medical records with you
15 today?

16 A. No, I did not. I'm sorry. I did not know I was
17 supposed to.

18 Q. Well, you might not have supposed to. And that would
19 have been before December?

20 A. That's correct. The first time I saw her was at the
21 end of November.

22 Q. By the way, did you share -- you've had some suspicions
23 yourself, is that correct, prior to her telling you this?

24 A. No.

25 Q. No? Did you discuss anything like that with her

1 mother?

2 A. Her mother and I -- her mother was there at the -- let
3 me fall back for one second. What I had was I had a call
4 from the emergency room saying that she had rectal prolapse.
5 Then I saw her in my office. What I do with all my patients
6 is I take them back into my office. I have them sit in
7 chairs in front of me and then I try and get a complete
8 history. And I did that with her with her mother there.

9 Q. You did not have her family -- you did not get her
10 family doctor records from any previous treatment prior to
11 you, did you? And review that, did you?

12 A. No, I really did not because what I was interested in
13 is -- I'm a surgeon. And she presented with a problem that
14 needed surgical correct, and that's all the information that
15 I need once I had done the flexible sigmoidoscopy.

16 Q. And frankly, does it matter what caused this as far as
17 what you have to do surgery-wise?

18 A. No. No, it does not.

19 Q. And you were there to do the surgery and correct the
20 problem?

21 A. That is correct.

22 Q. And you mentioned that there was a -- I have seen it
23 referred to as a lower G.I. with some barium enema?

24 A. That is correct.

25 Q. And you don't know exactly when that occurred?

1 A. Again, this is on history. And that supposedly had
2 occurred about two years before she had seen me.

3 Q. And you don't know why that was done?

4 A. No, because that -- what I ask is has the patient had a
5 flexible sigmoidoscopy, a colonoscopy or a barium enema.

6 And the barium enema was what was told to me.

7 Q. Incidentally, you mentioned the difference between
8 forcible sodomy and consensual anal intercourse.

9 A. Right.

10 Q. Do you see prolapsed colons caused by consensual anal
11 intercourse?

12 A. No.

13 Q. You don't see that?

14 A. No.

15 Q. I don't think we're going to have you back up here
16 later. Is it possible you could fax your records to the
17 solicitor so she could give them to me? I don't have this
18 stuff about these conversations you had with **Minor**, just
19 the surgery note. We can talk later about it.

20 A. I have no problem.

21 Q. I'll talk to her about that. I probably should have
22 talked about that outside the courtroom. It's just I've got
23 you here now.

24 A. Yeah. I mean, I have no problem with that. I'll be
25 glad to do that.

1 Q. Just a minute. I think I covered everything I wanted
2 to cover. I've got nothing further.

3 THE COURT: Re-examine?

4 MS. HERVEY: Yes, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. HERVEY:

7 Q. You stated that you didn't see the signs of chronic
8 constipation in **Minor** that would be more associated with
9 those alternative causes. If she did have those symptoms of
10 chronic constipation, would the treatment or prognosis of
11 her been different?

12 A. It can be. The treatment of some of these -- most of
13 the cases that have rectal prolapse is the surgical
14 treatment that I just outlined to you. That's the best way
15 to do it. And we're talking about now a normal healthy
16 person.

17 Now, sometimes with chronic drugs, you get another
18 entity called colonic inertia which means basically that
19 your colon just doesn't work. And in that case, then the
20 treatment would be different in that your whole colon would
21 have to be removed. It doesn't give you a bag. But then
22 you take your small intestine and hook it down to the
23 rectum. And that's the -- that would be the two
24 differentiating points.

25 Q. And you didn't see that colon inertia in **Minor** ?

1 A. No.

2 Q. And Mr. Stoddard asked you just briefly, and just to
3 reiterate for the jury, why don't you see rectal prolapses
4 in consenting homosexuals sexual intercourse individuals?

5 A. ~~Again, because the rectum and pelvic muscles inside are~~
6 ~~relaxed, so there's not a forceful tearing. In order to~~
7 ~~have rectal prolapse, the rectum has to be the normal~~
8 ~~attachments which go to a muscle that holds everything up~~
9 ~~and to your tail bone have to be broken.~~

10 Q. And that can only come with that forcible-type injury?

11 A. Yes.

12 Q. And when we say forcible-type injury, are you able to
13 quantify the amount of force it would take to accomplish
14 this type sodomy?

15 A. No. I'm sorry, I cannot do that.

16 Q. Is there any pain typically associated with it?

17 A. As I stated before, yes, there usually is. Because,
18 again, you're pushing against something that doesn't want to
19 give and you're making it give.

20 MS. HERVEY: Nothing further of this witness, Your
21 Honor.

22 MR. STODDARD: Nothing further.

23 THE COURT: All right. You may step down.

24 MS. HERVEY: We would ask that the doctor be
25 excused.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Garland James Major, Jr. - Direct Examination by Ms. Hervey

81

1 THE COURT: Any objection?

2 MR. STODDARD: No objection.

3 THE COURT: Very well. Thank you, Doctor.

4 MS. HERVEY: The State would call Investigator
5 Garland Major as our second witness.

6 **GARLAND JAMES MAJOR, JR.,**

7 Being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. HERVEY:

10 Q. And you're Sargent Major now, are you not?

11 A. That's correct.

12 Q. With the Anderson County Sheriff's Office?

13 A. Yes, ma'am.

14 Q. Back in 2002 and 2003, in what role were you employed
15 with them?

16 A. I was assigned as a detective. I investigated sex
17 crimes and crimes against children.

18 Q. And did you have the occasion to become involved in the
19 case of **Minor**?

20 A. Yes, ma'am.

21 Q. And was it -- how do you normally get your cases? How
22 do you normally come to be aware that these crimes may or
23 may have not occurred in Anderson County?

24 A. If the crime has occurred in Anderson County and is
25 reported in another jurisdiction, usually the law

1 enforcement agency that takes that report will either call
2 or mail us or communicate with us somehow and let us know
3 what went on.

4 Q. And you stated you were a sex crimes investigator.
5 About how long have you been involved with the detective
6 division? I believe you're a Sargent with the detective
7 division here with the Anderson County Sheriff's Office.

8 A. Right. All in all I've been a detective ten out of my
9 twenty-one years.

10 Q. And so you've been in law enforcement twenty-one years.
11 Has it been exclusively with the Anderson County Sheriff's
12 Office?

13 A. No, ma'am.

14 Q. Well, did you work elsewhere?

15 A. I worked for the Greer County Sheriff's Office and the
16 Williamston Police Department.

17 Q. And just briefly, what is the normal process by which
18 you go through in terms of investigating a sex crime?
19 Specifically involving minors.

20 A. With minors or children, we like to meet with them and
21 talk with them. We do what we call a forensic interview
22 where we ask the child to tell us what happened without
23 asking leading questions. Kind of let them just tell us
24 about it and ask them a few questions. We don't try to tie
25 them down. We let them tell us the story without putting

1 words in their mouth.

2 Q. And did you conduct a forensic interview on [REDACTED]

3 Minor [REDACTED]

4 A. No, ma'am I did not.

5 Q. And was it something that was reported to you from
6 another agency?

7 A. Right. It was -- I did not do the interview because of
8 logistical concerns. Minor was down in Georgia. I was made
9 aware of it by Eddie Colbert who is the chief deputy at the
10 Chattooga County Sheriff's Office.

11 Q. And did you direct them to do a forensic interview in
12 Georgia?

13 A. Yes, ma'am. I talked with Deputy Colbert. I also
14 spoke with Melanie Foldersman (phonetic) at the forensic place
15 which is a child advocacy center down in Georgia. They
16 interview children the same way that we do. They use the
17 same techniques that we do. So I asked them to interview
18 the child for us.

19 Q. And do we have a child advocacy center here in
20 Anderson?

21 A. Yes, we do.

22 Q. And what's the importance of doing these interviews in
23 a child advocacy center versus doing them in the normal
24 interview room in the detective division?

25 A. Well, it will make the child feel more at home. And

1 I'm not always talking about a four-year-old child. It
2 could be a fifteen- or sixteen-year-old child. You don't
3 want to be in a place where you've got the hustle and bustle
4 of the detectives, of suspects coming in there, the noises,
5 everyone walking by staring at you. A child advocacy center
6 is more a child oriented, a friendly type environment where
7 you don't have all the noise. You just sit down one-on-one
8 with the child with the interview.

9 Q. And were they able to produce to you the results of
10 those interviews?

11 A. Yes, ma'am. The interview was videotaped and a copy of
12 the tape was sent to us.

13 Q. And as a result of that and during your discussions
14 with Investigator Colbert, did you determine whether or not
15 **Minor** had lived here in Anderson County for some period of
16 time?

17 A. Yes, ma'am. And reviewing the tape and also speaking
18 with **Minor** mother and going back in tax records as far as
19 trying to get a time frame of when the Defendant, Maxwell
20 Sipes, and **Minor** and the mother lived here, we did find that
21 it was between March of 2002, I think, and May of 2003.

22 Q. And had she actually even attended school here in
23 Anderson?

24 A. Yes.

25 Q. And because of **Minor** being in Georgia, was the bulk of

1 the typical investigation left to those Georgia detectives?

2 A. They did all the -- I guess all the initial work. And

3 ~~when we found out that the crime occurred at Paul Revere~~

4 ~~Trail, happened in Anderson, the only thing I really did was,~~

5 ~~facilitate the interview.~~

6 Q. The forensic interview?

7 A. Right.

8 Q. And in terms of a typical child sexual crime, beyond

9 that forensic interview and those things, is that pretty

10 much the focus of most sex crime investigations involving

11 minors or children?

12 A. The forensic which is, again, the interview one-on-one

13 with the child, and we also do a medical examination.

14 Q. And in this case, did we do a medical examination, or

15 because of her medical problems, was that pretty much

16 resolved for you?

17 A. That was resolved for us.

18 Q. I have nothing further of -- oh, one more question.

19 You mentioned Paul Revere Trail. What is that?

20 A. That's 109 Paul Revere Trail. That's the apartments

21 they lived in in Anderson County at the time this occurred.

22 MS. HERVEY: Nothing further of this witness, Your

23 Honor.

24 THE COURT: Cross examination?

25 MR. STODDARD: No cross examination.

1 THE COURT: You may step down.

2 MS. HERVEY: And Your Honor, in order to
3 facilitate those witnesses both for the State that are only
4 available tomorrow, we would recess at this time and
5 reconvene at your convenience tomorrow morning to take the
6 rest of the testimony in the State's case.

7 THE COURT: All right. Any objection?

8 MR. STODDARD: No objection.

9 THE COURT: Mr. Foreman, ladies and gentlemen of
10 the jury, you've heard that we have some scheduling problems
11 in this case. So in order to accommodate that, I'm going to
12 suggest and request that we recede for the evening at this
13 time.

14 Now, this will be your first duty, Mr. Foreman. I'm
15 going to ask you to ask your jurors as to what time you'd
16 like to start in the morning. I would suggest nine thirty
17 or ten o'clock. I don't know exactly how far you have to
18 come or what you have to do before you get here. But I
19 think that nine thirty is about as early as everybody can
20 get together, and ten o'clock will probably be convenient.
21 Of course, if it's a later time, that will be fine too. But
22 if you'll just consult with your jurors here in the box
23 right now as to what time, nine thirty, ten or maybe later.

24 (Pause.)

25 THE COURT: By the way this is not a unanimous

1 verdict. It's a consensus.

2 JUROR: Your Honor, nine thirty seems to be the
3 consensus.

4 THE COURT: All right. Very good. If you'll come
5 -- we'll reconvene at nine thirty in the morning, and come
6 back to the jury room were you've been this afternoon.

7 Now, I tell jurors that this is perhaps the most
8 difficult part of the case that you'll have because you'll
9 go home this afternoon, and the first thing somebody is
10 going to ask is what are you doing. And you'll say, well,
11 I've been selected on a jury. And they'll say, well, what's
12 it about? And you're going to have to tell them, well, I
13 can't tell you. And they'll say, well, why not? And you'll
14 say, because the Judge said so. And they'll probably say
15 something to the effect, well, that's ridiculous.

16 Well, I think that you understand now that this is a
17 very important case to everybody involved. And no one who
18 doesn't sit where you're sitting in that jury box who is
19 not with you when you finally do get all the testimony,
20 exhibits and other evidence and the charge on the law and
21 the arguments can help you in the jury room. They haven't
22 heard the testimony. They haven't seen the first bit of
23 evidence. So therefore, all they can do is confuse or
24 interfere with the proper resolution.

25 So if you would, please, tell them you cannot discuss

1 it. If they should insist, however, I'll be here about
2 eight thirty in the morning. And tell them I'll be glad to
3 explain it to them. But I trust that you won't have that
4 problem. As I say, this is an important case to everyone
5 involved, and it needs to be resolved in a proper way.

6 And with that, I'm going to excuse you and see you at
7 nine thirty in the morning. Just come back to the jury
8 room. Of course, the bailiff showed you the way to do it.

9 Everyone else remain seated while the jury retires
10 from the courtroom.

11 (WHEREUPON, the jury exited the open court at
12 approximately 3:21 p.m.)

13 THE COURT: Have y'all gotten your copies yet?

14 MR. STODDARD: Part of them.

15 THE COURT: As soon as you do -- I'll be in
16 chambers probably the rest of the afternoon. If you have
17 anything to bring up, I'd appreciate it if you'd do it at
18 that time. So get what you're looking at and see if
19 there's any problem with it. Very good. All right. See
20 you in the morning at nine thirty.

21 MS. HERVEY: Your Honor, is the Defendant still
22 out on bond?

23 MR. STODDARD: His mother is on his bond. She's
24 in the courtroom.

25 THE COURT: Is she in the courtroom?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Garland James Major, Jr. - Direct Examination by Ms. Hervey

89

1 MR. STODDARD: Yes, sir.

2 THE COURT: All right. Mr. Sipes, if you would
3 please stand. And your mother is here?

4 MR. STODDARD: It's his grandmother.

5 THE COURT: Grandmother? Would you please
6 stand? And your name, please, ma'am?

7 MS. BLACKBURN: Ouida Blackburn.

8 THE COURT: Ms. Blackburn?

9 Mr. Sipes, raise your right hand.

10 (WHEREUPON, the Defendant was duly sworn.)

11 THE COURT: All right. I understand you're on
12 bond now.

13 How long has he been out on bond? Well, I mean, has
14 it been some time?

15 MR. STODDARD: Yeah, some time.

16 THE COURT: And there's been no problems? Has
17 there been any problem with his appearances?

18 MS. HERVEY: Not with his appearances, no, Your
19 Honor.

20 THE COURT: All right. Very good. I'm going to
21 continue you on bond at the request of your attorney.

22 Now, that means that ...

23 That's why I'm asking you to stand, Ms. Blackburn.

24 That means that the bond is continuing just as it has

25 been. If he should violate the bond, then, of course, the

1 bond will be estreated. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you understand, Ms.

4 Blackburn? Do you understand that he must do what he's
5 supposed to do or the State could estreat the bond?

6 MS. BLACKBURN: Yes, sir.

7 MS. HERVEY: And just to reiterate, Your Honor,
8 there was a condition of bond that there be no contact
9 between the Defendant and the victim or her family. If we
10 could just reiterate that again.

11 THE COURT: All conditions of the bond will
12 continue just as they have until now. Do you understand
13 that? No contact, directly or indirectly. Do you
14 understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, I'm also going to
17 advise you that this case will reconvene at nine thirty
18 in the morning, and if you're not here, the case will go
19 on in your absence. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Your failure to appear at nine
22 thirty will be a waiver of your right to be present during
23 the trial and the trial will continue. And if you should
24 be convicted, you will be sentenced in your absence. Do
25 you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That's nine thirty tomorrow morning
3 here in the Anderson County Courthouse on Main Street,
4 Anderson, South Carolina at nine thirty a.m. And that
5 will be March the 6th, 2007. Any questions? Third-floor
6 courtroom where you are right now. Any questions?

7 THE DEFENDANT: No, sir.

8 THE COURT: Very good. Anything from the State?

9 MS. HERVEY: No, Your Honor. Just as we did
10 before, if would could ask him and his family to remain in
11 the courtroom and we'll escort the victims out ---

12 THE COURT: Certainly.

13 MS. HERVEY: --- so there's no problem.

14 THE COURT: Very good.

15 You may be seated, Ms. Blackburn. Thank you. By the
16 way, Ms. Blackburn, you don't have any questions, do you?

17 MS. BLACKBURN: No, I don't.

18 THE COURT: Very good. Thank you, ma'am.

19 All right. The people on the right side of the
20 courtroom will remain seated while the others retire.

21 MS. HERVEY: Thank you, Your Honor. I
22 appreciate it.

23 THE COURT: Yes, ma'am. Let me know when it's
24 ready.

25 MS. HERVEY: If you'll just give them a few

1 minutes to get on the elevator.

2 THE COURT: Let me know when they're ready.

3 We'll stand in recess until tomorrow morning.

4 (WHEREUPON, court stood at recess for the day.)

5 MARCH 6, 2007

6 (WHEREUPON, court convened with all parties present
7 and the following proceedings were had.)

8 THE COURT: Is there anything from the State
9 before we proceed?

10 MS. HERVEY: Yes, Your Honor. As you know, the
11 next witness that the State would anticipate calling was
12 the victim, Minor . We kind of went through this
13 exercise yesterday in getting some records regarding her.
14 I believe the ones I got were from an inpatient admission
15 of her in July of -- or June of '03. And there's a couple
16 of things, I think, that I think we just need to establish
17 some ground rules in terms of what we can and cannot go
18 into with her from this.

19 A lot of this is hearsay records. A lot of this is
20 what other people said. There's some medical and
21 psychiatric testimony as far as I know from his witness
22 list. None of these people we anticipate calling. So I
23 think that, you know, obviously if she said something, he
24 can ask her if she said that. But I think to go beyond
25 that into what others may have said or what the diagnoses

1 are, I think there are some inherent limitations to that.

2 And the State would certainly anticipate opposing that.

3 Obviously, also -- and this is kind of -- it's common
4 knowledge that the Defendant is her adoptive father -- is
5 that she does have and has had some experience with the
6 juvenile system, and she does have some juvenile
7 convictions. The State feels that those are not proper
8 pursuant to Rule 609. They don't involve honesty and
9 those kind of things, and they don't carry more than a
10 year. So the State would feel that we would not be going
11 there.

12 And the third issue that I wanted to raise just to
13 kind of make sure everybody is on the same page, he is
14 indicted for molesting the younger sister, Taylor Sipes.
15 That's the subject of the other indictment that the State
16 did not pursue at this time. And we have gone over
17 significantly with the victim about not talking about
18 that, that she could express fear that he might go after
19 Taylor, but not of any knowledge that she may have had
20 either firsthand or from what her sister told her about
21 what went on between the two of them.

22 That being said, Mr. Stoddard raised in opening
23 argument that he believes that this was a false allegation
24 raised pursuant to that custody battle. And that kind of
25 opens the door into that realm. **Minor** was afraid that he

1 would get custody of Taylor, and she knew about what was
2 going on with her sister. And that's a part of the reason
3 that she finally came out, was in this effort to protect
4 her sister. So I don't want to step afoul of anything in
5 terms of the common case law regarding going into other
6 acts and why and all those other kind of things, but also
7 realizing at some point if the Defense goes there we've
8 kind of opened the door to things.

9 So I wanted to just kind of deal with her juvenile
10 record, deal with some of the notes contained in all those
11 records that relate to her and also deal with the issue of
12 the sister and what the Court feels is appropriate and
13 inappropriate testimony. And I know you haven't heard
14 anything, and that kind of puts you at a certain
15 limitation. But also I don't want to get her up on the
16 stand and suddenly we're sending the jury out if we can
17 establish some kind of common framework.

18 THE COURT: All right. Mr. Stoddard, what do
19 you say about those things?

20 MR. STODDARD: Perhaps one thing that would be
21 helpful is I don't know what her juvenile convictions were
22 for. And maybe if she could give me a list of them, then
23 I could say whether they involve dishonesty or -- I
24 realize that as a juvenile they don't carry more than a
25 year. But I would believe that something that if an adult

1 committed it, it would carry more than a year, then I
2 could go into it. But I don't know. I think she -- I
3 know I've seen things in the record of carrying a weapon
4 to school. I don't know what else.

5 MS. HERVEY: I believe there was an incident of
6 her carrying a gun to school. I don't have that as a
7 conviction. On her record it does come up that she was
8 charged with C.D.V. and that that was a juvenile
9 conviction that was handled through D.J.J. The victim of
10 that was her mother. She threw, I believe, a shoe at her
11 mother. And they just, I think, dealt with it locally.

12 She has an adult '06 conviction for obstruction of
13 officers for which she paid a \$400 fine. I've been
14 advised that that's a misdemeanor offense. It's out of
15 Georgia, so I had to look up what that was. So I don't
16 think that that is a crime of dishonesty. And also it
17 wouldn't carry the one-year statute. So the only true
18 juvenile conviction that I'm aware of from her RAP sheet
19 is the C.D.V. I am aware of the incident on the bus. I'm
20 not sure it actually resulted in a juvenile adjudication.

21 MR. STODDARD: Is the C.D.V. a conviction?

22 MS. HERVEY: It just says juvenile -- it says,
23 "juvenile disposition, not for public record."

24 MR. STODDARD: That may be relevant on this
25 issue. I understand the State is going to present

1 testimony that she has psychological -- the daughter has
2 psychological problems and that they're either consistent
3 with or resulting from this abuse. I think there's
4 evidence in the record that she has a very turbulent
5 relationship with her mother and has for years and that
6 that's an alternate explanation for some of her
7 psychological problems. And to me, the C.D.V., with her
8 mother being the victim, corroborates the fact that she
9 has a turbulent relationship with her mother.

10 MS. HERVEY: And the State feels you can go into
11 that relationship with the mother without bringing up that
12 it resulted with this juvenile adjudication of C.D.V.
13 Obviously the act in itself, I think, is something. I
14 think when you start calling it a juvenile adjudication is
15 when we run afoul. If he wants to ask if you've had a bad
16 relationship with your mother, if you've had fights with
17 her and those kind of things, obviously I think that is
18 fair game and we would anticipate that testimony. I think
19 it's when you start talking about a criminal record and
20 those kind of things that it becomes overly prejudicial
21 and runs afoul of the rules of evidence.

22 MR. STODDARD: Well, if I could be heard, she
23 characterized it as she threw a shoe at her mother. To
24 me, if you have such a conflict that the mother -- law
25 enforcement is called, I think that says something. The

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Garland James Major, Jr. - Direct Examination by Ms. Hervey

97

1 fact that her mother called law enforcement on her in and
2 of itself might make her have bad feelings toward her
3 mother.

4 THE COURT: What do you say about that, Madam
5 Solicitor?

6 MS. HERVEY: Your Honor, at some point I think
7 it becomes whether or not the probative value outweighs
8 the prejudicial effect. I think it is fair game, and I
9 can see his argument. But I don't really see how the fact
10 that she calls the law made it rise to -- I think he would
11 have to establish some relevance that that somehow impacts
12 her telling this story.

13 THE COURT: Well, that's just it. It goes to
14 credibility. The reason for the report, if there was a
15 reason. So you know ...

16 MS. HERVEY: I think he would have to tie it to
17 that. I think he can't just say, this is out there and
18 somehow that underlines it. I think there has to be some
19 causal connection because the law is quite clear on what
20 you can use in terms of a criminal record for the purpose
21 of ---

22 THE COURT: Well, it's not talking about
23 credibility from conviction as far as talking about a
24 witness' reason for testifying.

25 MR. STODDARD: Perhaps I can, you know, suggest

1 something ---

2 THE COURT: But anyway ---

3 MR. STODDARD: If she's worried about conviction
4 and arrest and no conviction, perhaps I could get into the
5 fact that the police were called without bringing up that
6 she was actually charged, if in fact she was. Or
7 convicted.

8 THE COURT: As I say, I don't -- I think Ms.
9 Hervey is right about it would not come in under a prior
10 conviction. But I do see that if there is, for lack of a
11 better word as we say in Oconee County, bad blood, that
12 that is relative to testimony as to the credibility of
13 that testimony or the reliability of that testimony.

14 I'll have to address it, but I do thank both of you
15 for recognizing this being something that the Court might
16 be -- and you anticipate going into it. Let's take maybe
17 a sidebar or something like that long enough maybe not to
18 interrupt the testimony.

19 Now, let's see. That deals with the mother. Now,
20 what was the other thing, Ms. Hervey?

21 MS. HERVEY: It was ---

22 THE COURT: About the medical reports or at
23 least the treatment reports?

24 MS. HERVEY: Well, I do -- I got these pretty
25 much at a quarter to nine this morning. And I've gone

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Garland James Major, Jr. - Direct Examination by Ms. Hervey

99

1 through most of them, and -- I mean, I've talked to this
2 victim. There's not a whole lot of it. She was
3 hospitalized because she was cutting herself and was
4 depressed, and they feared that she might be suicidal and
5 those type things. In those records they diagnose her as
6 depressive. They talk about that she vocalizes at times
7 that she does see things or those kind of things. But
8 there's a lot in here that are nurses' notes, that are
9 nurses' observations, that are nurses' opinion and those
10 kind of things that I don't think are fair game in terms
11 of cross-examining this witness. If he wants to go into,
12 did you ever say this, or those kind of things, I think
13 that at some point might be appropriate. But I think to
14 go into -- if he kind of goes into, well, weren't you
15 diagnosed with this or weren't you diagnosed -- you're
16 kind of going beyond the scope.

17 THE COURT: So what do you say, Mr. Stoddard?

18 MR. STODDARD: I'm not completely sure where I'm
19 going to go with some of those records. I might be able
20 to ask her if she was diagnosed with something. I think
21 ---

22 THE COURT: Well, I'm not sure because that's

23 ---

24 MR. STODDARD: It's probably going to come in --
25 I'm probably going to get into that with her expert

1 witness.

2 MS. HERVEY: And that's fine, because ---

3 THE COURT: Now, that I'm afraid that he would
4 have -- that would be available.

5 MS. HERVEY: And that's fine because she can
6 explain that, whereas the victim, however, I think can't
7 say, I was diagnosed as depressive disorder not otherwise
8 specified. And then it's kind of out there as this kind
9 of dead fish without anybody getting -- being able to
10 explain what it is. And my position is if he wants to go
11 into what she said or what she told them, you know, that's
12 a prior statement on her part. And if can establish
13 relevance to that, that's one thing. But I think to go
14 beyond that and cross-examine her with what nurses might
15 have said is hearsay. You're impeaching her with hearsay
16 statements and those nurses and those doctors aren't here.
17 Now, if he wants to ask an expert who might rely upon
18 those notes who might be able to interpret them for us,
19 then I think that is more proper. But I think that it's
20 improper with a lay witness victim herself.

21 THE COURT: Well, again, as I say, I think
22 that's definite. If you're doing it as far as a witness
23 is concerned, I think it does have to be something that
24 the witness participated in.

25 MS. HERVEY: Yeah.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Garland James Major, Jr. - Direct Examination by Ms. Hervey

101

1 THE COURT: Now, of course, if you're doing it
2 under the 803(6), the records of regularly conducted
3 activities which includes diagnoses, that would perhaps be
4 admissible but through a witness that would normally rely
5 on it.

6 MR. STODDARD: Well, we haven't addressed the
7 door-opening argument or issue she just raised about the
8 other indictment, I don't think. Or she addressed it. I
9 don't know that I've had a chance.

10 THE COURT: All right. Well, let's hear from
11 you on that.

12 MR. STODDARD: As I understand it, because I'm
13 making an argument -- ~~I probably will present evidence~~
14 ~~that my client served divorce papers on them prior to~~
15 ~~these allegations arising. Not divorce, custody papers.~~
16 ~~That's a fact that I do intend to bring up. I think that~~
17 ~~if Clara or if anybody testifies that Taylor was molested,~~
18 ~~we're going to have a trial within a trial and we'll open~~
19 ~~a can of worms.~~

20 THE COURT: Well, she says she's not going into
21 any sort of Lyle things.

22 MR. STODDARD: Oh, I thought she said ---

23 MS. HERVEY: I think if he does go to a certain
24 point, he does -- if he says that she's making up these
25 false allegations because there was this ongoing custody

1 dispute, the explanation for that and the way the State
2 responds to that is for her to say the reason that **Minor**
3 -- because he wasn't seeking custody of **Minor**; he's
4 seeking custody of the other siblings in the household.

5 MR. STODDARD: That's not true.

6 MS. HERVEY: She was under the impression that
7 he had made statements that he did not want her. Is that
8 she is afraid for her younger sister because, A, what he
9 has done to her, and, B, what she knows will happen to her
10 sister. And that is why she is so vehement about coming
11 out with this story is because she suddenly realized that
12 if he won custody, they would be alone with him and
13 without the ability to protect themselves. So I think it
14 does open the door. And the State wasn't going to go
15 there. The State was going to limit it to I was afraid
16 that he might go after Taylor just because he did this to
17 me, but not go into the more factual ---

18 THE COURT: So you were planning to go there?

19 MS. HERVEY: Well, I think it's fair for her to
20 say that I was afraid for the other kids in the house. I
21 think that's just her motivation. It's not actually
22 saying he ever did anything to her. I think she can
23 express that fear. But I wasn't going to go into the fact
24 that she actually had knowledge that he was doing
25 something to the sister. But I think that when he brings

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Garland James Major, Jr. - Direct Examination by Ms. Hervey

103

1 up that she's afraid of this custody allegation he does
2 open the door to that because that's a real fear, and I
3 think ---

4 THE COURT: No, no, no. I think you opened the
5 door. And if -- but I'd be very careful about trying
6 another case here.

7 MS. HERVEY: And the State is just put in the
8 position of how do we respond to the fact that it was a
9 false allegation regarding this custody dispute without
10 going into the substance of what her real motivation is
11 because that's really the response to that.

12 THE COURT: Well, as I say, you can --
13 unfortunately trials are not without dilemmas. How you
14 approach the dilemma is going to be up to you.

15 The same way with you, Mr. Stoddard. If you do
16 something that, what is it, invites development, then you
17 might regret it. As I say, both of you I think would be
18 better off trying the case you've got rather than trying
19 to do something else.

20 MR. STODDARD: Well, again, I almost have to go
21 with the custody thing coming before this allegation. As
22 far as it opening the door, it seems to me that she has
23 the same motivation to protect those children if these
24 allegations are true rather -- regardless of whether he
25 has supposedly messed with these children or not. Plus

1 I'm not sure whether she made her disclosure before or
2 after she supposedly learned about Taylor. If she learned
3 about Taylor later, I think that wasn't her motivation.

4 MS. HERVEY: And the State's, I think, position
5 is he's going to -- you know, he says this was a false
6 allegation from the custody dispute. The State's response
7 is that this came out because she was afraid that he would
8 get custody of Taylor and that they would be alone with
9 him and unprotected. I think it goes to the merit of that
10 fear what knowledge she has about what inappropriate
11 conduct was happening between him and Taylor because
12 otherwise Mr. Stoddard will be able to characterize it as
13 some irrational or feigned or made up fear which it is
14 not.

15 So the State does feel that it is relevant and part
16 of our ability to respond to this kind of red herring
17 that's been thrown out there, you know -- and I mean, I'm
18 not disparaging their case in any way -- in their attempt
19 to distract them from whether or not this happened between
20 him and **Minor**.

21 MR. STODDARD: Again, she said that that was her
22 motive. She knew that this had happened with Taylor. And
23 my question is -- and I don't know this -- is when she
24 first made this disclosure, did she -- had she heard that
25 Taylor -- had she even heard at that time that Taylor was

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Garland James Major, Jr. - Direct Examination by Ms. Hervey

105

1 alleging this. Because if she didn't, then her argument
2 doesn't hold water. In other words, if Taylor's
3 allegation came up after **Minor** allegation, then that
4 could not have been her motivation. It still might have
5 been to protect Taylor, but not because she also knew that
6 Taylor -- or suspected Taylor had been -- had reason to
7 believe Taylor had been molested.

8 THE COURT: All right. As I say, I can't give
9 you an advisory opinion, particularly when I don't know
10 what the advice is going to be based on. But I would ask
11 you, and I won't say admonish, but suggest to you very
12 strongly before you get into certain areas where you feel
13 like it's coming up, then let the Court know. For
14 example, much of the Defense cross-examination, if not all
15 of it, is going to be based on what the State presents.
16 So before you start your cross-examination, if you think
17 you're going into an area that the Court might need to
18 give particular attention to in advance -- and the other
19 thing is, as I say, inasmuch as some of this testimony
20 will be part of the State's case-in-chief, the State
21 should be very careful about what it does proffer because
22 it might, as I said earlier, invite something.

23 So with those strong suggestions, we'll -- unless
24 there's something else, we'll proceed.

25 MS. HERVEY: And just so we understand, is there

1 any objection to her saying that, you know, that she -- I
2 don't want to put words in her mouth -- that part of her
3 reason for coming out is that she feared what might happen
4 to her younger siblings? Because I think that is relevant
5 and fair game. And we're not really going into why or
6 those kind of things. It's her fear. It's based on what
7 happened to her. And I think it's a very reasonable
8 inference.

9 THE COURT: But the thing is the way this
10 usually comes out is, as you say, under Lyle, the rule
11 applicable to Lyle evidence. And what Mr. Stoddard is
12 saying is apparently she didn't know at the time.

13 MR. STODDARD: I really don't because I don't
14 know the exact time. In the records it's real confusing
15 as to when things got disclosed.

16 THE COURT: I'm just ...

17 MS. HERVEY: Assuming that she did know at the
18 time -- and I'll establish that foundation before we go
19 there. I'm not going to put the cart before the horse by
20 any means whatsoever. But my basis on my interview is
21 that while this is all coming out that this is
22 coincidental to the ongoing custody dispute and those kind
23 of things. That she becomes aware of Taylor -- that she
24 just feared for Taylor. And that's part of the reason ---

25 THE COURT: Well, wait a minute. You said

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Garland James Major, Jr. - Direct Examination by Ms. Hervey

107

1 during the ongoing custody she became fearful. As I say,
2 unless you're truly trying to go into a Lyle situation,
3 I'm not sure if that would be appropriate. In other
4 words, it's stuff that she learned after the custody
5 question. But anyway, it was raised.

6 All right. Again, I thank you for the notice. But
7 I'm not sure if I have enough information to make a
8 decision. The only thing is, as I say, the decision will
9 be based on what is in the record at the time that I'm
10 asked to make the decision.

11 MS. HERVEY: Can I have just a brief moment to
12 speak with her and kind of guide her through this ---

13 THE COURT: Certainly.

14 MS. HERVEY: --- and make her aware of where to
15 go and not to go until certain things are ---

16 THE COURT: Very good. All right. Let's stand
17 in recess for a minute.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Are we ready to proceed?

20 MS. HERVEY: Yes, Your Honor.

21 THE COURT: Are you ready to proceed?

22 MR. STODDARD: Yes, sir.

23 THE COURT: All right. Ask the jury to join us,
24 please.

25 (WHEREUPON, the jury entered the open court at

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Direct Examination by Ms. Hervey

108

1 approximately 10:01 a.m.)

2 THE COURT: All right. Let the record reflect
3 the jury and alternate are in the jury box.

4 Mr. Foreman, ladies and gentlemen of the jury, we'll
5 now proceed with the trial of the case. I do appreciate
6 your patience with us. We had some matters I needed to
7 take up before we did begin the testimony.

8 Madam Solicitor, you may call your next witness.

9 MS. HERVEY: The State calls Minor [REDACTED].

10 [REDACTED] Minor [REDACTED],

11 Being first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. HERVEY:

14 Q. How are you doing? Do you need a moment? Okay?

15 Now, you're squinting at me a little. Can you see me
16 all too well?

17 A. No, because I can't see far off.

18 Q. Okay. So that's why at times you may squint?

19 A. Correct, yeah.

20 Q. What's your name?

21 A. Minor [REDACTED].

22 Q. And who is Key? How did you come to have that last
23 name?

24 A. Through my husband Joshua Key.

25 Q. Is Joshua here?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Direct Examination by Ms. Hervey

109

- 1 A. Yes, ma'am.
- 2 Q. And is Joshua in the red shirt, red and white shirt?
- 3 A. Yes, ma'am.
- 4 Q. And how long have you and Joshua been married?
- 5 A. For a year.
- 6 Q. And do you have any children?
- 7 A. Yes, ma'am, we have one.
- 8 Q. And how old is she?
- 9 A. He is four months.
- 10 Q. And how long have you known Joshua?
- 11 A. For about three years.
- 12 Q. And so you dated him for some period of time and then
- 13 you got married?
- 14 A. Yes, ma'am.
- 15 Q. Do you remember what year you got married?
- 16 A. It was in '96.
- 17 Q. And do you work anywhere or do you stay at home with
- 18 your baby boy?
- 19 A. I stay home with my son.
- 20 Q. And does Joshua work?
- 21 A. Yes.
- 22 Q. And where do you all live? Do you all live here in
- 23 South Carolina?
- 24 A. No. We live in Chattooga County.
- 25 Q. Chattooga County? And is that in Georgia?

- 1 A. Yes, ma'am.
- 2 Q. And how long approximately have you lived in
- 3 Chattooga County?
- 4 A. For about three years now.
- 5 Q. And where is Chattooga County in relation to like
- 6 Atlanta? Is it north or south or what direction of
- 7 Atlanta? Do you know?
- 8 A. I think we're north.
- 9 Q. Are you up in the mountain kind of area of Georgia?
- 10 A. Yes, ma'am.
- 11 Q. And prior to you living with Joshua, did you live
- 12 there with anybody else in Chattooga County? Did you ever
- 13 live with your mom?
- 14 A. I lived with my grandmother.
- 15 Q. Your grandmother? What's your grandmother's name?
- 16 A. Nora Croy.
- 17 Q. And is she your mom's mom, or is she your dad's mom?
- 18 A. She's my mom's mom.
- 19 Q. And have you lived with your grandmother off and on
- 20 throughout your life?
- 21 A. Yeah. No, I haven't lived with her throughout. I
- 22 lived with my mom and my -- I lived with my mom.
- 23 Q. And are you close to your grandmother?
- 24 A. Yes, ma'am.
- 25 Q. And does she live close to you there in Chattooga

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Direct Examination by Ms. Hervey

111

1 County?

2 A. Yes, ma'am.

3 Q. And do you see her a lot?

4 A. Yes, ma'am.

5 Q. And does she see your baby? Does she see her great-
6 grandson, I guess?

7 A. Yes, ma'am.

8 Q. And do you have any brothers or sisters?

9 A. Yes, ma'am, I have two sisters and one brother.

10 Q. Okay. Deep breath. Let me have Dr. Graham get you
11 some water, all right?

12 (Pause.)

13 Q. Okay?

14 Are you the oldest of all your brothers and sisters?

15 A. Yes, ma'am.

16 Q. And what's the next one in line to you? Who's the
17 next younger?

18 A. Taylor.

19 Q. Taylor?

20 A. Yes, ma'am.

21 Q. Is Taylor here today?

22 A. Yes, ma'am.

23 Q. And is she sitting in front of the deputy back there?

24 A. Yes, ma'am.

25 Q. And how old is Taylor now?

1 A. She's eleven.

2 Q. Eleven? Okay. And then you said you have one more
3 brother and sister?

4 A. Yes.

5 Q. And how old are they?

6 A. Four.

7 Q. Four years old? What was their birth date? Do you
8 remember?

9 A. [REDACTED].

10 Q. Okay. Are you okay?

11 A. (Nodded head up and down in the affirmative.)

12 Q. All right. And so they're twins, right?

13 A. Yes.

14 Q. Boy and girl twins?

15 A. Yes.

16 Q. All right. And so do you see them a lot?

17 A. Uh-huh (affirmative). My mom, she lives in Atlanta.

18 I get to see them often.

19 Q. And at some point did you also live with them?

20 Before you married Joshua, did you have an opportunity to
21 grow up with them and live in the same home?

22 A. Yes.

23 Q. All right. And how are they? Are they trouble at
24 that age?

25 A. A little.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Direct Examination by Ms. Hervey

113

- 1 Q. A little bit?
- 2 A. Not a lot.
- 3 Q. Not a lot? And have you taken care of them as well?
- 4 A. Have I taken care of my brothers and sisters?
- 5 Q. Yeah.
- 6 A. Yeah, I took care of them.
- 7 Q. And who is your father?
- 8 A. My biological father is Phillip Kirby. He signed off
- 9 rights to me, and Maxwell Sipes adopted me.
- 10 Q. Maxwell Sipes adopted you?
- 11 A. Yes.
- 12 Q. And how old were you when he adopted you?
- 13 A. I was around seven. Somewhere around that age.
- 14 Q. And was he married to your mom at the time?
- 15 A. Yes.
- 16 Q. And about what age, if you remember, did he come into
- 17 your life? When did he and your mom ---
- 18 A. I was about five.
- 19 Q. About five?
- 20 A. Yes.
- 21 Q. And were they married at the time you were adopted?
- 22 Had they been married for a while, or did that happen all
- 23 about the same time?
- 24 A. They got married around all about the same time.
- 25 They got married when I was about five, five and a half or

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Direct Examination by Ms. Hervey

114

1 six.

2 Q. So whose father is Taylor?

3 A. Maxwell sipes.

4 Q. And is he also the father of the twins?

5 A. Yes, ma'am.

6 Q. And around that time that you're five or seven and

7 you're getting adopted and your mom's marrying him, are

8 you living in Georgia or are you living here in South

9 Carolina? Do you remember?

10 A. I was living -- when I was adopted we lived in

11 Georgia.

12 Q. So you were adopted in Georgia? All that stuff with

13 the court happened in Georgia?

14 A. Yes.

15 Q. And for the most part did you grow up and go to

16 school in Georgia?

17 A. Yes.

18 Q. And what are some of the things -- what are some of

19 the classes that you liked in school?

20 A. I liked English and I liked drama.

21 Q. Okay. Did you ever like science or anything like

22 that?

23 A. Not really.

24 Q. Did you like anything about science?

25 A. Not really.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Direct Examination by Ms. Hervey

115

1 Q. Did you like math?

2 A. It was okay. I wasn't very good at it.

3 Q. So you more favored English and drama and those kind
4 of things?

5 A. Yeah.

6 Q. All right. Do you have any kind of animal that you
7 like a lot? Do you have pets like dogs?

8 A. I like dogs.

9 Q. You likes dogs? Do you like any other kind of
10 animals at times?

11 A. My favorite one is frogs. I like frogs.

12 Q. It's frogs? How much do you like frogs, **Minor**

13 A. I like frogs a lot.

14 Q. How many frog things do we have, **Minor**

15 A. My whole living room and my bathroom is done in
16 frogs.

17 Q. So we've got frog clothes; is that fair to say?

18 A. Yeah.

19 Q. Frog jewelry?

20 A. Yeah.

21 Q. Do we have a frog shower curtain?

22 A. Yeah. Rugs and toiletries. Everything.

23 Q. Do we have any frogs themselves other than the ones
24 in the back yard?

25 A. No. I don't like them.

1 Q. You don't like real frogs?

2 A. No.

3 Q. You just like fake frogs?

4 A. Yeah.

5 Q. I see. So you don't have any as a pet and you let
6 them jump around and that kind of thing?

7 A. Uh-uh (negative).

8 Q. No?

9 A. Uh-uh (negative).

10 Q. How long have you liked frogs? How long has this
11 obsession been going on, **Minor**

12 A. Since I was about twelve.

13 Q. All right. And right now what are the kind of things
14 that you like other than playing with your son obviously?

15 A. I just like to go places. I like to go spend time
16 with my grandmother, watch TV. I like American Idol and I
17 watch House.

18 Q. Okay. Deep breaths. All right.

19 Now, you said that your mom and Max got married and
20 he was your adopted dad. Did you ever actually call him
21 Dad?

22 A. Yes.

23 Q. And is that -- did you call him that more than you
24 called him Max?

25 A. Yes.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Direct Examination by Ms. Hervey

117

1 Q. And when they first got together and you were in
2 elementary school, have they remained married pretty much
3 most of your childhood, or was there a time when they
4 became separated?

5 A. They were married until I was about eleven or twelve.
6 I can't really remember. Then they got a divorce.

7 Q. And at some point after the divorce, did they get
8 back together?

9 A. Yes.

10 Q. And do you remember approximately when that was? Do
11 you remember what grade you were in?

12 A. That was in the year of 2001, the beginning of 2002.

13 Q. So they were apart for a couple of years, a year and
14 a half, that kind of thing?

15 A. Yeah.

16 Q. Okay. And during that time were you all still living
17 in Georgia?

18 A. No, ma'am. My mother and my sister were still living
19 in Georgia when they were divorced.

20 Q. Because the twins weren't born yet, right?

21 A. No.

22 Q. Okay. And then at some point do they get back
23 together?

24 A. Yes.

25 Q. Do they get married again?

1 A. No.

2 Q. No? They just start kind of living back together as
3 man and wife, but they don't actually go through the whole
4 shebang?

5 A. Yeah.

6 Q. All right. And during that break, that period of
7 time, do you have contact with Max? Do you go see him?
8 Does he come see you?

9 A. Yes.

10 Q. Okay. And just generally as father and daughter, how
11 would you describe your relationship with Max? Was he a
12 strict disciplinarian? Was he ---

13 A. He was strict, but I mean, he wasn't that bad at
14 first.

15 Q. At first he wasn't that bad?

16 A. He wasn't that bad.

17 Q. Was he good? Would he take you places and give you
18 Christmas and birthday and those kind of things?

19 A. Yeah.

20 Q. Okay. Deep breaths.

21 Okay. So in the beginning, it would be fair to say
22 that you had pretty much kind of a normal or traditional
23 kind of father/daughter relationship?

24 A. Yes, ma'am.

25 Q. Did anything ever go to the point where it wasn't a

1 normal kind of father/daughter relationship?

2 A. Yes. Yes, ma'am.

3 Q. Okay. Do you remember about when that all began?

4 A. ~~One time when I was eleven and they got a divorce.~~

5 ~~And then it started again when they got back together.~~

6 Q. ~~And you said it started again. What type of things~~

7 ~~were not kind of a normal father/daughter relationship?~~

8 ~~Was it kind of like a different kind of relationship?~~

9 A. ~~Yes.~~

10 Q. ~~And what kind of things happened that you didn't~~

11 ~~like?~~

12 A. ~~He would touch me and ...~~

13 Q. You said that he would touch you?

14 A. Yeah.

15 Q. ~~And was that kind of like a father would hug his~~

16 ~~daughter or something?~~

17 A. No.

18 Q. ~~No? Would he ever kiss you or those kind of things?~~

19 A. ~~Yeah. Yes, ma'am.~~

20 Q. And is that, again, like a father would kiss his

21 daughter on the cheek?

22 A. No.

23 Q. ~~Or was that more like a boyfriend would kiss his~~

24 ~~girlfriend?~~

25 A. ~~Uh-huh~~ (affirmative).

1 Q. More like the second one?

2 A. Yes.

3 Q. Would he -- and you said that he would touch you.

4 Would he touch you with your clothes on or with your

5 clothes off?

6 A. Off.

7 Q. And would this happen when you were alone with him or

8 were there other people around?

9 A. Alone.

10 Q. And how would you come to be alone with Max? Did
11 your mom work and is that when you would be home alone
12 with him, or did this happen on weekends when she was at
13 the store? Would it kind of vary just at times?

14 A. It just varied at times. She stayed downstairs and
15 slept downstairs.

16 Q. And why would she stay downstairs or sleep
17 downstairs?

18 A. Well, she couldn't get up and down the stairs. And
19 then before that, it just varied at times when she wasn't
20 at home.

21 Q. Did she ever work nights or work a different schedule
22 than Max?

23 A. No.

24 Q. Would she just maybe be out at night doing things or
25 going to the store, those kind of things?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381

121

Minor - Direct Examination by Ms. Hervey

1 A. Yes.

2 Q. All right. And you said that she couldn't get up and
3 down the stairs. Why couldn't she get up and down the
4 stairs?

5 A. She was pregnant with my brother and sister.

6 Q. So this is when she was pregnant with the twins?

7 A. Yes.

8 Q. Okay. And is that when you were living here in
9 Anderson County?

10 A. Yes.

11 Q. All right. And so you lived in a two-story house
12 like a duplex?

13 A. Yes.

14 Q. All right. And so there were bedrooms downstairs?

15 A. Yes, ma'am.

16 Q. And other than your mom, did anybody else sleep
17 downstairs?

18 A. My little sister.

19 Q. Your little sister did?

20 A. (Nodded head up and down in the affirmative.)

21 Q. That's Taylor?

22 A. Yes, ma'am.

23 Q. Do you remember about how old you were when the twins
24 were born?

25 A. I'd say eight or nine. I can't be sure.

1 Q. Okay. In elementary school? Would that be fair to
2 say?

3 A. Yes.

4 Q. All right. And upstairs -- who slept upstairs?

5 A. Max slept in his room, and I slept in the other room.

6 Q. And you said it's this time when your mom was
7 sleeping downstairs that he would touch you?

8 A. Yes.

9 Q. Did that happen in your room or in his room, or did
10 it kind of vary?

11 A. My room. But it wasn't my room; it was my little
12 sister's room. I didn't have a room. I had a closet.

13 Q. Did you have a bed? Were you ---

14 A. I slept in my sister's bed. I didn't have a room.
15 My room got taken away.

16 Q. And why did your room get taken away?

17 A. Because he said I kept it dirty, so they took it
18 away.

19 Q. And was that the room you used to share with your
20 sister, or was that another room?

21 A. A room I used to share with my sister.

22 Q. And did you two have separate beds in that room, or
23 did you share a bed?

24 A. Just one bed.

25 Q. Just one bed?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Direct Examination by Ms. Hervey

123

- 1 A. Uh-huh (affirmative).
- 2 Q. Was it like a twin bed, or was it like a bigger bed?
- 3 A. It was a bigger bed.
- 4 Q. And so when he took the room away, what did he do?
- 5 Did he take anything out of the room?
- 6 A. He took all my clothes out of the room, and I got a
- 7 closet downstairs. And my stuff went outside in this --
- 8 we had this back porch thing, and my stuff went in there.
- 9 Q. Okay. And so when you say that he would come into
- 10 your room, is that your and Taylor's room? Is that the
- 11 room that you mean?
- 12 A. Yes.
- 13 Q. And would this happen during the day or at night ---
- 14 A. At night.
- 15 Q. --- or would it just depend?
- 16 A. At night, and then sometimes it would depend.
- 17 Q. And you stated that -- had this ever happened before
- 18 you lived in Anderson?
- 19 A. No. No, not in my rectum. No.
- 20 Q. And do you remember the first time it happened?
- 21 A. No. I remember the first time that it happened, yes.
- 22 But I can't remember what date.
- 23 Q. Not what date it was?
- 24 A. But yes, I do remember.
- 25 Q. Okay. And you said that when he would touch you not

1 like a father would touch a daughter but in this different
2 way, it would happen at night and it would happen in your
3 bedroom and your mom and Taylor would be downstairs; is
4 that correct?

5 A. Yes.

6 Q. And so he would come into your room?

7 A. Yes.

8 Q. And were you awake when he came in, or were you
9 asleep or would it depend?

10 A. It would depend.

11 Q. And do you remember when he came in, would he have
12 clothes on or clothes off?

13 A. ~~He would have some clothes off.~~

14 Q. ~~And would he crawl in bed with you, or would this~~
15 ~~happen out of the bed?~~

16 A. ~~He would get in the bed.~~

17 Q. He would get on the bed or in the bed with you?

18 A. Yes.

19 Q. And would he touch -- did you sleep in pajamas or a
20 tee shirt or something like that?

21 A. Yes, ma'am.

22 Q. And would he leave your clothes on, or would your
23 clothes come off?

24 A. ~~My pants would come off.~~

25 Q. He would -- and what kind of pants? Like pajama

1 pants ---

2 A. Yes.

3 Q. --- or boxer shorts, or would it just depend?

4 A. Yes. It would just -- whatever I was wearing.

5 Q. And would it -- if he came in there, is this -- would
6 he kiss you?

7 A. Uh-huh (affirmative), and touch me.

8 Q. And he would touch you?

9 A. Yeah.

10 Q. ~~Did he touch you above the waist or below the waist~~
11 ~~or both?~~

12 A. ~~Both.~~

13 Q. Okay. When he touched you above the waist, would it
14 be on your chest or your arms or your head or where?

15 A. ~~On my chest and my bottom.~~

16 Q. On your bottom?

17 A. (Crying.)

18 Q. Deep breath. Deep breath. Okay? Do you need some
19 water?

20 A. (Shook head side to side in the negative.)

21 Q. So there were times he would touch you below the
22 waist?

23 A. Yeah.

24 Q. Okay. ~~Did he touch you with his finger or his hand~~
25 ~~or his private parts?~~

125

Mr.

of them?

3 A. Yes.

4 Q. Okay. And when he touched you below the belt, would
5 it be on your front privates or your back privates?

6 A. On my back privates.

7 Q. Okay. And did you ever say anything to him while
8 this was going on?

9 A. I told him to stop.

10 Q. And would he say anything in response to that?

11 A. (Shook head side to side in the negative.)

12 Q. Did he ever tell you not to say anything?

13 MR. STODDARD: Objection to her leading the
14 witness.

15 THE COURT: I'm going to permit some.

16 MS. HERVEY: I apologize, Your Honor.

17 A. Repeat the question.

18 Q. Hold on. He's got to rule on whether I can ask you
19 the question.

20 THE COURT: No. I've already said I was going
21 to permit it.

22 MS. HERVEY: Oh, okay. I'm sorry.

23 THE COURT: By the way, Mr. Foreman, ladies and
24 gentlemen of the jury, one of those rules I talked about
25 in the opening instructions has to do with leading

1 questions. A leading question is a question that suggests
2 an answer. In other words, what you have is the attorney
3 testifying and the witness is agreeing with the attorney's
4 statement. Now, if it's your witness -- in other words,
5 you called the witness -- then you can't lead.

6 In cross-examination it's different. You can lead
7 witnesses that are put up by the other party. These rules
8 apply both to the State and the Defendant, but I'm going
9 to permit certain leading in this particular area.

10 You may proceed.

11 Q. Are you ready?

12 A. Yeah.

13 Q. Would he ever tell you not to say anything or prevent
14 you from saying anything in any way?

15 A. ~~He just told me not to tell, and if I did there~~
16 ~~wouldn't nobody believe me anyway.~~

17 Q. Did he ever put his hands anywhere on your head or
18 anything like that?

19 A. Yes. He put a pillow over my head.

20 Q. ~~And why would he put a pillow over your head?~~

21 A. ~~So I couldn't scream or make any noise.~~

22 Q. Okay. Deep breath.

23 And you stated that he would touch you on your back
24 privates below the waist with your clothes off?

25 A. Uh-huh (affirmative).

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Direct Examination by Ms. Hervey

1 Q. And would he touch you there with his finger or with
2 his mouth or his private?

3 A. His private.

4 Q. And would he just touch you there, or would he
5 actually -- would he go inside of you in any way?

6 A. Uh-huh (affirmative). Yes.

7 Q. And did he go in your front private or your back
8 private?

9 A. My back private.

10 Q. And do you remember if it ever hurt when he did that?

11 A. Yes (crying.)

12 Q. And do you remember about how long this would last?
13 Would he stay in there all night or for a few minutes or a
14 few hours?

15 A. No. A few minutes.

16 Q. Okay. Do you ever remember him ejaculating?

17 A. Yes.

18 Q. Did he do that inside of you or out of you, or would
19 he do that someplace else? Or would it vary?

20 A. It would vary.

21 Q. And after this happened, would he stay in the room
22 with you or where would he go?

23 A. He would go back to his room.

24 Q. And would you stay in bed, or would you go anywhere?

25 A. I would stay in bed under my covers.

1 Q. Under your covers?

2 A. (Nodded head up and down in the affirmative.) Yes,
3 ma'am.

4 Q. And afterward -- you said it would hurt when it
5 happened. Would it hurt afterwards too?

6 A. Yes. It hurt really bad. Really, really, really
7 bad.

8 Q. ~~And did you ever have any problems after that with~~
9 ~~going to the bathroom or anything like that?~~

10 A. ~~I would bleed from my rectum.~~

11 Q. And did this happen once, Minor or did it happen
12 more than once?

13 A. ~~More than once.~~

14 Q. And did most of it happen while your mom was pregnant
15 or around that time?

16 A. Yes. Yes.

17 Q. And while it was going on while your mom was
18 pregnant, did you ever say anything to her?

19 A. ~~No. No. I was afraid to tell because I didn't think~~
20 ~~they would believe me.~~

21 Q. You didn't think your mama would believe you?

22 A. No.

23 Q. Did you ever tell any of your friends at school or
24 your grandma or anything like that?

25 A. No.

1 Q. Do you remember the first person you did tell?

2 A. Yes.

3 Q. Who was the first person you told?

4 A. My mom.

5 Q. And do you remember approximately when you told her
6 or not really?

7 A. I don't actually remember when I told her.

8 Q. Was it before or after the twins were born? Do you
9 remember that?

10 A. It was after.

11 Q. The twins were born?

12 A. Yes.

13 Q. Okay. When you -- once the twins were born, did your
14 mom start sleeping back upstairs, or did she stay
15 downstairs with the twins?

16 A. She stayed downstairs, and she would sleep upstairs.

17 Q. So she was a new mom, so it would kind of depend on
18 the babies' schedule?

19 A. Yeah.

20 Q. And do you remember Max coming into your room at
21 night -- you said it happened maybe when your mom was
22 pregnant. Did it every happen after the twins were born?
23 Do you remember that?

24 A. No.

25 Q. You don't remember?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Direct Examination by Ms. Hervey

131

1 A. Uh-uh (negative).

2 Q. So you don't remember -- and I just want to be clear
3 on this. All right? You don't remember it happening
4 after the twins were born or you can't remember if it did?
5 It could or could not have happened?

6 A. It could have happened, but I don't think it did
7 because I was in and out of group homes and in and out of
8 hospitals.

9 Q. You said you went to a group home. Do you remember
10 why you went to a group home, Minor

11 A. Yes, ma'am. I went to a group home because I had
12 gotten out of jail -- I got put in jail for a criminal
13 domestic violence.

14 Q. ~~Who was the criminal domestic violence against?~~

15 A. ~~Against my mother. I had thrown a shoe and I had ran~~
16 ~~away.~~

17 Q. Why did you throw your shoe at your mom, Minor

18 A. I was mad because I had come to court and they was
19 going to put me either in a foster home or I could go live
20 with my grandmother. And I wanted to go stay with my
21 grandmother, and they told me that I couldn't and I had to
22 go to a foster home. So I got mad and I didn't want to be
23 there anymore.

24 Q. You didn't want to be where anymore?

25 A. In that home anymore with him.

1 Q. And why did you run away, Minor

2 A. Because I didn't want it to happen. I didn't want to
3 be around him. I didn't -- I wanted to go away.

4 Q. And you stated that they wouldn't let you go live
5 with your grandmother, so they put you in a group home.
6 Is that right?

7 A. They put me -- they were going to put me in a foster
8 home. And when I got a runaway charge and a criminal
9 domestic charge, they put me in jail. But it was better
10 than being at home.

11 Q. You said you went to the hospital?

12 A. I got out of jail, and I stayed at home for about two
13 weeks. And I started cutting on myself. And I had a big
14 sister come see me.

15 Q. Was that your own big sister or like the Big Sisters,
16 Big Brothers?

17 A. The Big Sister and Big Brother program. And they
18 found out that I cut on myself, and they thought it would
19 be best if I just went to a hospital because I was cutting
20 on myself. I went to a hospital and ---

21 Q. Let me back you up. I'm not trying to break you up,
22 but let me back you up just so the jury understands.
23 Okay?

24 A. Uh-huh (affirmative).

25 Q. When you said you would cut on yourself, what would

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Direct Examination by Ms. Hervey

1 you cut yourself with?

2 A. Razors and knives.

3 Q. And where would you cut yourself?

4 A. My arms and my legs.

5 Q. And you said that your big sister saw that and that's
6 how you ended up at the hospital?

7 A. Yeah.

8 Q. And are you talking like a hospital where you go for
9 like a broken bone or surgery?

10 A. A mental hospital.

11 Q. And how long did you stay there? Do you remember?

12 A. For about a month.

13 Q. For about a month?

14 A. Uh-huh (affirmative). And they -- my counselor
15 thought it was best that I didn't go home because I was
16 harmful to myself. And so they put me in a group home.

17 Q. And was that here in South Carolina?

18 A. Yes. In Columbia.

19 Q. And you said that you went into the hospital because
20 your big sister knew that you were cutting on yourself.

21 Did you tell her any other problems that you were having
22 at that time or any other issues that were going on with
23 you?

24 A. Yes.

25 Q. What kind of things were those?

1 A. I told her that I was seeing things.

2 Q. And were you seeing things?

3 A. No.

4 Q. And why did you tell her that?

5 A. Because I wanted to ...

6 Q. You wanted to go?

7 A. I wanted to leave.

8 Q. And when you went into this mental hospital, were you
9 having any eating disorders or anything like that? Were
10 you having any of those issues?

11 A. Yeah. I was making myself throw up.

12 Q. And why were you doing that, if you know?

13 A. I didn't want to be me. I just -- I didn't -- I
14 thought that if I didn't look the same way that maybe I
15 wouldn't have to -- it just -- I hated myself.

16 Q. So you went from the mental hospital to a group home
17 here in South Carolina?

18 A. Uh-huh (affirmative).

19 Q. And after -- while you were in the mental hospital or
20 the group home, did you have any contact with Max?

21 A. ~~He came to the group home maybe once, and then he~~
22 ~~didn't come anymore because I didn't want to see him.~~

23 Q. ~~Did you tell the group home that you didn't want to~~
24 ~~see him?~~

25 A. ~~Uh-huh~~ (affirmative).

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Direct Examination by Ms. Hervey

135

1 Q. Did he ever come to the hospital while you were in
2 there?

3 A. No.

4 Q. Did you -- was that because ...

5 A. Because I requested not to.

6 Q. So you told them that you didn't want to see him?

7 A. Yes.

8 Q. And after -- how long did you stay in the group home?

9 Do you remember?

10 A. The group home, I stayed there for two or three
11 months maybe. I'm not really sure.

12 Q. And after that, did you go back to stay with Max and
13 your Mom? Were they still together?

14 A. ~~No, they weren't together after I got out of the~~
15 ~~group home. My mom had moved.~~

16 Q. Your mom had moved? Did she move somewhere here in
17 South Carolina?

18 A. No. She had moved to Georgia with my Aunt Marlo.

19 Q. With your Aunt Marlo?

20 A. Yes.

21 Q. And they live in Georgia?

22 A. Yes.

23 Q. And is that near where you live now?

24 A. No.

25 Q. No?

1 A. Uh-uh (negative).

2 Q. Is that on the other side of Georgia?

3 A. Uh-huh (affirmative).

4 Q. And did you ever tell -- you said you told people in
5 the group home and the hospital that you didn't want to
6 see Max. Did you ever tell them why?

7 A. No. I just told them that I didn't want to see them.

8 Q. Did you ever tell them about him coming into your
9 room at night?

10 A. Uh-uh (negative).

11 Q. And is there a reason why you didn't tell them?

12 A. I was scared.

13 Q. And when did you finally tell your mom? Do you
14 remember? Was it after you got out of the group home and
15 you went back to living with her and your Aunt Marlo?

16 A. Yes.

17 Q. ~~And is there a reason you told your mom finally?~~

18 A. ~~Max wanted custody of my little sister and my~~
19 ~~brother.~~

20 Q. And you stated that you told your mom. Did you tell
21 anybody after you told your mom? Did you tell your Aunt
22 Marlo or your grandmother?

23 A. Yeah. Yes.

24 Q. ~~And you talked about the fact when this was happening~~
25 ~~back when your mom was pregnant and those kind of things~~

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Direct Examination by Ms. Hervey

137

1 ~~and he was doing this to you that you were having problems~~

2 ~~going to the bathroom and those type things and bleeding.~~

3 ~~Were you still having those problems after the group home?~~

4 A. ~~Yeah. Yeah.~~

5 Q. And did you ever tell anybody at school about what
6 happened?

7 A. No. I was embarrassed.

8 Q. And did you ever actually have to go see a doctor?

9 A. Uh-huh (affirmative), yes.

10 Q. And Dr. Payne that was here yesterday?

11 A. Yes.

12 Q. Did you go straight to Dr. Payne, or did you go to
13 the emergency room?

14 A. I went to the emergency room, and they referred me to
15 Dr. Payne. And I went and seen him.

16 Q. ~~And what happened that you went to the emergency~~
17 ~~room? Do you remember?~~

18 A. ~~My rectum was falling out. And it hurt.~~

19 Q. And do you remember who took you to the emergency
20 room?

21 A. My mom.

22 Q. Was your grandmother there, or did she know about
23 what was going on?

24 A. Yes, she knew. She was the first person who seen my
25 rectum. And I told her about my rectum falling out. And

1 I told my mom. She took me to the emergency room.

2 Q. And after that is that when you had the surgery with
3 Dr. Payne?

4 A. Yes.

5 Q. And do you remember when you had that surgery
6 approximately?

7 A. December the 18th of 2003.

8 Q. Okay. I'm going to repeat that date just so we all
9 heard it, okay? December the 18th ---

10 A. 2003.

11 Q. --- 2003. And about how long did you stay in the
12 hospital? Do you remember?

13 A. A week.

14 Q. And did you go to the emergency room in December, or
15 had it been some point earlier in the fall?

16 A. No. It wasn't in the fall. It was before December.
17 And it was about the beginning of November, I guess. I
18 had to wait so they could do my surgery.

19 Q. Did they wait till you got out of school, or were
20 they waiting for other stuff to happen?

21 A. No. They were waiting till I got out of school. Dr.
22 Payne was just -- I don't know why we had to wait.

23 Q. That's when he could work you into his schedule or
24 something?

25 A. I guess.

1 Q. But were you at the hospital for Christmas, or did
2 you get to come home?

3 A. I got to come home the 23rd right before Christmas.

4 Q. And was your mom still living with Aunt Marlo at the
5 time?

6 A. Uh-huh (affirmative), yes.

7 Q. And are the twins and Taylor there, too?

8 A. Yes.

9 Q. And is your Aunt Marlo married? Does she have any
10 kids of her own?

11 A. Yes. She has three kids.

12 Q. So how many people were living in this house the
13 Christmas of 2003?

14 A. Me, my two sisters, my brother and my mom, my aunt,
15 her son and her two girls.

16 Q. So it was a full house?

17 A. Yeah.

18 Q. And so did you get anything for Christmas that year?

19 Did you get any frog stuff for Christmas? Do you
20 remember?

21 A. Yes, I got frog stuff. I always got frog stuff.

22 Q. Do you still get frog stuff?

23 A. Yes.

24 Q. And around the time of the surgery, do you remember
25 going to law enforcement and telling them about what had

1 happened?

2 A. Yes.

3 Q. And did you come back up here to Anderson and talk to
4 Mr. Major or did you talk with some other ---

5 A. No, I didn't talk to Mr. Major. I talked to a
6 forensic place. I got took to the sheriff's department,
7 and I talked to a guy named Eddie Colbert, an
8 investigator. And they set me up to go to a forensic
9 place.

10 Q. A child advocacy center place?

11 A. Yeah.

12 Q. So it wasn't like a sheriff's office with bars on the
13 window, people in handcuffs or anything like that?

14 A. Uh-uh (negative). I sat down and talked to one
15 person.

16 Q. One of the counselors there or one of the people
17 there?

18 A. Uh-huh (affirmative).

19 MS. HERVEY: The Court's indulgence for one
20 moment, Your Honor.

21 THE COURT: Certainly.

22 MS. HERVEY: That's all I have of this witness
23 at this time, Your Honor.

24 THE COURT: Cross-examination?

25 MR. STODDARD: Yes, sir.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Cross Examination by Mr. Stoddard

141

CROSS-EXAMINATION

1

2 BY MR. STODDARD:

3 Q. Minor, obviously you and I have never met. I'm
4 David Stoddard. You've been in the courtroom. I know you
5 realize I represent Max Sipes.

6 I want to start off by asking you what you were just
7 talking about. You went to a place where you said there
8 was a forensic interview conducted, right?

9 A. Yeah.

10 Q. It probably lasted about an hour?

11 A. Yes, sir.

12 Q. Does that sound about right? And he asked you
13 questions?

14 A. Uh-huh (affirmative).

15 Q. And of course, he asked you questions to calm you
16 down, I'm sure?

17 A. Uh-huh (affirmative).

18 Q. Things like the things about frogs. Maybe he didn't
19 ask you about frogs, but he tried to get you calm. But
20 you told him about these acts that you say Max committed
21 on you, didn't you?

22 A. Yeah.

23 Q. And that's on videotape, by the way. I've had an
24 opportunity to see it.

25 A. Yes.

1 Q. Would it be fair to say -- I notice you've cried
2 almost this whole time. When you told him these things,
3 you were able to stay calm? You might have teared up
4 maybe once or twice, but mostly you were able to tell that
5 without crying like you have today; is that correct?

6 A. Yes. I wasn't in front of a jury, and I wasn't in
7 front of him.

8 Q. Okay. And I realize the circumstances are different.
9 But it was important to get out the fact that you can
10 discuss these things without crying that way. But I
11 realize the circumstances are different.

12 Now, you mentioned that the first person that you
13 told was your mother. Do you know if that was before or
14 after you first saw Dr. Payne?

15 A. It was -- I think it was after. I'm not sure.

16 Q. You're not sure? You mentioned an incident when you
17 were eleven. You said it happened -- something happened
18 one time, right?

19 A. Uh-huh (affirmative).

20 Q. And then nothing happened again like that until your
21 mother was pregnant?

22 A. Yeah.

23 Q. Now, the first incident, though, Max did not have
24 anal sex with you?

25 A. No.

1 Q. And that would have been in Georgia; is that c

2 A. Yeah.

3 Q. Before Max and your mom divorced?

4 A. Yeah.

5 Q. When you first told your mother, is that the first
6 thing -- is that what you told her first?

7 A. Yeah.

8 Q. You didn't go into the anal sex stuff, did you?

9 A. No.

10 Q. ~~And what you told your mom happened on that occasion~~
11 ~~on the couch -- Max got you on the couch, made you pull~~
12 ~~off your pants and he touched you; is that right?~~

13 A. ~~Yes.~~

14 Q. In the den or living room?

15 A. Yes.

16 Q. Okay. And that's the first thing you told your
17 mother?

18 A. Yes.

19 Q. And you don't know if that was before or after -- do
20 you know if that was before or after you met with Dr.
21 Payne?

22 A. I'm not sure.

23 Q. You mentioned that the reason you told these things
24 is because Max filed for custody, and it was after that
25 though, wasn't it, that you first told your mother?

1 A. Uh-huh (affirmative).

2 MR. STODDARD: Excuse me. I lost my train of
3 thought. Beg everybody's indulgence. That happens
4 sometimes to me.

5 Q. Oh, yeah. I knew there was something I wanted to
6 ask, and it just went away.

7 You told the forensic interviewer -- see if you
8 remember this. Did you tell him that your mom left Max
9 because Max was cheating on her?

10 A. I don't remember that.

11 Q. Could you have told him that?

12 A. I could have, but I don't remember.

13 Q. Well, is that something you believed to be true back
14 then?

15 A. Yes.

16 Q. Now, Max didn't tell you he was cheating on your
17 mother, did he?

18 A. No.

19 Q. You didn't see him cheating on your mother?

20 A. How could I? I was in a group home.

21 Q. That's what your mother told you, isn't it?

22 A. Yes.

23 Q. She told you Max was cheating on her?

24 A. Yes. And my little sister.

25 Q. Another thing you said even today -- and I think you

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Cross Examination by Mr. Stoddard

145

1 told the forensic interviewer -- that Max was trying to
2 get custody of my brother and sisters, but not me?

3 A. Yes.

4 Q. Now, did you read the court papers yourself?

5 A. No.

6 Q. Is that what your mother told you?

7 A. Yeah.

8 Q. Would it surprise you to learn that in the court
9 papers he asked for custody of all the children?

10 A. No. He didn't have anything to ---

11 Q. Excuse me?

12 A. Why? Why would he -- I mean, he didn't do anything
13 to me but hurt me.

14 Q. Now, you've described this apartment. Isn't it
15 correct this is a duplex and it has two bedrooms upstairs
16 and there's no bedrooms downstairs, are there?

17 A. No.

18 Q. And you shared a bedroom with Taylor?

19 A. Yes.

20 Q. One of the things you talked with the forensic
21 interviewer about is -- well, one thing you mentioned here
22 today that Max wasn't that bad at first. But did you tell
23 the forensic interviewer he used to beat the -- I think
24 ---

25 A. Yes, he did that.

1 Q. Huh?

2 A. Yes, he did that.

3 Q. He used to beat you?

4 A. Yes, he beat me.

5 Q. Did your mother beat you?

6 A. She hit me.

7 MS. HERVEY: Can we approach, Your Honor?

8 THE COURT: Certainly.

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 Q. I'm handing you a record. The group home you talked
12 about, was that in Greer?

13 A. I think it was in Greer, but I'm not sure. I think
14 it might have been Columbia.

15 Q. Columbia? There was a place you went to somewhere in
16 Greer?

17 A. Uh-huh (affirmative). I was in so many homes.

18 Q. Okay. And I think there was one in Columbia, too.
19 And I can't -- when you're referring to the group home,
20 I'm not sure which one you're talking about.

21 This is from the place in Greer, however. This is a
22 record. And it says on there that you were cutting on
23 yourself for three years. Is that's what you told them?

24 MS. HERVEY: Your Honor, I'm going to object. I
25 think he has to establish a foundation. He's testifying

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Cross Examination by Mr. Stoddard

147

1 as to what this document is. I think she needs to either
2 be able to identify it. And if she can't, I don't think
3 that's proper impeachment. I think he can ask her if she
4 ever said these things.

5 THE COURT: Are you challenging the document's
6 validity?

7 MS. HERVEY: Yes, Your Honor. I don't know who
8 wrote that document. He's saying what it is. I don't
9 think ---

10 THE COURT: It's the subject of subpoena.

11 MS. HERVEY: I understand that, but I ---

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, I'm going to have to ask you to retire from the
14 courtroom. I need to take up a matter of law with the
15 attorneys. Again, do not undertake a discussion of the
16 case among yourselves in any way.

17 (WHEREUPON, the jury exited the open court at
18 approximately 10:52 a.m.)

19 THE COURT: All right. First of all, let's find
20 out what the Defendant intends to proffer.

21 MR. STODDARD: My next question ---

22 THE COURT: Let's see what your first question
23 is because the solicitor has already objected to that.

24 MR. STODDARD: Yeah. I don't know if she still
25 has the document. The document -- and I think I made her

1 a copy. But it says that she's been cutting herself for
2 three years. And my next question was going to be, is
3 that what you told the people at the center.

4 MS. HERVEY: Well, I don't know if this history
5 is coming from her, if it's coming from her mother.

6 THE COURT: Well, wait a minute.

7 MS. HERVEY: I don't think -- and let me just
8 make my objection clear because I think perhaps it might
9 not be. I think he can ask her if she ever told them that
10 she had been cutting herself for three years. I think
11 it's inappropriate to show her some document she may have
12 never seen before and ask her to authenticate it.

13 THE COURT: That's not what the authentication
14 -- the authentication came from this when the records were
15 subpoenaed. And no one made an objection to that subpoena
16 as not having the custodian. Now, if you insist, I'll
17 subpoena the custodian and have them come in and verify
18 the records' being accurate. And that's why I'm asking.
19 I don't want to waste time on a technicality unless you
20 think there is a basis for saying these records have been
21 altered or not what they represent to be.

22 MS. HERVEY: I just think we need to make it
23 clear as to what. He's representing that this is her
24 statement. I don't ---

25 THE COURT: No. He's asking the question. And

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Cross Examination by Mr. Stoddard

149

1 she can say, no, that she didn't tell them that. And if
2 that, then we might be in a problem because then you've
3 got a prior inconsistent statement and then we'll probably
4 have to bring the custodian over here to establish it.

5 MS. HERVEY: I mean, it could have been coming
6 from her mother. It could have been ---

7 THE COURT: Well, again, I'm just looking at
8 Rule 803, "Statements made for the purpose of medical
9 diagnosis or treatment and described in the medical
10 history are not hearsay." So ...

11 MS. HERVEY: And my objection is not that he
12 can't ask her this question, did you ever say that. But
13 he's showing this document. He's putting it before the
14 jury. He's testifying ---

15 THE COURT: He hasn't put anything before the
16 jury.

17 MS. HERVEY: Well, the jury saw him walk up
18 there and hand it to her. There is some type of
19 independent voracity that's being used to question her.

20 THE COURT: Again, the voracity goes to the
21 document. Now, if you're suggesting that it's been
22 altered and not what the document purports to be, then I
23 need to know that.

24 MS. HERVEY: It's not as to the voracity of the
25 document; it's to whether or not this statement can be

1 attributed to her.

2 THE COURT: Well, that's just it. If she says
3 no, then that ends the matter except that, what is it, he
4 will then under Rule 619 be able to impeach her and have
5 the document actually introduced.

6 MS. HERVEY: Well, but then ---

7 THE COURT: If that document can be verified, it
8 will take getting the person ---

9 MS. HERVEY: Okay. And that's fine. I just
10 want to, you know ...

11 THE COURT: Well, I want to know too because,
12 again, if we have a problem with any exhibit as to the
13 authenticity of it, I want to know because I'm not going
14 to let anybody even ask questions from something that's
15 not what it purports to be.

16 MS. HERVEY: And I told you already it wasn't
17 that I would really challenge the authenticity of the
18 document, but I did tell you before in kind of our
19 discussions this morning that there's a lot of these
20 documents that comes from people other than her.

21 THE COURT: Again, but this is not one.

22 MS. HERVEY: Well, I don't know that yet.

23 THE COURT: Well, we're going to find out if
24 you'll let him ask it.

25 All right, Mr. Stoddard. Ask the question.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Cross Examination by Mr. Stoddard

151

1 MS. HERVEY: She needs her glasses to read
2 anything. I apologize. Before we ask her to read
3 something ...

4 MR. STODDARD: I do want to be clear though. If
5 I decide I want to get any of these documents in as a
6 medical record or a business record, is there going to be
7 an objection on the grounds that I haven't put up the
8 custodian?

9 THE COURT: That's the -- I thought we decided
10 that since these were subpoenaed from -- in fact, I signed
11 the order subpoenaing -- that we were not going to have to
12 have a custodian.

13 MS. HERVEY: Well ---

14 THE COURT: If not I'll go ahead and subpoena
15 the custodian.

16 MS. HERVEY: Well, I think he -- I understand
17 where the Court is going. And it's not as to voracity.
18 It's as to relevance. And if there's statements
19 attributed to somebody else, I don't think she's
20 appropriate to interpret those.

21 THE COURT: Well, then what we do is -- again,
22 I'm sorry, Madam Solicitor. But if that information came
23 from this witness, he's entitled to ask the question.

24 MS. HERVEY: And I have no objection to that.

25 THE COURT: Well, that's the question he was

1 asking, as I understood. I'm sorry. The question was
2 going to be if she did not tell -- or at least you can ask
3 her if she's the source of that information in the record.

4 MR. STODDARD: And while we're outside, I want
5 to bring up something else that may come up. Based on her
6 statement that she had asked these two -- one or two of
7 these -- I can't remember -- two facilities that I know of
8 that Max not be allowed to visit. Right now I'm inclined
9 -- I know I subpoenaed all their records, but I don't know
10 that I got them all. And it would be hard to make a
11 negative inference from what I got. I really want a
12 subpoena -- or do I have to do an order for the custodian
13 of records to appear with any record that would indicate
14 her desire or order that Max not visit her?

15 THE COURT: All right. We're off the record. I
16 want to see the attorneys.

17 (WHEREUPON, a bench conference was held off the
18 record.)

19 THE COURT: Let's take a recess now. And when
20 you're ready to come back -- but please understand that
21 you're under oath, so you can't discuss your testimony
22 with anyone.

23 THE WITNESS: Yes, sir.

24 THE COURT: Very good. We'll stand at ease.

25 (WHEREUPON, court stood at recess for a short break.)

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Cross Examination by Mr. Stoddard

153

1 THE COURT: All right. The witness is on the
2 witness stand. You do understand that you're still under
3 oath? You do understand that you're still under oath?

4 THE WITNESS: Yes, sir.

5 THE COURT: Very good. Thank you.

6 All right. Let me ask you about the note I got from
7 my office about the records in Columbia. Maybe not.
8 Maybe Greer because it's an 864-number.

9 MR. STODDARD: The records?

10 THE COURT: Right.

11 MR. STODDARD: I wonder if they fax ---

12 THE COURT: I think they're saying they don't
13 want to fax 200 pages.

14 MR. STODDARD: Oh, they don't want to fax that
15 many?

16 THE COURT: The note is, "Two hundred pages or
17 so can be picked up with a court order."

18 MR. STODDARD: With a court order?

19 THE COURT: Right.

20 MR. STODDARD: Of course, the court order has
21 already been issued, I think. I guess I could call.

22 THE COURT: Well, you're going to have to take
23 care of it. I can't.

24 MR. STODDARD: I understand. I had already
25 given up.

1 THE COURT: If you want to have somebody check
2 on it, they may.

3 MR. STODDARD: Judge, the problem I have is by
4 the time I get them, she'll be off the stand.

5 THE COURT: I understand.

6 MR. STODDARD: I wonder if maybe we can recall
7 her if there's something in them.

8 THE COURT: That will be fine. Maybe we can
9 look at it.

10 All right. Just so the Court is clear, is there any
11 objection to the records that have been produced as to
12 their validity, from the State?

13 MS. HERVEY: Not as to their voracity. The
14 State reserves an objection as to relevance.

15 THE COURT: Well, that's why -- the point is --
16 and I think you understand -- that if there was a
17 challenge we would have to bring the custodian in or
18 somebody knowledgeable to vouch for them. And if that's
19 not necessary, if there's no question about it, then that,
20 of course, would not be necessary.

21 All right. Anything else from the Defendant?

22 MR. STODDARD: Well, I'm going to make you aware
23 of something that probably we shouldn't go into now
24 because the jury has been out a while. I subpoenaed a
25 witness. She's not on the witness list because it was

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Cross Examination by Mr. Stoddard

155

1 because of some things I saw in these records that I got
2 yesterday. But I subpoenaed Cindy Stichnoth who is -- I
3 don't even know if she's with that children's center
4 anymore, but was at that time. And I just got a message
5 that they will not let her come unless it's court ordered.
6 I guess based on that statute that mental health records,
7 all that is confidential unless ---

8 THE COURT: Well, somebody is going to have to
9 prepare the order.

10 MR. STODDARD: I know.

11 THE COURT: I've got a little something to do,
12 it seems, right now. I try to accommodate people as much
13 as possible, but ...

14 MR. STODDARD: I thought I was just -- I mean, I
15 guess ---

16 THE COURT: Well, as I say, if you prepare the
17 order I'll be glad to ...

18 MR. STODDARD: I'll see what I can do.

19 THE COURT: All right. Very good. Anything
20 else from the Defendant? I mean, you're going to continue
21 your examination.

22 MR. STODDARD: Yes, sir.

23 THE COURT: Anything from the State before we
24 bring the jury back?

25 MS. HERVEY: No, nothing.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Cross Examination by Mr. Stoddard

156

1 THE COURT: All right. Ask the jury to join us,
2 please.

3 (WHEREUPON, the jury entered the open court at
4 approximately 11:16 a.m.)

5 THE COURT: All right. Let the record reflect
6 the jury and alternates are in the jury box. You may
7 proceed.

8 Q. Did you tell the people at the center in Greer that
9 you had been cutting on yourself for three years?

10 A. No, sir. No. I started cutting on myself after
11 stuff had started happening to me.

12 Q. Okay. I'm going to hand you a set of records. And
13 I've given the assistant solicitor these. And for your
14 information, if I refer to anything there I can call out
15 the page number.

16 Do you agree -- I'm going to direct your attention to
17 the first page. And I'm not going to have you -- I'm
18 going to have you read this to yourself. It's got page 11
19 on it. It says, "Describe patient's progress toward goals
20 in behavioral terms." That's toward the middle of the
21 page. Do you see that?

22 A. Uh-huh (affirmative).

23 MS. HERVEY: Where are you at?

24 MR. STODDARD: Page 11.

25 Q. Do you agree that while you were there at the

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Cross Examination by Mr. Stoddard

157

1 Carolina Center when you were talking with your mother, it
2 tended to increase your negative behaviors?

3 A. Talking to my mother?

4 Q. Your mother.

5 MS. HERVEY: Your Honor, I object to this.
6 That's not a statement of her. He's reading from their
7 diagnostic, their comments about her.

8 THE COURT: Well, let me see it.

9 MS. HERVEY: That middle paragraph.

10 (Pause.)

11 THE COURT: All right. Approach, please.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 THE COURT: You may proceed.

15 Q. My question is did talking with your mother increase
16 negative behaviors and make you act out?

17 A. No.

18 Q. Did not?

19 MR. STODDARD: Beg the Court's indulgence. I
20 had a cup of water with me, and now I don't know where to
21 put it.

22 Q. If you'll turn to page -- let me ask you this. Do
23 you know while you were there, did you even tell them or
24 maybe while you were there did you use laxatives to cause
25 diarrhea?

1 ~~Yes. I used laxatives and also I used enemas to~~

2 ~~clean myself out.~~

3 Q. Okay. While you were there you did describe having
4 hallucinations of images of green men, monkeys in your ear
5 and hearing voices?

6 A. No.

7 Q. You did not?

8 A. I had hallucinations, but it was from the medication
9 that I was on. It wasn't from me just seeing it.

10 Q. Okay. Did you describe your relationship with your
11 father as y'all fought a lot?

12 A. Yes.

13 Q. Did you describe your having a background as moving a
14 lot from place to place? Did that happen?

15 A. Yeah, because I was going in and out -- when I was in
16 South Carolina because I was going in mental hospitals,
17 going back to where I was at and then going to group homes
18 and to hospitals, yes.

19 Q. I'm talking about way before that. Going back seven
20 years ---

21 A. No.

22 Q. --- you did not move a lot -- around a lot with your
23 mother?

24 A. No.

25 Q. You -- to the forensic interviewer -- and I think

1 maybe it's reflected in these records -- you've had a long
2 history of drug abuse; is that correct?

3 A. You do not? You deny a long history of drug abuse?

4 A. Yes. The medications that I was on when I lived in
5 South Carolina with the disorders that they said that I
6 had, I took medication.

7 Q. Did you tell them at the Carolina Center that you
8 smoked pot?

9 A. Yes.

10 Q. Did you -- when you were talking to the forensic
11 interviewer, did you tell him that you have a history of
12 lying and that -- like when you would complain about Max
13 hitting you, your mom wouldn't believe you because you
14 have a pretty bad history of lying?

15 A. No.

16 Q. You did not tell her that?

17 A. No.

18 Q. Did you tell them you had a history of stealing?

19 A. Yes.

20 Q. So you do have a history of stealing?

21 A. Yes. I don't steal anymore. But yes, when I was
22 living in the home, yes, I did steal.

23 Q. And was there an occasion ...

24 MR. STODDARD: Beg the Court's indulgence.

25 Q. Was there an occasion where you took your jewelry out

1 of your jewelry box and accused a child named Ashley

2 Spearman of stealing your jewelry?

3 A. No.

4 Q. That didn't happen?

5 A. No, that did not happen. I know who you're talking
6 about, but we was never around them.

7 Q. Did you tell the forensic interviewer -- do you
8 recall talking to him and he asked you -- when you told
9 him about your surgery, he asked you, 'Did you tell the
10 doctor about the abuse' and you denied telling the doctor
11 about the abuse? Do you remember -- do you recall that?

12 A. Yes.

13 Q. And did you tell the forensic interviewer that the
14 doctor told your mother that you'd been abused but you
15 never discussed it?

16 A. No.

17 Q. You didn't tell them that?

18 A. No.

19 MR. STODDARD: Your Honor, I have a matter -- I
20 have a tape that I don't think I want to put into
21 evidence. I may have to, but it may -- I would like to
22 use it at this time to refresh her memory which we may
23 have to do outside the jury's presence because it's ---

24 THE COURT: Well, that's all right. Just a
25 second. All right.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Cross Examination by Mr. Stoddard

161

1 Again, Mr. Foreman, ladies and gentlemen of the jury,
2 I'm going to have to ask you to retire, if you would, to
3 the jury room while I take up a matter with the attorneys.
4 Again, do not undertake a discussion of this case among
5 yourselves in any way. Thank you.

6 (WHEREUPON, the jury exited the open court at
7 approximately 11:27 a.m.)

8 THE COURT: All right. We're off the record
9 while the machinery is set up.

10 (WHEREUPON, a short break was taken.)

11 MS. HERVEY: I think -- and I don't want to
12 belabor the trial or anything. But she probably -- I'm
13 not sure she's ever seen these tapes. I mean, it was
14 obviously her on the tapes, so it's not that question.
15 But he keeps asking her these questions and I think he's
16 challenging her recollection from a long period of time.
17 But if he is going to refresh her recollection, I think he
18 needs to refresh her entire recollection and not just the
19 bits and pieces he wants to take apart here and there
20 because I think she's going to need the context of certain
21 things in order to provide an answer because he may say,
22 well, here you said this, but twenty minutes later in the
23 tape they go back to it. Because if you watch these
24 tapes, they come back around to a number of these subjects
25 on a number of different occasions. It's not they talk

1 about something once and then they never go back there.

2 MR. STODDARD: Well, I got these tapes from the
3 prosecutor. And if there's something else on the tapes
4 she wants to bring out, she's got them. I mean, it's her
5 -- you know.

6 MS. HERVEY: But I don't want to make her stop
7 and watch the tape every five minutes because we have a
8 ---

9 THE COURT: What do we want to do? I mean,
10 we're in the middle of the examination of a witness. And
11 apparently there have been some inconsistencies or at
12 least purported inconsistencies.

13 MS. HERVEY: And I would just ask that she be
14 allowed to watch the whole tape.

15 THE COURT: How long is the tape?

16 MS. HERVEY: The tapes are about forty minutes
17 apiece.

18 THE COURT: All right. Take forty minutes and
19 watch the tape. And let's see. Be sure -- do you want to
20 let the jury go to lunch?

21 MS. HERVEY: That's fine with me if they want to
22 go to lunch.

23 THE COURT: Well, the point is it's eleven
24 thirty. Forty minutes would be twelve fifteen.

25 MS. HERVEY: And also -- and I don't know this.

1 Just to be honest with the Court, I don't know which tape
2 he's using. There's actually two interviews which becomes
3 the other problem.

4 THE COURT: How much are both of the tapes?

5 MS. HERVEY: They're both forty minutes.

6 THE COURT: Forty minutes. So that's --
7 somebody do the math for me. That's about an hour and
8 twenty minutes.

9 MS. HERVEY: So that becomes the problem, is he
10 could be asking her about one thing, she's thinking about
11 the other interview.

12 THE COURT: Let me see if I understand this.
13 But we'll look at it very carefully.

14 MR. STODDARD: If this were a written document,
15 it would be much easier, you know. But it's just not.

16 THE COURT: All right. I think I'm going to
17 maybe -- and I'll permit you to do -- under 609, you know,
18 I think, complete -- you can put anything you'd like to.
19 Not 609. What is it? Complete statement. But I'm going
20 to -- 613, examining witness concerning prior statement.
21 In examining -- this is 613(A). "In examining a witness
22 concerning a prior statement made by the witness, whether
23 written or not, the statement need not be shown nor its
24 contents disclosed to the witness at that time, but on
25 request the same shall be shown or disclosed to opposing

1 counsel." I understand these tapes came from opposing
2 counsel. So I'm going to permit it to go forward. And if
3 it's -- as to what the Defendant wants to use. At the
4 same time, in order to serve completeness, the State will
5 be permitted to put in what they feel would be necessary
6 at that time.

7 MS. HERVEY: And I don't really want to put
8 anything in.

9 THE COURT: Well, let's -- if you don't want to
10 put anything in, let's go ahead and try the case then.

11 MS. HERVEY: Well, but he wants to refresh her
12 recollection. And I'm just saying ---

13 THE COURT: I don't know if he wants to refresh
14 her recollection or not. I think he's asked about prior
15 statements being made and he wanted to show her that there
16 was an inconsistency. Now, I'm going to permit him to do
17 that. And if there's anything else you want to put in at
18 the same time, you may.

19 All right. Anything else?

20 MS. HERVEY: I just want to be clear. Are we
21 showing the tape to the jury then?

22 THE COURT: No. Right now what I was asked to
23 do was send the jury out. Nobody objected to it. I wish
24 they had. But they haven't objected to it, and so I'm
25 going to let him do what he said he was going to do in the

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Cross Examination by Mr. Stoddard

165

1 first place. If he wants to do something else, then I'll
2 take that up, too.

3 Very well. You may proceed.

4 MR. STODDARD: Beg the Court's indulgence while
5 I try to find -- I've got the times where it is on the
6 tape. I'm going to try to find it. The last one -- I
7 think I've got it cued up on the last one.

8 THE COURT: All right. Ms. Hervey, do you want
9 to stand with your witness?

10 MS. HERVEY: I can see it from here.

11 THE COURT: I said, do you want to stand with
12 your witness?

13 (WHEREUPON, a portion of the tape was played.)

14 MR. STODDARD: Can I ask some questions out --
15 voir dire her ---

16 THE COURT: Yes, go ahead.

17 MR. STODDARD: Because it's kind of hard to
18 hear.

19 Q. Did you tell the doctor that the doctor and my mom
20 knew, but I didn't know? In other words, the doctor and
21 your mom -- I think your words were, "The doctor knew and
22 my mom knew that this had happened, but I hadn't said
23 anything." Is that what you told them?

24 A. Yes. I'm sorry. There was two different tapes.
25 There were two different interviews. And I didn't ...

1 Q. Well, believe me, I understand. That's why I wanted
2 to play it for you, because it has been a long time. I'm
3 not accusing you of hiding something.

4 And the doctor, you told the interviewer the doctor
5 never asked you about the abuse; is that right?

6 A. Right.

7 Q. Let me get to the other matter.

8 MS. HERVEY: Your Honor, the State would just
9 ask that in front of the presence of the jury that she be
10 allowed to explain that. I think he's asking a very
11 specific question, but I don't think that it's necessarily
12 in the same context. She saw a number of doctors. And I
13 just -- we would ask her if she would like the opportunity
14 to explain that, that she be given that opportunity.

15 THE COURT: Now, why would I deny her that
16 opportunity?

17 Q. Was the doctor ---

18 THE COURT: No, wait a minute. Why would I deny
19 her that opportunity if that's what the rule provides?

20 MS. HERVEY: And ---

21 THE COURT: I always do instruct juries -- I'm
22 sure you've been in my courtroom before -- answer the
23 question and you may explain your answer.

24 MS. HERVEY: And I appreciate that. I just note
25 it's because we're outside the presence of the jury and

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Cross Examination by Mr. Stoddard

167

1 we're not doing it here. That's all.

2 MR. STODDARD: And I want to ask a couple of
3 other questions. The only reason being I want to clarify
4 it because if not, I may have to play the tape for the
5 jury which means putting the tape into evidence which is a
6 forty-minute tape.

7 Q. Was the doctor that you were referring to the doctor
8 that did surgery on you when you said that?

9 A. Yeah.

10 THE COURT: And by the way for your comment, I
11 think she did explain that there were two tapes.

12 THE WITNESS: Yes, sir.

13 THE COURT: I thought so. Again, I'm not
14 exactly sure what is being done here. But we will
15 continue.

16 MR. STODDARD: Well ---

17 THE COURT: No. Let's just proceed.

18 MR. STODDARD: There was another place in the
19 tape, and I've got to see if I can find it. Again, Your
20 Honor, to kind of explain why I'm doing it this way,
21 normally I would ask the witness something from the
22 prospect that they did not put the statement in to show --
23 this tape gets into some issues that ---

24 THE COURT: I understand.

25 MR. STODDARD: It gets into some of that vital

1 stuff for example.

2 THE COURT: I understand. But at the same time
3 if she wants -- if the solicitor wants to put in anything
4 on the tape, she can too. At the same time. Don't have
5 to wait for re-examination.

6 MR. STODDARD: I'm having trouble operating the
7 machine, Judge. I apologize.

8 THE COURT: Let's get the machine going.

9 MR. STODDARD: I got it now.

10 (WHEREUPON, portions of the tape were played.)

11 THE COURT: We're back on the record. Go ahead
12 and ask it.

13 Q. When you were being interviewed and you talked about
14 your father hitting you, did you tell them you were --
15 your mother believed you to an extent but to an extent she
16 didn't ---

17 A. Yes.

18 Q. --- because you lied -- you had a history of lying?

19 A. No, it wasn't because that I was -- that I lied. I
20 lied about stuff, but it was because I didn't want to be
21 in the home. And every time I did something wrong, I got
22 sent away. And that's what I wanted.

23 Q. But you did ---

24 A. I told my mother. Yes, she would believe me. But
25 then again she wouldn't believe me because she would go

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor [REDACTED] - Cross Examination by Mr. Stoddard

169

1 and ask Max, and Max would say that he didn't do it. And
2 she would believe him.

3 Q. But did you tell the interviewer that one of the
4 reasons she didn't believe you was because you lied a lot?
5 Did you tell the interviewer that?

6 A. That's not what I meant though.

7 THE COURT: All right. Anything else?

8 MR. STODDARD: Nothing. That was the only two
9 things I wanted.

10 THE COURT: All right. Are we ready to proceed
11 now with the jury?

12 MR. STODDARD: Yes, sir.

13 THE COURT: All right. Ask the jury -- anything
14 from the State before we bring the jury back? Madam
15 Solicitor, anything from the State before we bring the
16 jury back?

17 MS. HERVEY: No. I'm sorry.

18 THE COURT: That's all right. Very good.

19 (WHEREUPON, the jury entered the open court at
20 approximately 11:48 a.m.)

21 THE COURT: Let the record reflect the jury and
22 alternates are in the jury box. You may proceed.

23 Q. I want to revisit the question I asked earlier. I
24 had asked you earlier when your father would hit you or
25 beat you or however you want to put it, I asked you did

1 you tell the interviewer that to an extent your mother
2 wouldn't believe you or she only believed you to an extent
3 and one of the reasons she didn't believe you is because
4 you lied a lot. Is that what you told the interviewer?

5 A. I didn't mean it that way.

6 Q. But I would ask that you answer the question first
7 and then explain. Did you tell the interviewer that?

8 A. Yes, I told the interviewer that, but I did not mean
9 it that way. When Max would do something to me, when he
10 would hit me, she didn't believe me because she would go
11 ask him and he would say that he didn't do it. And she
12 would believe him.

13 Q. But again, what you told the interviewer was ---

14 A. Yes, sir, I told the interviewer that, but I was not
15 meaning it in that way.

16 Q. Revisiting another thing we talked about was the
17 interviewer asked you when you were talking about your
18 surgery did the doctor ever ask you about abuse, and you
19 told him he did not ask you about abuse. Is that correct?

20 A. (No verbal response.)

21 Q. You said you never told the doctor about the abuse;
22 is that correct?

23 A. Yeah.

24 Q. And you were talking about the doctor. That's the
25 doctor that testified here earlier this week; is that

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Cross Examination by Mr. Stoddard

171

1 right?

2 A. Yeah.

3 Q. But you said that the doctor and your mother
4 discussed the abuse; is that correct?

5 A. Yes, sir. That's what was said on the tape. There
6 was two different tapes. There was a misunderstanding.

7 Q. Okay. And is that correct? You never discussed it
8 with the doctor?

9 A. No.

10 Q. Do you recall telling the interviewer that after you
11 were adopted your dad started acting like a dick-head? Do
12 you remember saying that?

13 A. He was okay, but he was strict. And yes, he was
14 mean.

15 Q. Now, the beatings you described to the interviewer,
16 Max hit you with his fist. Does that sound right?

17 A. Yes.

18 Q. I'm handing you a document. This is from --
19 something from Michelle Matthews. Did you ever get
20 counseling from Michelle Matthews?

21 A. Yes.

22 Q. And she was actually counseling you before these
23 allegations arose; is that right?

24 A. Yes.

25 Q. Did you ever -- when she first counseled you -- and

1 I've highlighted this -- did you tell her initially about
2 your father that -- did you complain to her that he did
3 not make an effort to contact you while you were at the
4 children's home in North -- it says North Carolina, but
5 that's probably not ---

6 A. No.

7 Q. You never said that?

8 A. No.

9 Q. You never told her -- you never described to her his
10 failure to contact you caused you a great deal of stress?

11 A. No.

12 Q. Did you complain about Maxwell Sipes' not wanting to
13 talk to you since he was not talking to your mother? You
14 never said any of that stuff?

15 A. No.

16 MS. HERVEY: Your Honor?

17 THE COURT: Just a moment while she's marking
18 the exhibits. We'll go off the record.

19 (WHEREUPON, Defendant's Exhibits Number 1-2 were
20 marked for identification only.)

21 MR. STODDARD: Your Honor, I'm offering at this
22 time exhibits 1 and 2 as business records or medical
23 records.

24 THE COURT: All right. In other words -- any
25 objection?

1 MS. HERVEY: Yes, Your Honor.

2 THE COURT: All right. Very good. Mr. Foreman,
3 ladies and gentlemen of the jury, I need to ask you to
4 retire to the jury room for just a few moments while I
5 take up a matter of law.

6 (WHEREUPON, the jury exited the open court at
7 approximately 11:56 a.m.)

8 THE COURT: All right. Madam Solicitor?

9 MS. HERVEY: May it please the Court, Your
10 Honor. This is a letter from Michelle Matthews. It says,
11 "To whom it may concern." It's unclear ---

12 THE COURT: Now, we're talking about November
13 the 18th or May the 3rd or both?

14 MS. HERVEY: Both. Actually, I think they're
15 the same letter. I don't know why they're ---

16 THE COURT: I thought so too. But there are a
17 few ---

18 MS. HERVEY: I think she may have forwarded this
19 to somebody else based on an ongoing matter involving
20 D.S.S. or whatever the Georgia's equivalent of that is.
21 It's unclear because we don't know who the letter is
22 written to. This is not a medical record. This is a
23 letter containing her opinion. We don't understand the
24 context of it. It's not taken from her notes. It
25 contains certain excerpts, but there's no real ability to

1 put that back together in an orderly fashion.

2 She is documenting various events, and in the end
3 says that she should -- feels that they shouldn't have any
4 contact with their father. But to say that it's a medical
5 record, the same as what you would tell a doctor to get
6 treatment, I think, is an incharacterization (phonic).
7 She's not available to authenticate it. She's not
8 available to explain it. The notes upon which this is
9 based are not available.

10 So I think for all those reasons, Your Honor, it
11 doesn't fall within the hearsay exceptions, and he can't
12 impeach her with this document having not truly being able
13 to attribute it to her because a lot of this is opinion
14 testimony from Ms. Matthews and also contains verbiage
15 from her mother. Again, not done for the purposes of a
16 medical diagnosis.

17 Her mother is talking to this woman at D.M.H. about
18 whether or not they feel they ought to have any contact
19 with their father and ongoing treatment plan. For him to
20 offer it and somehow use it to impeach her, it's hearsay
21 upon hearsay to challenge her. He's asked her those
22 questions, and I think they're proper questions. But now
23 to try and submit this, that she'd actually said this to
24 this woman, without this woman present to authenticate it
25 or to explain why the letter was even written in the first

1 place, I think is improper.

2 MR. STODDARD: Well, it's an authentication -- I
3 did get this from the Solicitor's Office. I do not have
4 the custodian of records here. It's been my experience
5 that letters of this type get put in the medical file and
6 saved when they write these letters. One reason I don't
7 have the custodian here is, you know, I don't know how to
8 do it because these people are in Georgia and I can't do a
9 subpoena to Georgia.

10 As far as her other statements about that, everything
11 she just said -- I believe if the custodian of records
12 were here, everything else she said could be applied to
13 any medical records. To the extent that I'm allowed to
14 put in a medical record that includes statements made to
15 the doctor or the treating physician -- and I believe Ms.
16 Michelle Matthews, she admitted, treated her. You could
17 say that about any doctor. It is hearsay. You know, it
18 is hearsay on hearsay. It's statements that the ---

19 THE COURT: Well, of course, the doctor ---

20 MR. STODDARD: It's an exception.

21 THE COURT: The doctor can put in those things
22 that he relied on, or she relied on. But I'm not sure
23 that an individual record without further authentication
24 can be excepted under Rule 803. I'm going to sustain the
25 objection. The exhibits are exhibits, Defendant's

1 Exhibits 1 and 2 for identification. They won't be
2 admitted.

3 All right. Anything else? I mean about the
4 exhibits.

5 MS. HERVEY: No, Your Honor.

6 THE COURT: All right. We'll bring the jury
7 back, please.

8 (WHEREUPON, the jury entered the open court at
9 approximately 12:03 p.m.)

10 THE COURT: All right. Let the record reflect
11 the jury and alternates are in the jury box.

12 All right. You may proceed.

13 Q. I've got no further questions.

14 THE COURT: All right.

15 Re-examination?

16 MS. HERVEY: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. HERVEY:

19 Q. Just a little bit longer, **Minor**. Okay? I only have
20 a couple of questions. All right? Are you doing okay?
21 Do you need some more water or anything from Dr. Graham?

22 A. Yes, ma'am.

23 (Pause.)

24 Q. Mr. Stoddard asked you a lot of questions about a
25 forensic interview that you had. Did you speak to that

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Minor - Redirect Examination by Ms. Hervey

177

1 forensic interviewer once or twice? Do you recall?

2 A. I recall twice.

3 Q. If you recall, approximately how long did you talk to
4 him?

5 A. It was maybe an hour each time give or take twenty or
6 thirty minutes.

7 Q. And when you talked to him, did you talk to him in a
8 certain chronology? Or would you talk about things and
9 then go back and talk about them later? Or did you pretty
10 much stick to ---

11 A. We went and -- we talked about stuff and then we'd
12 talk about it later too. He didn't ask me just the same
13 question just one time. He asked me over again.

14 Q. And during these taped -- or during this interview, I
15 should say, did you ever become emotional with the
16 interviewer?

17 A. No.

18 Q. Do you recall ever crying or getting upset with him?

19 A. I remember getting mad. And yes, I was upset, but I
20 wasn't in front of a jury. I wasn't in -- I didn't have
21 to see him.

22 Q. And how long has it been since you saw him?

23 A. About four years.

24 Q. And is this the first time that you've ever testified
25 in court in front of a jury like this?

1 A. Yes.

2 Q. You said you'd been to court before. But was that
3 juvenile court where there's just a judge or something.
4 like that?

5 A. Just a judge.

6 Q. And how did you feel about coming and testifying in
7 front of this jury and being in the same room with Max?
8 How did you feel ---

9 A. I didn't want to. I was scared.

10 Q. And did you meet with me about getting ready to
11 testify here today?

12 A. Yes, ma'am.

13 Q. And do you remember in those discussions with me ever
14 becoming emotional or upset about the concept of coming
15 here and testifying?

16 A. Yes.

17 Q. And what was the purpose of having two interviews,
18 **Minor**? Why were you interviewed twice? Do you remember?

19 A. Because I didn't tell the forensic interviewer
20 everything that I needed to tell him because I was scared.

21 Q. And what were you scared about with the forensic
22 interviewer?

23 A. I was scared and I was embarrassed and I was ashamed.
24 And I was talking to a man.

25 Q. You said you were talking to a man?

1 A. Yes.

2 Q. And was it a man that you had ever dealt with or seen
3 before?

4 A. No.

5 Q. It's pretty much -- the two times that you talked to
6 him, are those about the only two times you'd ---

7 A. I'd ever seen him before.

8 Q. So he wasn't one of the counselors that you were in
9 therapy with?

10 A. No.

11 Q. And when you have been in therapy, as Mr. Stoddard
12 asked you about that, have you had male or female
13 therapists?

14 A. I've had female therapists.

15 Q. Now, Mr. Stoddard asked you some questions about your
16 lying in the past. Have you lied in the past, Minor

17 A. Yes.

18 Q. And generally, what were the kind of things in your
19 childhood or those kind of things that you did lie about
20 that you would get in trouble for?

21 A. For stealing and I'd get in trouble -- I mean, just
22 little things I would lie about.

23 Q. And you talked about when you went through this stage
24 where you were stealing a lot. Was that around the time
25 that this was happening to you with Max?

Yes.

Or before, after or both?

It was around the time this stuff was happening to
4 me.

5 Q. And Mr. Stoddard asked you some questions about what
6 you told Mr. Payne, your surgeon. Do you recall how many
7 times you went to see Dr. Payne?

8 A. I would say four times. I'm really not sure.

9 Q. And you said you went to the emergency room. Did you
10 talk to the doctors there?

11 A. About what happened?

12 Q. Sure. About what was going on with you?

13 A. Yeah, I talked to them about my rectum falling out
14 and everything falling out of me, but I didn't tell them
15 why.

16 Q. Did they ever ask you why?

17 A. No.

18 Q. Did they ever tell you why or give you any reasons?

19 A. No.

20 Q. Have you had a lot of constipation in the past? Did
21 you ever tell them anything about that?

22 A. No.

23 Q. ~~And you said you used laxatives and stuff like that.~~

24 ~~Was that because you were constipated?~~

25 A. ~~No.~~

- 1 Q. ~~What was the reason you did that?~~
- 2 A. ~~Because he was messing with me, and I wanted to clean~~
3 ~~myself from it.~~
- 4 Q. Mr. Stoddard asked you some more questions about what
5 happened back when you were eleven?
- 6 A. Yes.
- 7 Q. Did that happen here, or did that happen when you
8 were in Georgia?
- 9 A. That happened in Georgia.
- 10 Q. And do you recall what room you were in when that
11 happened?
- 12 A. The living room.
- 13 Q. And you stated that he did what to you? I can't
14 really remember. I'm sorry.
- 15 A. ~~He made me take off my pants, and he messed at me~~
16 ~~below the waist with his hands.~~
- 17 Q. You stated that he took off your pants and he messed
18 with you below the waist?
- 19 A. Yes, ma'am.
- 20 Q. Did he tell you -- did you tell anybody about that
21 when it happened?
- 22 A. No.
- 23 Q. And other than that, did you have any other
24 encounters where you weren't comfortable with Max where
25 you didn't have any clothes on?

1 A. He would come in my room sometimes when I would be
2 getting dressed in the morning to go to school. And I
3 would be naked, and he would tell me it's nothing he had
4 ever not seen before.

5 Q. Mr. Stoddard asked you some questions about Max not
6 coming to see you or not talking to you at certain points.
7 Have there been times in your life where he didn't talk to
8 you, not because you didn't want to talk to him, but
9 because he just didn't have any contact with you for some
10 other reason?

11 A. Yes.

12 Q. And do you know just generally kind of when that was?
13 Was that when he and your mom were separated or some other
14 time?

15 A. That was when he and my mom were separated and
16 afterwards, after we had moved.

17 Q. After you had moved back to Georgia?

18 A. Yes.

19 Q. Mr. Stoddard asked you some questions about you lying
20 and those kind of things. Have you been lying about the
21 things you've been saying here in court?

22 A. No, ma'am.

23 Q. You talked about the stuff that happened to you with
24 the forensic interview. Is that pretty much what you've
25 told us here today?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Direct Examination by Ms. Hervey

183

1 A. Yes, ma'am.

2 MS. HERVEY: Nothing further, Your Honor.

3 THE COURT: Recross?

4 MR. STODDARD: No recross.

5 THE COURT: All right. Very good. You may step
6 down.

7 Approach, please.

8 (WHEREUPON, a bench conference was held off the
9 record.)

10 MS. HERVEY: The State calls Tina Goodwin to the
11 stand, please.

12 **TINA GOODWIN,**

13 Being first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MS. HERVEY:

16 Q. Ms. Goodwin, I'm going to ask that you speak into the
17 microphone so that these last jurors can hear you. All
18 right?

19 A. Yes, ma'am.

20 Q. Now, Ms. Goodwin, the girl who just testified, **Minor**
21 is that your daughter?

22 A. Yes, ma'am.

23 Q. And how many other children do you have?

24 A. I have three other children.

25 Q. And what are their names and their ages right now?

1 A. Taylor Jordan Sipes, she's eleven. I have a set of
2 twins, Gabriel Hunter Sipes and Gabrielle Haley Sipes.
3 They're four.

4 Q. And which of those children did you have by Max
5 Sipes?

6 A. Taylor, Gabriel and Gabrielle.

7 Q. And do you remember when approximately you married
8 Max?

9 A. Yes, ma'am. 1992.

10 Q. And at that time, how many children did you have?

11 A. I had **Minor**

12 Q. Just **Minor**

13 A. Yes, ma'am.

14 Q. Taylor hadn't been born yet?

15 A. No, ma'am.

16 Q. And at that time did **Minor** have any relationship or
17 involvement with her biological father?

18 A. No, ma'am.

19 Q. And did she ever have a relationship with her
20 biological father?

21 A. No, ma'am.

22 Q. And did she appear to have a relationship with Max?

23 A. Yes, ma'am.

24 Q. And as a result of that, did he ever adopt **Minor**?

25 A. Yes, ma'am.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Direct Examination by Ms. Hervey

185

- 1 Q. And do you remember approximately when that was?
- 2 A. Yes, ma'am. She was around seven or eight years old.
- 3 Q. And sometime -- when in relation to the adoption is
- 4 Taylor born?
- 5 A. In 1995.
- 6 Q. So sometime shortly thereafter?
- 7 A. Yes, ma'am.
- 8 Q. And how long are you and Max married this first time
- 9 that you're together?
- 10 A. We was married till 1999. March 13th of 1999 is when
- 11 it become final.
- 12 Q. And did you get a divorce?
- 13 A. Yes, ma'am.
- 14 Q. And when that first period of time when you're
- 15 married to Max and he's adopting **Minor**, are you living in
- 16 South Carolina or are you living in Georgia or back and
- 17 forth?
- 18 A. I'm living in Chattooga County.
- 19 Q. And is Max living there with you, or is he working or
- 20 ---
- 21 A. He's living in Chattooga County with me.
- 22 Q. Did you meet him in Georgia?
- 23 A. Yes, ma'am, at Mt. Vernon Mills.
- 24 Q. And after the divorce, does Max remain in the
- 25 Chattooga area or does he return to South Carolina or go

1 someplace else?

2 A. He returns to Anderson, South Carolina.

3 Q. And his family is here or something like that, or his
4 job brought him here?

5 A. His job traveled him here along with his family.

6 Q. And how long do you stay separated from Max after the
7 divorce?

8 A. From 1999 to 2002. Between 2000 -- the end of 2001
9 -- about November, December 2001 till 2002.

10 Q. And what brings about your getting back together with
11 Max from 2000 to 2002?

12 A. In the year of 2000, my kids had went and visited
13 their father. And my children had come home. Max had
14 dropped Taylor off with my mother at my Aunt Miriam's
15 house in Alpharetta. And Taylor had went to school. The
16 kindergarten teacher had pulled me aside.

17 Q. And what brought about you getting back together with
18 Max when you go back together with him in 2002?

19 A. Because he was going with different women. Every
20 weekend he was having different women. He done a sexual
21 act in front of my five-year-old.

22 Q. Why -- but why did you go back to him? That's my
23 question.

24 A. So my kids would be safe and they wouldn't be going
25 through everything they were going through.

1 Q. And so you get back together with Max. Do you move
2 here to Anderson, or does he move back to Chattooga?

3 A. I move to Anderson.

4 Q. And during that break that the two of you had, you
5 stated that he had visitation with the kids?

6 A. Supervised visitation.

7 Q. And you came back to Anderson. And did you work here
8 or did you stay home with the kids?

9 A. I worked at the AmStar Motel.

10 Q. And how long did you and Max live here in Anderson?

11 A. Till right after the twins were born, then we moved
12 to Central.

13 Q. So do you remember approximately when you moved back
14 in with Max?

15 A. It was March of 2002.

16 Q. 2002? And then you stayed with him pretty much
17 continuously until what date? Do you recall?

18 A. Yes. September the 26th of 2003.

19 Q. And the twins were born in that time?

20 A. Yes, ma'am. [REDACTED].

21 Q. And if you got back together with him in March of
22 2002 and the twins were born in October of 2002, even
23 though you weren't still living with him, were they
24 obviously conceived before you two started living back
25 together again?

1 A. We were seeing each other January and February, and I
2 got pregnant with the twins on Valentine's Day. I was
3 staying up here temporarily -- I still had my place in
4 Chattooga County, the apartment -- to see if we was going
5 to be able to work it out or if we wasn't. And right
6 after I found out I was pregnant, I moved back in up here
7 with him in Anderson in March.

8 Q. So that was one of the reasons you went back to him
9 as well?

10 A. Exactly, because I was pregnant.

11 Q. And then you leave him in September of 2003, correct?

12 A. Yes, ma'am.

13 Q. And do you remember the first time that you learned
14 about -- that **Minor** told you about what was going on
15 between her and Max? Do you remember the month or around?

16 A. Yes, ma'am. It's November the 12th, 2000 ...

17 Q. November the 12th, 2000?

18 A. ... three.

19 Q. And between September and November where are you and
20 **Minor** living?

21 A. With Marlo Brown. She's my first cousin, but she's
22 like my sister. So we call her Aunt Marlo.

23 Q. So she's not really your aunt, she's a cousin?

24 A. No. She's my first cousin.

25 Q. And why did you move in with Marlo?

1 A. Because Max had moved out and had moved in with his
2 grandmother. And he told me to do the best we could do.
3 My family come up and picked me up, my kids up, and moved
4 me down here in Alpharetta.

5 Q. So you went back to Chattooga at that point?

6 A. Yes, ma'am.

7 Q. And so you stated that you remember **Minor** telling
8 you what happened. Do you know if you were the first
9 person she told?

10 A. Yes, ma'am.

11 Q. And when in relation to when she tells you in
12 November does she start having medical problems that we've
13 heard about?

14 A. She had -- November the 12th she had told me, but I
15 did not know that it was so intense. She just told me
16 about the fondling. And she had went and spent the
17 weekend with my mother. And my mother had called me and
18 told me **Minor** was complaining and wanted some
19 Preparation-H. And I took her to Northside Hospital where
20 I live at. And that's when they had told me and they had
21 called a specialist surgeon doctor in.

22 Q. So when **Minor** first tells you what happened, she
23 doesn't tell you everything. She just tells you what
24 happened when she was eleven or at some other point in her
25 life?

- 1 A. Yes, ma'am.
- 2 Q. When does she tell you more, if ever?
- 3 A. She told me more after they done the surgery, but
- 4 North Fulton -- Eric Cofton (phonic), social service for
- 5 North Fulton Hospital, called me to the side and wanted to
- 6 know if it had been reported sexual abuse. And I said
- 7 yes, ma'am. And she had called Forsythe County and
- 8 Chattooga County to see if it had been reported. They
- 9 told me the only way that my daughter's rectum could have
- 10 fell out the way it did was because of sexual abuse.
- 11 Q. And so at some point around that **Minor** also tells
- 12 you more?
- 13 A. She told me. She broke down in the hospital, told me
- 14 and the nurses there.
- 15 Q. And then at some point law enforcement gets involved?
- 16 A. Yes, ma'am.
- 17 Q. And then you carry her to have these forensic
- 18 interviews?
- 19 A. Yes, ma'am, with Eddie Colbert and Ted Buckenham in
- 20 Rome, Georgia.
- 21 MS. HERVEY: That's all I have of this witness,
- 22 Your Honor.
- 23 MR. STODDARD: Beg the Court's indulgence. I've
- 24 got a document. I'm seeing if I've got an extra copy for
- 25 the prosecutor

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Cross Examination by Mr. Stoddard

191

1 (Pause.)

2 CROSS-EXAMINATION

3 BY MR. STODDARD:

4 Q. Did you ever take -- in all the places you've been
5 to, was Children's Healthcare of Atlanta somewhere that
6 **Minor** got treated?

7 A. Yes, for acid reflux.

8 Q. And here's a document that's dated March of 2004.
9 Was she treated there in -- or April 2004, I believe. Was
10 she treated in April 2004?

11 A. This was after -- I'll have to look. This is
12 Lakeside Pediatrician with Bobby Garrett. She was having
13 acid reflux, and he was giving her Zantac to take.

14 Q. Does this look like a document you might have filled
15 out as a -- or provided that information for on her
16 medical history?

17 A. Yes.

18 Q. There's an item here. Did you indicate past
19 constipation? Did you indicate that as in her medical
20 history?

21 A. Yes, but what I did not understand and everything was
22 **Minor** was not allowed to discuss the case with my
23 children. Her counselors and everybody told me not to
24 discuss anything with my children. I knew she had took
25 some laxatives before, but I did not know why.

1 Q. Minor testified that ...

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

3 Q. ... that you told her that Max was seeking custody of
4 her siblings but not her. Is that what you told her?

5 A. No. Was seeking custody all of them. At Pickens
6 County he got up in front of Judge Johnson in front of the
7 Pickens County Courthouse -- and it is documented. He
8 said he did not want Minor because she was mentally
9 insane. He only wanted Taylor, Gabriel and Gabrielle. He
10 did not want Minor, that she was better off
11 with her mother.

12 MR. STODDARD: Beg the Court's indulgence again.

13 (Pause.)

14 Q. But you do agree that in his complaint he asks for
15 all the children?

16 A. Yes, sir. But when we got to court, he did not want
17 Minor. He just wanted the three. And Minor hadn't even
18 got out of the children's home. I went and got her out of
19 the children's home.

20 Q. Now, at that hearing, you informed the Court of these
21 allegations, didn't you?

22 A. Along with social service, yes. Chattooga County
23 DFACS, yes.

24 Q. Now, you testified that y'all separated in September
25 of 2003; is that right?

1 A. It's -- I can't recollect. It was Taylor's b
2 September -- it was 2002. September 26, 2002. No. It
3 was 2003. I'm sorry.

4 Q. I think that's what you said earlier.

5 A. Yeah.

6 Q. And after your separation, you filed a child
7 abandonment warrant, I understand, against Max down in
8 Georgia; is that right?

9 A. No. That was for child support. When I was going
10 through child support getting my kids medical help because
11 my daughter was needing prolapsed rectum surgery, Max quit
12 his job. When Eddie Colbert went to look for him, he
13 would not come in for the interview. When Eddie Colbert,
14 the investigator, looked for him to question him about the
15 sexual abuse, Max quit his job and left. So I had to go
16 get assistance.

17 MR. STODDARD: I have a matter of law.

18 THE COURT: Just a moment. All right. Thank
19 you.

20 Mr. Foreman, ladies and gentlemen of the jury, I'm
21 going to have to ask you to return to the jury room for
22 just a few moments while I take up a matter of law with
23 the attorneys. Again, do not undertake a discussion of
24 the case among yourselves in any way.

25 (WHEREUPON, the jury exited the open court at

1 approximately 12:26 p.m.)

2 THE COURT: Mr. Stoddard?

3 MR. STODDARD: I need to confer with my client.

4 (Pause.)

5 MR. STODDARD: Your Honor, at this time I'm
6 making a motion for a mistrial on the grounds that this
7 witness commented on my client's failure or assertion of
8 his Fifth Amendment rights. She said that he would not
9 come down for an interview with the police. And that's
10 his right. And it wasn't -- you know, I know it's in
11 response to my questioning, but she went off on a
12 narrative. She didn't -- it wasn't in response to my
13 question. I can't even remember what my question was.

14 MS. HERVEY: And, Your Honor, I don't believe
15 that she's commenting on his Fifth Amendment rights.
16 She's stating that she was unable to locate him, that law
17 enforcement was unable to locate him, that he had quit his
18 job. I think for him to take the stretch that she's
19 commenting on his Fifth Amendment rights is taking it out
20 of context. At that point he could be, you know, at that
21 point investigating in terms of the child support and
22 trying to get the child support from him. And I
23 understand what he's saying, but he did ask the question.
24 He said, why did you file this child abandonment? Her
25 response is, law enforcement couldn't find him, that he

1 wouldn't return their calls, that he wouldn't cooperate
2 with them.

3 I asked this witness some very targeted chronological
4 questions designed solely to establish that because this
5 mother has a better recollection than the child. I didn't
6 go into all the custody disputes and all that for this
7 particular reason, because it is a landmine in terms of
8 these kinds of things in terms of other acts, you know.
9 Those type things.

10 THE COURT: Well, I'm sure you instructed her
11 not to go off on tangents.

12 MS. HERVEY: I did instruct her ---

13 THE COURT: To respond to the questions and not
14 try to interject something.

15 MS. HERVEY: I did tell her that. But his
16 question was, why did you file the ---

17 MR. STODDARD: Can I interrupt? Because that
18 wasn't my -- actually my question was, didn't you file a
19 child abandonment warrant. And we got on that. I didn't
20 say why. I said, didn't you.

21 MS. HERVEY: ~~And the other thing is she never cut~~
22 ~~her off which she has done in previous answers where~~ -- and
23 I have done -- where I said, were you directed to that
24 witness. And she -- you know, ~~where she was going in~~
25 ~~terms of I filed these papers and the reason was because~~

1 ~~of this, and that they couldn't find him.~~ And he asked --
2 what is the relevance of whether she filed this child
3 abandonment paper unless he's wanting to go down that
4 road. And he's obviously wanting to call into question
5 whether or not he did ---

6 MR. STODDARD: No.

7 MS. HERVEY: And I don't understand what he's
8 thinking he's going to get without, you know, having the
9 cake that he's going to get a slice of.

10 MR. STODDARD: Well, anyway. I had no idea it
11 was going to somehow lead to he wouldn't cooperate with
12 the police. I mean, that's not even close. I have a
13 place I'm going with it, but it wasn't there.

14 MS. HERVEY: And, again, that's her opinion,
15 Your Honor. And granted -- ~~I think it can be stricken. What~~
16 ~~don't think it's risen to the level of some type of~~
17 ~~mistrial.~~ She wasn't present with law enforcement. Those
18 are things that can be addressed with the Court; curative
19 instructions can be given. ~~This has not risen to the~~
20 ~~level. I think that a mistrial is warranted at this point.~~

21 THE COURT: Well, why don't we try to keep our
22 witnesses aware of responsibility. But again, they're not
23 trained in the law. They don't know what they're supposed
24 to say unless we tell them. They're not supposed to say
25 things that can be prejudicial to the point of a mistrial.

1 MR. STODDARD: And, Judge, you know, I do think
2 it was accidental. I don't think it was anything
3 intentional, certainly not on the prosecutor's part. It
4 wasn't something I was trying to elicit. I think it's
5 well put that the witnesses aren't experts in the law.

6 THE COURT: Well, if the witnesses who do not
7 know, they could very well mistry a case by telling things
8 that are not necessarily in response to the questions that
9 are asked. That goes for all witnesses, both the State's
10 witnesses and the Defense's witnesses. ~~So I would suggest~~
11 ~~-- what it is -- just answer the questions that are asked.~~
12 ~~And if you need to explain, you may do so.~~

13 MS. HERVEY: Do you understand? The Judge is
14 asking that you focus on -- and let me just ...

15 Can I educate her a little?

16 THE COURT: I would hope that you would.

17 MS. HERVEY: Thank you.

18 ~~What we're asking you is to limit it to what you --~~
19 ~~and I talked to you -- what you know with your own~~
20 ~~knowledge.~~ You weren't with Eddie when he was up here and
21 those kind of things. That would have been stuff that was
22 reported back to you. And what we want you to do is focus
23 in on what you heard with your own ears, what you saw with
24 your own eyes, what you know with your own heart and not
25 delve into these things that you may or may not have

1 learned from other people because obviously you weren't
2 with them. All right?

3 And the question about the comment he does have a
4 right to remain silent. And whether or not he cooperates
5 with the investigation is up to him. It's different than
6 a family court matter. And that's why we're having this
7 hearing today. And we'll just ask that you refrain from
8 going into that and focus instead on Mr. Stoddard's
9 question. And if you think you're going to run afoul of
10 that, if you think the only way I can answer this question
11 is if I say, you know, he wouldn't cooperate with police
12 or he said or she said or those kind of things, then you
13 need to let the Court do that. Your Honor, I need to
14 explain my answer, but maybe I need to tell you what it is
15 outside the presence of the jury because I think I want to
16 keep in mind the Court's rules. Does that make sense?

17 THE WITNESS: Yes, ma'am.

18 MS. HERVEY: And I told you to focus on those
19 kind of things, but I understand some of these questions
20 can only be answered one way. All right?

21 THE WITNESS: Yes, ma'am.

22 MS. HERVEY: Thank you.

23 THE COURT: ~~All right. I'm going to deny the~~
24 ~~motion for a mistrial at this time. I don't think that it~~
25 ~~has arisen to the degree of prejudice that would make it~~

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Cross Examination by Mr. Stoddard

1 impossible for the Defendant to have a fair trial.
2 However, if the Defendant was to, I would give a narrative
3 instruction that there's no need for the Defendant to ever
4 present a defense.

5 MR. STODDARD: I do want the State to have a fair trial.

6 THE COURT: All right. Very good.

7 Anything else from the State?

8 MS. HERVEY: Nothing from the State, Your Honor.

9 Nothing from the State, Your Honor, no. I was going to
10 ask Mr. Stoddard if I could see one of the documents. He
11 was walking around with some documents that I haven't
12 seen. I just -- before you bring them back in....

13 Are you going to show her anything that I haven't
14 seen?

15 THE COURT: All right. We'll stay off the
16 record then.

17 (Pause.)

18 THE COURT: All right. Let me know when you're
19 ready.

20 MR. STODDARD: Are you asking us?

21 THE COURT: Yes.

22 MR. STODDARD: Well, I'm ready. I don't know
23 about the State.

24 MS. HERVEY: I'm sorry. I just got a lot of
25 Family Court documents for the first time.

1 THE COURT: That's the way it works.

2 MS. HERVEY: I understand. I'm just begging the
3 Court's indulgence to read them. That's all.

4 (Pause.)

5 MS. HERVEY: Your Honor, from what I can see,
6 the bulk of these documents, a hearing here in South
7 Carolina in front of Alvin Johnson regarding child
8 support, and then another hearing here in Anderson
9 regarding child support. I'm not really sure what the
10 relevance is because it's talking a lot about whether or
11 not seven hundred and fifty dollars was paid ---

12 THE COURT: Well, I think the witness has
13 introduced child support.

14 MS. HERVEY: No. I think he asked the question
15 did she file a child abandonment warrant. But as to --
16 I'm not sure how this all relates back to ---

17 THE COURT: I'm not either. And that's why I
18 regret that -- what is it -- information came in that is
19 somewhat prejudicial and with no important consideration.
20 What's the purpose of the Family Court record?

21 MR. STODDARD: The purpose of the first
22 document, the hearing with Alvin Johnson, it's actually
23 the custody hearing. And she said that Max told the judge
24 he doesn't want ---

25 THE COURT: It's impeachment.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Cross Examination by Mr. Stoddard

201

1 MR. STODDARD: It's impeachment. The other ---

2 THE COURT: And that is the transcript?

3 MR. STODDARD: Yes, sir.

4 THE COURT: Any objection to the transcript?

5 MS. HERVEY: With all of it, or are you just
6 going to ask her that question?

7 MR. STODDARD: It depends on what she says. You
8 know, if she agrees with what the transcript says, I'll
9 probably just ask her.

10 MS. HERVEY: Because there's a lot of other
11 stuff in there.

12 THE COURT: Well, we've heard a lot of other
13 stuff in this case. You're right about that, and I regret
14 it.

15 MR. STODDARD: And the other transcript -- where
16 I'm going with child support is, Your Honor -- and he did
17 it in both of the hearings. He also did it in the custody
18 hearing. It's my contention that she put up false
19 testimony in those two hearings, and I will bring that
20 out. It goes to her credibility.

21 THE COURT: "Extrinsic evidence of prior
22 inconsistent statement by a witness is not admissible
23 unless the witness is advised of the substance of the
24 statement, the time and place it was alleged to have been
25 made and the person to whom it was made and is given the

1 opportunity to explain or deny the statement." Rule
2 613(B). Is that what you're doing with this?

3 MR. STODDARD: Yes, sir.

4 THE COURT: All right. It's permissible.

5 MS. HERVEY: And I could be wrong. But except
6 for one page of the first one, she never gives testimony.
7 It's all done by her lawyers. So ...

8 THE WITNESS: I never said that.

9 MS. HERVEY: I don't quite understand how their
10 characterization of facts makes her giving false testimony
11 in court. She's asked a couple of questions.

12 THE COURT: It's not false testimony. It's
13 inconsistent testimony.

14 MR. STODDARD: One thing I'm trying to do is to
15 rebut her contention that Max told the Court he didn't
16 want custody of Minor . Which that's partially true, but
17 only after she brought up allegations of sexual misconduct
18 and pointed out Minor in therapy. And then Max's
19 lawyer then at that time said, well, we would ask for
20 custody of the two minor -- the two -- the three younger
21 children. But since Minor in therapy, perhaps not her.
22 But he never -- it was not -- I'm just contending she
23 mischaracterized that he didn't want custody of Minor .

24 THE COURT: You can do that, but you can also
25 explain the rest.

1 MR. STODDARD: And as far as the false
2 testimony, she is trying to get child support going back
3 to June and saying that Max should have been paying child
4 support in June and even said that he -- I realize it's
5 through her lawyer. Well, I could ask her a question now
6 to see if I can get it in.

7 THE COURT: Yes, sir.

8 MR. STODDARD: Voir dire her.

9 IN-CAMERA EXAMINATION

10 BY MR. STODDARD:

11 Q. Anything your lawyer said that day would be based on
12 information you gave him; is that correct?

13 A. Which lawyer?

14 Q. Huh?

15 A. Which lawyer?

16 Q. In the hearing in front of Alvin Johnson ---

17 A. Kirby Mitchell?

18 Q. Kirby Mitchell. Those statements he made were -- to
19 the Court were based on information you provided him,
20 weren't they?

21 A. Yes, sir.

22 Q. And when you said that Max presented you a check that
23 bounced in June of 2003, that was when -- when Kirby said
24 that to the judge, that was because you told Kirby that;
25 is that right?

1 A. Yes, sir, he did.

2 MS. HERVEY: And perhaps the State is confused.

3 I don't understand how that gets to false testimony or
4 prior impeachment or where we're going with all that.

5 MR. STODDARD: She's testified that ---

6 THE COURT: Well, if she testifies to it, there
7 is no impeachment.

8 MR. STODDARD: --- they separated in September.
9 And I'm just pointing out she's telling the Family Court
10 in Anderson and some kind of court in Forsythe that he
11 should have been paying child support back in June and
12 that it's -- it gets even more complicated because he had
13 a prior order when they got divorced prior to the
14 reconciliation.

15 THE COURT: Well, let's don't try everything in
16 Family Court. Go ahead. I'm going to permit your
17 questions. Inasmuch as she's here for cross-examination,
18 in fact on the stand, I would suggest that her statements
19 are not hearsay, 801(B)(1).

20 MS. HERVEY: And that's fine. He was saying
21 that her lawyers were based on her, and that's somehow
22 providing her false testimony. I think that's making a
23 stretch of it. If he wants to know what she actually
24 swore to in court, that's one thing. But otherwise what
25 her attorney said and how he characterized things, I think

1 is improper. He can say, did you tell your attorney

2 THE COURT: Very good. Noted. Overruled,

3 guess, if there's an objection other than a lecture.

4 All right. Anything else from the State before we

5 bring the jury back?

6 MS. HERVEY: Your Honor, we would just renew

7 that this is not -- the child support thing has gone

8 beyond the relevance of this court.

9 THE COURT: Very well. Noted for the record.

10 Anything from Mr. Stoddard?

11 MR. STODDARD: Nothing from us.

12 THE COURT: All right. Ask the jury to join us.

13 Perhaps you ought to think about that and counsel

14 your witnesses not to bring it up.

15 MS. HERVEY: When he started asking the

16 questions about ---

17 THE COURT: Thank you, ma'am.

18 (WHEREUPON, the jury entered the open court at

19 approximately 12:47 p.m.)

20 THE COURT: All right. Let the record reflect

21 the jury and alternates are in the jury box.

22 ~~You may proceed.~~

23 Q. You -- I think the Court characterized it as an

24 abandonment warrant. That may be the way you collect

25 child support in Georgia. I don't know. But you did

NEVER
ASKED FOR
CREATIVE JUST
STARTED
QUESTIONING

1 bring some kind of proceeding in Georgia about child

2 support?

3 A. Yes.

4 Q. And in that hearing you -- it was your contention to
5 the Court that Max owed you child -- you were trying to
6 enforce the order in your original divorce decree that was
7 granted somewhere around the year, I guess, 1999 or 2000?

8 A. No. We went back to court again after that.

9 Q. Okay. What year was the decree that you were trying
10 to enforce in Georgia?

11 A. The year 2000.

12 Q. Okay. And -- but, now, this is -- this hearing was
13 after y'all separated in September 2003; is that right?

14 A. Yes. It was still an outgoing court order in
15 Georgia.

16 Q. I know. But y'all had reconciled, separated ...

17 A. That's the thing. We hadn't completely reconciled.
18 That's where you're getting misunderstand. I still had my
19 apartment in Chattooga County. And when I moved to
20 Anderson, me and Max was going to see if it was try to
21 going to work. He still hadn't paid me child support
22 while I was there.

23 Q. So -- because that is what you told the judge, that
24 this whole time he's been paying child support. That's
25 what you told the judge in Georgia, isn't it?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Cross Examination by Mr. Stoddard

207

1 A. Yes.

2 Q. And so now is it your contention that all the time
3 that we're in court about today was going on, y'all were
4 not reconciled and living together?

5 A. Yes, we were together. After I found out I was
6 pregnant, we got all my stuff and I moved to Anderson
7 County.

8 Q. But you're also saying, like you told that judge,
9 that while y'all were living together Max kept on paying
10 child support?

11 A. Yes. He wrote me checks out.

12 Q. Okay. And -- now, he doesn't pay -- he didn't pay
13 through the court then, he just ---

14 A. No. He paid me..

15 Q. All right. And in the court in Georgia, you
16 presented a check that was written in June of 2003, June
17 or July 2003; is that right?

18 A. I don't recollect. I'd have to get my paperwork and
19 look. I know he had written a bad check, yes.

20 Q. You've got transcripts. This is the thicker one, the
21 one from -- it just -- it doesn't have a date on the
22 front. It says "Transcript of Record." It's not the
23 Alvin Johnson hearing. That one. On page 3, starting
24 with line 11, you were presented a check dated July 1st for
25 five hundred dollars to the Court?

1 A. Yes.

2 Q. And you told the Court that it had bounced?

3 A. Yes. He didn't have the whole amount to pay me
4 because we had -- when we got recycled and got back
5 together, Max didn't want to stay -- we would argue a lot.
6 And I would pack up my stuff and I was going to leave and
7 go back home. And he would give me money and say -- write
8 me a check out and say, okay, this is what I'll give you.
9 He wouldn't have the whole amount.

10 Q. So you were telling the Court in Georgia that he had
11 written you a child support check in July that bounced and
12 that he owed you that check plus every month thereafter
13 whenever this hearing was, right?

14 A. Correct.

15 Q. Even though y'all stayed together till September of
16 2003?

17 A. Yes.

18 Q. And the check that you told the Court bounced, when
19 the judge looked at it, it turned out the check had never
20 been presented to a bank for payment, had it?

21 A. They said it -- no. My lawyer took it and said that
22 -- I had two lawyers, one in Georgia and one in South
23 Carolina. They said that there was insufficient funds,
24 the checking account had been closed out.

25 Q. I mean, you never -- it never really bounced; you

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Cross Examination by Mr. Stoddard

209

1 never presented it to a bank?

2 A. Yes, I presented it to the bank. They said the
3 checking account had been closed out.

4 Q. They didn't stamp that on the check in any way
5 though, did they?

6 A. They said they would -- if I ran it through I would
7 have to pay for it..

8 Q. Okay. The -- and you deny that you wrote that check
9 out yourself and ---

10 A. No, I didn't write that check out. He wrote it out.

11 Q. On this closed account?

12 A. No. He wrote that check out.

13 Q. On an account that was closed; is that -- that's what
14 you're saying, isn't it?

15 A. I didn't know the checking account was closed. I
16 don't understand what you're saying.

17 Q. And you said the same thing on the hearing when you
18 filed for custody. Y'all had a temporary hearing in
19 Pickens. And if you'll get that transcript. That hearing
20 was December 7th, 2003; is that right?

21 A. Yes.

22 Q. And going into that hearing, he was seeking custody
23 of all three children, wasn't he?

24 A. Three or four?

25 Q. Or four. I'm sorry. That's my mistake. Four

1 children; is that right?

2 A. Correct.

3 Q. And in that hearing, your lawyer pointed out to the
4 Court these allegations that we're here about today and
5 also pointed out that [Minor] was in therapy. And at the
6 end of the hearing, having heard that, Max's lawyer stated
7 to the Court, "Given that, we still seek custody of the
8 younger children, but [Minor] should stay with the mother
9 given that she's in therapy in Georgia." Isn't that what
10 he said?

11 A. Him and his lawyer both talked about that. And he
12 said that [Minor] was better off with me, not the other
13 three. That he wanted to get custody of just the three of
14 them.

15 Q. Who said [Minor] is better off with you?

16 A. Him and his lawyer said that [Minor] was better off
17 with me.

18 Q. Where is that in this transcript? It may be. I just
19 ...

20 A. Because she had her mental problems.

21 Q. I'm just going to withdraw that question just for
22 time's sake.

23 Also in this hearing in front of Alvin Johnson in
24 December, you told him that Max had issued you a check in
25 July and that bounced and it was for -- well, let me back

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Cross Examination by Mr. Stoddard

211

1 up. You didn't actually talk in this hearing; your lawyer
2 did all the talking; is that correct?

3 A. I didn't have nothing to say. My lawyer did all the
4 talking, correct.

5 Q. Because in those hearings you file affidavits instead
6 of talking; isn't that correct? Temporary hearings. You
7 did affidavits?

8 A. Yes, sir.

9 Q. And I imagine your affidavit -- your lawyer was just
10 summarizing what was in your affidavits, but everything
11 your lawyer said was based on information you provided
12 your lawyer; is that correct?

13 A. No, just not with me, with Calvin Kierst (phonic),
14 the guardian ad litem, the children's lawyer that they
15 appointed. They done that that day. DFACS service and
16 mental health and Michele Matthews.

17 Q. But the issue -- you did tell your lawyer about this
18 bounced check?

19 A. Yes. He was seeing about it because child support
20 recovery told me to show it to them.

21 Q. And you were, again, getting your lawyer to represent
22 to the Court that Max had bounced a child support check to
23 you in July of 2003 and he should pay you that and keep
24 paying ongoing support going back to that date; is that
25 right?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Tina Goodwin - Redirect Examination by Ms. Hervey

212

1 A. And Judge Johnson made his order.

2 Q. Huh?

3 A. Judge Johnson made his order in Pickens County.

4 Q. Yeah. And he made him start not going back to July,
5 but starting in December, didn't he?

6 A. That's correct.

7 Q. I've got no further questions.

8 THE COURT: Re-examine?

9 REDIRECT EXAMINATION

10 BY MS. HERVEY:

11 Q. So when Mr. -- let's clear up this check. You got a
12 check?

13 A. Yes.

14 Q. To the best of your knowledge, who wrote the check?

15 A. Maxwell Sipes wrote the check.

16 Q. And did you see him write the check ---

17 A. Yes.

18 Q. --- or did you recognize it?

19 A. No. He wrote the check. I seen him when he wrote
20 it.

21 Q. Were you -- and were you here in South Carolina?

22 A. Yes, ma'am, because I was on Medicaid to pay for the
23 children to be born, the twins to be born. And they had
24 to show proof of it, so Max Sipes wrote it and the
25 receipts out.

1 Q. And you characterized it as a bounced check, but it
2 actually bounced in your account or what happened in terms
3 of presenting it or trying to cash it?

4 A. When we tried to cash it, they said that there was no
5 money checking account with the Southeast Federal Credit
6 Union. The checking account that he had had been closed
7 out for quite some time. So if would have done it, I
8 would have been held responsible for the check.

9 Q. So for that reason, did you ever actually deposit it
10 into your account?

11 A. No. No.

12 Q. And you said that you were seeking child support back
13 to that date in July. Why weren't you seeking child
14 support from the time in March of 2002 that you started
15 living back together up until July of the following year?

16 A. I did seek -- I did receive child support from him.
17 He was paying it every month that way to me. We was -- we
18 tried to get back together and work everything out as far
19 as the kids go, but it didn't end up working.

20 Q. And Mr. Stoddard said when you left Mr. Sipes -- did
21 you all have a joint checking account or bank account at
22 that point in time?

23 A. Yes.

24 Q. And did you remove funds from that account?

25 A. Yes.

1 Q. And was that the reason why the judge ordered that
2 child support didn't have to pick back up till later?

3 A. Yes, ma'am.

4 Q. So he basically ruled those funds you withdrew made
5 up for that lack of child support?

6 A. Yes, ma'am.

7 Q. Did you ever advise [Minor] counsel [Minor] or in any
8 way suggest to [Minor] to make up these allegations to
9 further your child custody fight with Mr. Sipes?

10 A. No, ma'am.

11 MS. HERVEY: I have nothing further of this
12 witness.

13 RECROSS-EXAMINATION

14 BY MR. STODDARD:

15 Q. Let me get one thing straight here. You're saying
16 Max Sipes was paying you child support every month because
17 the child was on Medicaid; is that right?

18 A. (No response.)

19 Q. Isn't that Medicaid fraud?

20 A. Excuse me. I'm not understanding what you're saying.

21 Q. Weren't you supposed to report to Medicaid when you
22 moved back in with ---

23 A. I did.

24 Q. --- your exhusband and was living under his roof and
25 reporting his income?

1 A. I did. And he fixed the paperwork up that we was
2 working things out, and I also talked to Miss Betsy about
3 it that filled out my new Medicaid. Matter of fact, my
4 Medicaid stopped and all my assistance stopped till I got
5 pregnant with the twins. And I explained that to her the
6 day I found out I was pregnant with the twins, and she
7 signed me up on it.

8 Q. They didn't tell you even knowing you were living
9 with him that he still has to pay you child support to
10 stay on Medicaid, did they?

11 A. No. Medicaid is insurance for the kids. It's not
12 child care. I mean, it's not cash money.

13 Q. No.

14 A. And Miss Betsy knew. I turned all the information in
15 to Miss Betsy Kelly at DFACS service, and she seen the
16 check stubs that Max had wrote out. He was with us that
17 day.

18 Q. And you did tell them I'm living with him?

19 A. Yes. She knew that Max was with us.

20 Q. No further questions.

21 THE COURT: And re-re-examine?

22 MS. HERVEY: No. We're done.

23 THE COURT: Thank you very much. You may step
24 down.

25 Mr. Foreman, ladies and gentlemen of the jury, this

1 is a good place for us to break for lunch. I have a
2 matter I have to take up at two o'clock. So I'm going to
3 ask you if you would, please, take a rather long lunch and
4 -- well, two fifteen would be -- I think it will be
5 through. It's just a short hearing, but I do have it
6 scheduled for people from out of town, so I need to get it
7 out of the way at two o'clock. So let's come back at two
8 fifteen and come back to the jury room that you've been
9 and we'll continue with the trial.

10 Again, do not undertake a discussion of this case
11 among yourselves or permit anyone to discuss it with you.

12 Everyone else remain seated while the jury
13 retires from the courtroom.

14 (WHEREUPON, the jury exited the open court at
15 approximately 1:00 p.m.)

16 THE COURT: All right. Anything from the State
17 before we take a lunch recess?

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

19 THE COURT: From Defense?

20 MR. STODDARD: The only thing is I had mentioned
21 a witness needs a court order before her employer will let
22 her come. And I still find that bizarre because I
23 subpoenaed her as an individual, not her company. And I
24 didn't -- I don't know that I asked for the records. I
25 may have. But I really didn't need to. But to me she's

1 supposed to show up and then -- I understand if she has to
2 reveal these things that are protected by statute, then --
3 anyway, I need to -- I was wondering if your law clerk --
4 those orders that were issued yesterday, if she could e-
5 mail one of those to my office so I can use that to help
6 prepare an order for this. It might help me. No. What I
7 need -- if she could e-mail it I wouldn't have to retype
8 it all. I could just ...

9 LAW CLERK: I've done it.

10 MR. STODDARD: Oh, you've done the order. Oh,
11 I'm sorry. You're way ahead of me. Do I need to sign I
12 so move?

13 THE COURT: No. You need to be sure you got the
14 right dates and everything else.

15 LAW CLERK: And spelling of the name.

16 MR. STODDARD: I just -- I thought -- I just
17 kind of took it earlier that you were getting tired of
18 scrambling to issue orders and you were going to put it on
19 me.

20 THE COURT: That doesn't mean I don't do what I
21 can. I don't have to be pleased to take care of what's
22 necessary. That's all right. Get that information to ---

23 MR. STODDARD: That sounds right.

24 THE COURT: Well, I mean, is that the dates and
25 all that and where it is?

1 LAW CLERK: It's the name the main thing.

2 THE COURT: How about the dates?

3 (Off record discussion.)

4 THE COURT: Anything else? See y'all back at

5 two fifteen. Mr. Stoddard, the order is signed. Now,

6 you're going to have to take care of it. I don't have

7 enough gas to go to wherever that place is.

8 (WHEREUPON, court stood at recess for a lunch break.)

9 THE COURT: All right. Is there anything from
10 the State before we bring the jury back?

11 MS. HERVEY: Nothing from the State.

12 THE COURT: From the Defense?

13 MS. HERVEY: Nothing from the Defense.

14 THE COURT: All right.

15 (WHEREUPON, the jury entered the open court at
16 approximately 2:17 a.m.)

17 THE COURT: Let the record reflect that the jury
18 and alternates are in the jury box.

19 Madam Solicitor, you may continue.

20 MS. HERVEY: The State calls Dr. Allison
21 DeFelice.

22 Allison Foster DeFelice, M.D.,

23 Being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. HERVEY:

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

219

1 Q. You're Dr. DeFelice; is that correct?

2 A. Yes.

3 Q. And what are your credentials and what is your
4 medical background or education, training and experience
5 that gives rise to that title?

6 A. Okay. I'll begin with college, I guess. I went to
7 college at Emory University in Atlanta, Georgia. And I
8 majored in Psychology and in English Literature. I worked
9 for a year in a residential treatment facility called
10 Devereaux for emotionally and behaviorally disturbed
11 adolescents. And then I moved to Columbia, South Carolina
12 in the fall of 1989 to attend graduate school at the
13 University of South Carolina. And I got my Ph.D. in
14 Clinical Psychology from U.S.C.

15 I graduated in 1996. As part of getting a doctoral
16 degree do what's called pre-doctoral internship a year,
17 which I did at the place called William S. Hall
18 Psychiatric Institute. And that's when I first began my
19 training at the ARC, the Assessment Resource Center, which
20 is where I'm employed now. I guess the last thing I'd say
21 about that is I'm licensed -- I'm a licensed clinical
22 psychologist. I received my licensure in September of
23 1997.

24 Q. And licensed as a clinical psychologist?

25 A. Yes.

1 Q. And do you have any special training, education or
2 other experience working with children who are victims of
3 sexual abuse or other physical abuse?

4 A. Yes. Specifically The ARC where I work, The
5 Assessment Resource Center, is a child abuse evaluation
6 and treatment center. And in order to be prepared for
7 that job and in order to carry out that job, beginning as
8 an intern, I worked under the director of The ARC for a
9 year as part of my training. And then throughout my
10 career over the last eleven and a half years, I've
11 continued to go to national, regional and statewide
12 conferences on matters of child abuse evaluation and
13 treatment. Of course, I also conduct trainings around the
14 country and within our state on those subjects.

15 Q. And at those schools you teach at, who are you
16 teaching at these type of schools or conferences that you
17 spoke of?

18 A. We teach what we call multi-disciplinary teams which
19 means it is -- our audience is law enforcement
20 investigators, child protective service workers like
21 D.S.S. caseworkers, attorneys, D.S.S. attorneys,
22 prosecuting attorneys. We also train therapists. We
23 train victim advocates, and we also train forensic
24 interviewers who are specifically employed at centers like
25 my own. And their job is to be a forensic interviewer.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

221

1 Q. What is your specific title with The ARC or the
2 Assessment Resource Center?

3 A. I'm the director.

4 Q. As the director, what are some of your duties and
5 responsibilities above and beyond those you already
6 mentioned?

7 A. Sure. I still interview children. I interview
8 children every week. I supervise a team of ten multi-
9 disciplinary professionals including psychologists,
10 psychiatrists, social workers, counselors, child life
11 specialists. I work as a co-director with our
12 pediatrician who is our medical director. And so I'm
13 directly involved in the supervision and kind of the
14 program oversight of how we conduct forensic interviews of
15 children who are suspected of being sexually abused or
16 severely physically abused.

17 And also how we provide therapy services, how we
18 prepare children for coming into court and testifying. We
19 work with family reunification when that's appropriate and
20 research on best practices, what are the best ways of
21 doing these jobs. I provide expert court testimony.

22 And then training. We do a five-day forensic
23 interview training course four times a year called
24 "Finding Words." So we do a lot of education also in the
25 state of South Carolina.

1 Q. And you stated that you testified in court before.

2 Approximately how often have you testified in court
3 before?

4 A. I would estimate certainly more than fifty times,
5 fewer than a hundred times. I really don't keep a tally.

6 Q. And for the most part, is that regarding children who
7 have been the victims of sexual abuse?

8 A. Sexual abuse or -- mostly sexual abuse, yes. And
9 also sometimes physical abuse or other forms of abuse.

10 Q. And have you been previously certified as an expert
11 to testify in court regarding your opinion?

12 A. Yes, I have.

13 Q. In this state and any other states?

14 A. Yes. In the state of South Carolina, both in General
15 Sessions and Family Court, in the state of Colorado and in
16 Federal Court for both Federal Civil Court and also U.S.
17 Courts Martial.

18 MS. HERVEY: Your Honor, at this time we would
19 like to tender Dr. DeFelice as an expert in clinical
20 psychology, specifically in treating and assessing
21 children who have been the victims of physical or sexual
22 abuse.

23 MR. STODDARD: No objection.

24 THE COURT: Any voir dire? No objection?

25 MR. STODDARD: No objection.

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen of the jury, as I mentioned earlier, when a
3 witness has certain expertise by reason of background,
4 training or experience in a particular area, they can be
5 qualified as an expert in that area and therefore give
6 their opinions. The witness here has been qualified in
7 the area of clinical psychology with a specialty in
8 treating and diagnosing sexually and physically abused
9 children.

10 Very well. Obviously all testimony is for your
11 evaluation.

12 Very good. You may proceed.

13 MS. HERVEY: Thank you.

14 Q. And you were asked to consult on this case by my
15 office; is that correct?

16 A. Yes, that's correct.

17 Q. You didn't participate in any way in the initial
18 forensic interview or assessment or any of the treatment
19 that **Minor** has received over the years?

20 A. That's correct.

21 Q. And you were asked to consult on this case because
22 her other therapist, Ms. Houston, was unavailable this
23 week for court?

24 A. That's correct.

25 Q. And do you know Ms. Houston? Do you have a

1 professional relationship with her?

2 A. Yes, I do.

3 Q. And have you agreed to review part of some of her
4 notes as well as other documents relating to Minor [REDACTED] ?

5 A. Yes, I have.

6 Q. And do you often testify in cases where you're not
7 the forensic interviewer or perhaps not the treating
8 clinician?

9 A. Yes.

10 Q. And why do you do that given that limitation or in
11 what way are you here to assist this jury in
12 understanding?

13 A. It's often very helpful. I'm called in to testify
14 about general principles from my knowledge and training
15 and expertise about dynamics of child sexual abuse and how
16 children do or don't disclose abuse, various kind of
17 components that I don't necessarily have to -- I'm not
18 here to -- with any professional vested interest in the
19 outcome for the individual victim, but rather I'm giving
20 educational information for the jury.

21 Q. Are there any reasons why someone who was the
22 treating counselor that might have limitations in
23 testifying here today?

24 A. The treating counselor?

25 Q. Yes.

1 A. Yes.

2 Q. And what might those be?

3 A. Well, it can -- therapists, above all else, must do
4 no harm for their client. And being called into court
5 where it's all about facts and judgments of validity and
6 that sort of thing, you might be able to imagine that that
7 is very stressful for -- it's essentially a requirement of
8 therapists to come and kind of have what is usually
9 confidential material that is given for the benefit of
10 treating emotional and psychological well-being of a
11 client suddenly kind of exposed and scrutinized.

12 And then the presence of the client. And that can
13 set up a situation where a therapist might feel that to
14 give testimony can almost be -- can almost run against the
15 -- it can almost run counter to the well-being of the
16 client because of the stress and because of the way the
17 information is being used in a way that's not designed for
18 therapy. It's designed for fact-finding all of a sudden.
19 So that's a different kind of role.

20 Q. Is it oftentimes or is it ever -- is it recommended,
21 I guess is perhaps a better question, that the treating
22 counselor be the one who conducts a forensic interview?

23 A. It is not recommended for the treating counselor to
24 be the forensic interviewer of a suspected victim. That
25 is considered to be inappropriate.

1 Q. And we've heard that term thrown around, and
2 Investigator Major may have discussed it when you weren't
3 here yesterday. But to the best of your knowledge and in
4 your professional opinion, what is a forensic interview?
5 What's its purpose and how do you go about that?

6 A. Okay. A forensic interview -- the short answer is
7 it's a fact-finding interview. So the purpose of a
8 forensic interview is it's an investigative interview.
9 It's to determine ---

10 MR. STODDARD: Your Honor, I have an objection.
11 And the objection -- I may need to approach the bench on
12 this.

13 THE COURT: All right.

14 (WHEREUPON, a bench conference was held off the
15 record.)

16 Q. I'm sorry, Dr. DeFelice. You were discussing that a
17 forensic interview is a fact-finding mission and those
18 kind of things. Why do you call it a forensic interview
19 versus some other interview? What is the purpose of that?
20 How do you go about it, or how do you train people to go
21 about it?

22 A. We train people -- the basis for the word forensic
23 comes from the Latin forum. And the idea of a forensic
24 process is that it is to expose, to bring to light, to
25 uncover facts. And really the client, for a fact-finding

1 purpose, is not necessarily the child or the person you're
2 interviewing but really the court. So that really defines
3 what a forensic -- any forensic process by definition is
4 court related and investigation related whether that be
5 civil or criminal or family court. And so that's the
6 purpose of discovering, eliciting information in a
7 forensic interview. It's eliciting information from the
8 victim or the witness about who, what, where and how and
9 when from their prospective, their recollection. And it
10 has to be done in a -- following particular rules that are
11 based on what we know about the scientific basis of memory
12 and about kind of what kinds of questions children can
13 answer and under what circumstances it's most appropriate
14 to collect that information.

15 Q. And just generally what is the general procedure
16 that's nationally recognized in conducting these forensic
17 interviews, specifically in terms of how you go through
18 it, leading versus non leading questions, other types of
19 assessments that you might do in that process?

20 A. Right. Forensic interviewers are specifically
21 trained. The standard in the field is that forensic
22 interviewers have specialized training in what kinds of
23 questions are appropriate, non leading, non suggestive to
24 ask. And there are certain principles around the country
25 and really around the world we agree upon. And that has

1 to do with it being a neutral fact-finding interview in a
2 private setting, very well documented which has really led
3 to -- pretty much across the board there's been a lot of
4 momentum towards video recording the interview so that the
5 questions and the answers and the way it was said is all
6 preserved on the video.

7 The questions need to be kind of open-ended following
8 the child or the adolescent asking -- the idea is that the
9 interviewer isn't imposing the answers, but collecting the
10 information from the perspective of the child or
11 adolescent.

12 Q. And this forensic interview that is done, would you
13 just talk briefly about the importance of the initial
14 conversation with the child specifically as it deals with
15 rapport and those type of things?

16 A. The first stage of all forensic interview protocols,
17 as we call them -- there are protocols that are kind of
18 like the guidelines that an interviewer will follow. The
19 first stage of any forensic interview protocol is rapport
20 building. And that simply means establishing that
21 relationship with the child, allowing the child or teen to
22 get comfortable to kind of understand the room and the
23 role of the interviewer and to just start to establish
24 some conversation.

25 So this is usually the time when the interviewer will

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

229

1 ask the child questions about their interests, their
2 likes, their dislikes with school and friends and just
3 things that are designed to establish comfort for the
4 child, communication between the interviewer and the
5 child. And also it allows the interviewer to get a sense
6 of the skill level or the competencies of the child.

7 So if it's a very young child with limited
8 vocabulary, the interviewer is going to be adjusting his
9 or her language to match. Or if it's a child that's got
10 really advanced skills, again, the interviewer is using
11 that opportunity during rapport to match his or her
12 expectations to the child's skill level.

13 Q. And there's testimony that this interview was
14 conducted at a child advocacy center similar to where you
15 work at. What's the significance of taking a child there
16 versus a law enforcement center or other environment?

17 A. Children's advocacy centers were specifically
18 designed with this task in mind. The investigation of
19 crimes of children and setting circumstances up that are
20 child friendly, meaning not intimidating. It reduces the
21 authority of the interviewer so we -- I think you made a
22 joke earlier when you had another witness on the stand
23 about no bars on the window. But the idea is that the
24 center is set up to be friendly and accessible to the
25 child and the family. They come to a private room.

1 Things are all designed for the purposes of collecting the
2 best forensic statement from the child and not increasing
3 the likelihood of trauma, not increasing the likelihood of
4 actually increasing stress or causing the child to be
5 further harmed by the investigation.

6 Q. And Mr. Stoddard was asking questions earlier about
7 the difference in **Minor** demeanor and appearance here in
8 court versus how she appeared on the forensic interview
9 tape. Do you have anything to speak as to why they would
10 be different in a child advocacy center and that type of
11 environment versus a courtroom environment?

12 A. Most definitely. I mean, it's a courtroom. I get
13 nervous coming into court. It doesn't matter how long
14 I've been doing this job. The courtroom and the auspices
15 of this environment are all designed to define the
16 formality of what we're doing and the authority of certain
17 people in the courtroom. This is not a setting that is
18 designed to reduce anxiety. A children's advocacy center
19 is designed specifically to be accepting and calm and
20 child-friendly and to reduce authority. So we actually
21 find that children can put their best effort forward.

22 You know, we're there to set the circumstances to get
23 the best verbal statements from children under very
24 difficult circumstances. But needless to say, that's very
25 different from one, two or three years later when that

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

231

1 same victim or witness has to be prepared to come into
2 this sort of setting. So it's a very -- just a very
3 different -- has a different purpose.

4 Q. Does the presence of the alleged perpetrator in the
5 room in any way contribute to any difference of demeanor
6 that you may see with a child in the interview versus here
7 in court?

8 A. Without a doubt. And one of the national standards
9 that I didn't mention, but children's advocacy centers,
10 one of the defining standards is that suspected offenders
11 or perpetrators are not permitted to be on the premises.
12 Again, we're trying to do everything we can to reduce
13 threats, authority, any symbols of dominance or fear. We
14 want those removed. So clearly that's different from this
15 courtroom setting.

16 Q. And in terms of the forensic interview, is that
17 something that you do on an ongoing or a weekly basis with
18 the child, or is it something that you try to do once or
19 twice or those type?

20 A. Forensic interviews are to be limited. We want to
21 interview a child with the least -- we want to reduce it
22 to the bare necessity of number of interviews. And most
23 protocols nowadays are designed with a goal of a single
24 interview in mind. And then there can be reasons why a
25 child would come back for a follow-up interview or a

1 second interview. The protocols vary on this, but even
2 protocols that allow for multiple interviews, they still
3 stop after about four interviews. So one or two
4 interviews is the most common number.

5 Q. And what are those reasons why a child might come
6 back for a follow-up interview?

7 A. The reasons a child might come back for a follow-up
8 interview include that the child asks to come back for a
9 follow-up interview because the child divulges that he or
10 she didn't -- either said something that wasn't true or
11 didn't include information. Maybe they were testing the
12 waters and then they realize, okay, I really need to come
13 forward now and tell everything. Or they remember
14 something that they just simply had forgotten and they
15 want to come and tell it. Or it can be at the discretion
16 of the interviewer. The interviewer may -- children, like
17 all of us, communicate on three channels. There's
18 language, there's behavior and emotions. So maybe that
19 the interviewer has a reason to believe that the child was
20 hesitant or reluctant and there might be more questions to
21 ask or the need for a second opportunity for that
22 interviewer to build rapport and continue to ask
23 additional questions.

24 Sometimes with young children, it just has to do with
25 their short attention spans. And so it may be that we

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

233

1 have shorter interviews, but we have them come back two or
2 three times to complete the job.

3 Q. Is there anything in terms of is there a recommended
4 protocol of male interviewers with female victims or the
5 sex of the victim versus the sex of the victim [sic], and
6 how can that contribute to the success of the forensic
7 interview?

8 A. This is something that's talked about a lot in the
9 field and is one of those issues similar to the issue of
10 race or ethnicity. Also there's the issue of gender which
11 is, you know, we know from mental health principles that
12 people often feel more comfortable speaking to someone who
13 looks more like them. So that is a question that comes
14 up. There's no set protocol typically about that except
15 that sometimes -- and if we ...

16 I will tell you at The ARC if we have adolescent
17 females, we do typically pair them with a female because
18 we know that -- and with adolescent males, we're more
19 likely to pair that male with a male interviewer. Because
20 we know that the older the child is, the more
21 embarrassment and shame and kind of social concerns they
22 can have about talking. So we'll try to match on the
23 basis of both gender and race if we can.

24 Q. Why is the older the child the more you're concerned
25 about embarrassment or shame or those type issues?

1 A. It's a developmental principle. The younger a child
2 is, they are more egocentric, they're more concrete in
3 their understanding of why something is bad or wrong. And
4 so while they are affected by sexual abuse, they don't
5 necessarily have quite the depth of impact, and they don't
6 necessarily feel things like embarrassment about talking
7 about the same information that an adolescent would
8 because as we grow older we become more preoccupied and
9 concerned with how others view us. And so we know that
10 those concepts of embarrassment or shame or kind of our
11 self-view by how other people perceive us, we know that
12 that becomes progressively more important. And that
13 increases some barriers for victims being able to talk.
14 Q. And in this case, due to the factual allegation of
15 forcible sodomy, what type of things did you witness in
16 **Minor** or in reviewing her record regarding was she or was
17 she not experiencing some of those issues based on the
18 interview we've been here today ---

19 MR. STODDARD: Objection. Unless she can say to
20 a reasonable degree of medical certainty, I don't know
21 that she say things that lead her to believe what is true
22 or not.

23 MS. HERVEY: I just asked what she observed in
24 her professional opinion.

25 THE COURT: Again, we're not to pit one witness

1 against another. And that's what -- to ask a witness to
2 evaluate the veracity of the witness.

3 MS. HERVEY: Well, I didn't ask her to evaluate.
4 I said did she see some of those symptoms in **Minor** that
5 she just described. We're talking about embarrassment and
6 shame. That's all.

7 THE COURT: Very well. Restate your question.

8 Q. You were just talking about some of those issues that
9 older children experience in terms of embarrassment and
10 shame and what you see in **Minor** and what you've done in
11 reviewing her records. Did you see any indications that
12 she was experiencing those things either here today or
13 during this process?

14 A. Yes. I observed that in both -- both in what I
15 observed on the video-recorded forensic interview that I
16 watched as well as the testimony I watched here today.

17 Q. And just given the specific factual allegation of
18 forcible sodomy, does that in any way contribute to any
19 embarrassment or shame that she may be experiencing?

20 A. It is my opinion in this case that it does, yes.

21 Q. And why is that?

22 A. Because it is a terribly invasive kind of act that's
23 being described. It's of a very private and lewd nature.
24 And so you have an adolescent girl beginning at the
25 investigation phase talking to a male about something that

1 is -- that she makes clear is embarrassing and difficult
2 to relate. And I think that -- I mean, I saw that in the
3 testimony today, and I believe it was verbalized directly
4 and would be consistent with the fact that it's such a
5 private and completely atypical thing for somebody to
6 publicly discuss, especially across gender lines and to
7 strangers?

8 Q. Do children who are the victims of sexual abuse from
9 a family member, specifically a father figure, experience
10 any symptoms that are atypical versus children who
11 experience it at the hand of a stranger or somebody not in
12 a familial relationship?

13 A. Yes. We -- in our field there's a lot of literature
14 and a way of thinking about the continuum of the
15 relationship from what we would consider to be a very
16 externalized relationship -- that would be a stranger
17 assaulting a child -- to the most what we would call
18 internalized relationship along the continuum. And that's
19 when you get down to the parent/child relationship or what
20 we call compliant victims where it's a teenager who feels
21 that they are in love with an adult offender.

22 So those are the most internalized relationships.
23 And so depending on where the relationship falls on that
24 continuum, we expect the abuse dynamics to be somewhat
25 different.

1 Q. And what in particular do children who are sexually
2 -- female children who are sexually abused by their
3 father, what do they experience that's different from
4 other children with different relationships in that
5 continuum?

6 A. Tremendous feelings of entrapment and betrayal and
7 confusion. Ambivalence because you have to remember that
8 a parent/child relationship is very complex. And it's
9 based on love, and it's based on trust. It's also based
10 on authority and compliance, dependence.

11 Children are dependent upon their parents for their
12 very security. So it's a very complicated relationship,
13 and there are certain basic expectations that children
14 have for how their parents or their parent figures are
15 going to treat them. So when that's violated, it is -- it
16 can make -- it typically makes children feel helpless. It
17 makes them feel trapped.

18 Like I said before, it's confusing. They have their
19 mixed feelings because love and fear, apprehension, guilt,
20 you know, shame, all those feelings are very intense when
21 it's a parent or a parent figure.

22 Q. Is there anything in particular about **Minor** age
23 being fifteen to sixteen when this happened that in any
24 way either exacerbated or minimized those issues?

25 A. The testimony about being the victim is squarely in

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

1 that adolescent stage. So it very much speaks to the
2 adolescent girl's dynamics that every adolescent girl has.
3 And then the impact in that developmental stage, I think,
4 you know, has some particular impact that is different
5 from the younger child. So you have the coming of age,
6 the physical changes, the social changes, the fact that
7 there is sexual development. And healthy sexual
8 development, needless to say, relies in part on healthy
9 relationships with your parents as in non abusive
10 relationships with your parents.

11 So because this is the time when you're developing
12 your sense of how you feel about your body, what are your
13 sexual boundaries, how do you relate to others in a
14 romantic way or who you feel safe with, all of that stuff.
15 So it strikes at the heart of a lot of very important
16 tasks of adolescents. And if they don't -- when they get
17 damaged in adolescence obviously that can create long-term
18 problems going forward into adulthood as far as intimacy
19 and relationships and both physical and emotional
20 security.

21 Q. And is there anything in particular in terms of
22 **Minor** biological father not being involved in her life
23 and he being her adopted father that, again, exacerbated
24 or minimized her feelings of betrayal or entrapment in
25 earlier issues?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

239

1 A. Well, obviously it's on a case-by-case basis. It
2 depends. In this particular case, both in the records I
3 reviewed and the testimony I heard, there is a clear sense
4 that this is a child who very much wanted a father and
5 originally was very grateful to have a father figure come
6 into her life. So the importance of, I think, maintaining
7 that parental relationship was every bit as great or
8 greater than were he the biological father.

9 Q. You stated that children communicate, I think, in
10 three ways. I think it was language, behavior and
11 emotions.

12 A. Right.

13 Q. What did you witness about [Minor] language,
14 behavior and emotion either in the tapes or what you saw
15 here today that is consistent or inconsistent with someone
16 who's been a victim of child sexual abuse?

17 A. As a mental health evaluator is a forensic evaluator,
18 we do look at what is being said, also how it is being
19 said, and what's the emotional behavioral kind of
20 connections between things. And this is just -- provides
21 us additional ways to think about the information. So
22 listening to [Minor] and listening to her on video
23 and then here today and reviewing the records ---

24 MR. STODDARD: Your Honor, I'm going to object.
25 I know she started the answer. But the question was in

1 the video what did you see that's consistent with abuse.
2 And again, I think now she's essentially giving a closing
3 argument. She's picking out things in the record -- or
4 maybe not in the court record, but in the documents --
5 that she says is consistent with abuse.

6 MS. HERVEY: And the question was consistent or
7 inconsistent. And it's not only here today, but also the
8 records and the tapes. So it's not just limited as Mr.
9 Stoddard would say. She's free to give ---

10 THE COURT: Look -- excuse me.

11 MS. HERVEY: I think she's free to give that
12 response. It's not closing argument or I'm picking what I
13 like. She would actually give the question in terms of
14 what is something that we do see in children of sexual and
15 what is something we don't see. What is atypical versus
16 what is typical.

17 THE COURT: Well, we'll wait and see if she has
18 inconsistencies in her testimony and evidence that she's
19 reviewed. Go ahead.

20 THE WITNESS: Thank you, sir.

21 A. Crying, avoiding eye contact, stating fear,
22 describing shame, describing guilt, describing
23 embarrassment, looking embarrassed, nervous giggling,
24 statements of nervousness all are consistent with the
25 dynamics I'm talking about, about fear and embarrassment

1 and shame with anxiety.

2 Q. Did you see anything that was inconsistent in her
3 testimony with what you typically see in children who are
4 victims of sexual abuse?

5 A. No, I did not.

6 Q. And why is that language, behavior and emotion so
7 important to you as an evaluator? What are -- what does
8 it tell you about what the child is telling you?

9 A. Well, we're looking at -- we look at motivations for
10 fabrications, for embellishments. We look for motivations
11 for minimization, for minimizing something to say that it
12 was less severe than it really was as well as embellishing
13 or adding on and making something sound like it was worse
14 or different than it really was. So we're looking at what
15 we call the congruents, how things go together and then in
16 what ways they don't go together.

17 Of course, this is not like a lie detector test or
18 something like that. But it's just a mechanism to follow
19 information on more than one channel. So we're looking at
20 cues, both from words and behavior and emotional state,
21 and then we can follow up on those issues.

22 Q. Are you familiar with the term -- is there a sexual
23 abuse scenario or a standard pattern of conduct or
24 behavior that children who are the victim of sexual abuse
25 normally go through?

1 A. In terms of chronic sexual victimization, there are
2 of course variations. But we do know that for -- and this
3 is replicated across a tremendous amount of research. But
4 what we know is that for two thirds of all bonafide child
5 sexual abuse victims, for two thirds of them they will not
6 tell in childhood. They will not. So we know that it's a
7 very typical dynamic for there to be a chronic holding in
8 of information, a pattern of secrecy and what we call
9 accommodation. And then disclosure, if it's going to
10 happen in childhood, is most typically delayed.

11 Q. And why would you have that? Well, first let's talk
12 about -- you used the phrase accommodation. What does
13 accommodation mean, and why do children accommodate if
14 that's what you meant by the term?

15 A. Yes. Accommodation means essentially putting up with
16 something you cannot change. That would be my way of
17 defining that. And we all accommodate lots of things.
18 And children put up with and accommodate lots of
19 circumstances that they decide they either cannot or will
20 not try to change. And child sexual abuse is one of
21 those. That because of these dynamics of feeling
22 powerless, feeling guilty, ashamed, feeling afraid of the
23 consequences of telling. There are many, many different
24 reasons why children don't tell.

25 Once they feel that they are stuck and cannot tell,

1 they still have to get along with the business of life.
2 So they still have to go to school and do their chores and
3 go to after-school activities or go to church or whatever
4 it is that they are doing. So they're accommodating.
5 They have to kind of put up with emotional distress that
6 they feel. They have to put up with ongoing periodic
7 sexual assaults that are unwanted. And somehow they have
8 to put up with that and get on with life because they're
9 not feeling that they can tell and stop it.

10 So during that accommodation phase, you know,
11 obviously some children accommodate better than others.
12 For some there are no outward signs or symptoms of a
13 problem, and for others there are signs that they're
14 struggling with something. You know, we'll see -- this is
15 oftentimes when people will look back and say, oh, yes,
16 well, we did notice that, you know, grades went down or
17 behavior changed and so on. And it is linked to that time
18 of accommodation.

19 Q. And what are some other signs of acting out or
20 children dealing with stress beyond actual disclosure that
21 you might see in children during this phase or any other
22 part of this scenario?

23 A. Well, typically during accommodation -- this depends
24 on the age. But for example, with younger children they
25 will act out what we call sexually reactive play. So they

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

1 might do things with their dolls or with their little
2 friends that kind of reveal that they -- that something's
3 going on and it's -- because their play sort of reveals
4 it.

5 In adolescents they are going to be more
6 sophisticated in suppressing information and withholding
7 information, but their symptoms often include things like
8 anxiety, depression, problems with sleep. We see -- there
9 is a significant clinical correlation between eating
10 disorders and history of child sexual abuse, self-
11 mutilating behaviors, truancy, runaway behavior. Other
12 kinds of conduct problems, lying, stealing, that kind of
13 thing.

14 Q. Let me interrupt you before you get too far. While
15 you see that correlation between body images or eating
16 disorders and child sexual abuse, is there a clinical
17 explanation that's been found?

18 A. Yes. The clinical explanation is that -- we hear
19 this time and time again from victims in therapy. That
20 they really feel that their own bodies betrayed them. And
21 they can have terrible feelings of really hating parts of
22 themselves so that they wish they didn't have a body or
23 wish they could change their body. They wish they could
24 clean their bodies. But no matter what they do to try to
25 cope with those feelings, they're still trapped within

1 that body. It's like, you know, the victim is walking
2 around possessing the crime scene, if you will. So they
3 can never really escape within their own selves the
4 symbolic -- not the symbolic. They can't escape their own
5 violation. And so they can really have some issues with
6 what you could generally call self-esteem, but also very
7 much how they viewed their physical being.

8 Q. You stated that also they -- but we see eating
9 disorders in children who haven't been the victim of
10 sexual abuse, so it's not a quid pro quo or anything like
11 that?

12 A. That's correct. There is a significant correlation,
13 but I'm not suggesting that everybody who has an eating
14 disorder has been sexually abused or that everybody who's
15 been sexually abused has an eating disorder.

16 Q. And you stated that there was also a correlation
17 between mutilation or self-mutilation, cutting, those type
18 things, in children who are victims of sexual abuse. And
19 what is it that we've found?

20 A. I'm sorry. Will you repeat the last part of that?

21 Q. I'm sorry. Have we found a correlation, and if so
22 why is it? Similar to the question on eating disorders.
23 Why do we see that, if we do, in victims of sexual abuse?

24 A. There is a correlation between self-mutilating
25 behavior and depression and a range of clinical problems.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Direct Examination by Ms. Hervey

1 And -- I'm sorry. I'm having a little bit of a hard time
2 concentrating. I need to just ...

3 Q. That's okay. It should print out. Just -- if you
4 want to just take a break.

5 A. I would like that.

6 THE COURT: Oh, I'm sorry. Just a moment,
7 please.

8 THE WITNESS: I apologize. I guess I'm easily
9 distracted.

10 MS. HERVEY: Well, it's right behind you versus
11 all of us.

12 (Pause while printer completed printing.)

13 A. It still has to do with the body image. It's not
14 necessarily just body image, but it's -- I need to take
15 that back. I need to start my train of thought over
16 again.

17 Self-mutilating behavior in terms of the clinical
18 literature on why somebody will cut on themselves is
19 related to feelings of great emotional distress and an
20 inability to cope with these feelings and what they --
21 what these clients find is that by cutting themselves,
22 that it's as if they're able to isolate the pain and make
23 it more focused. And they can cope with it better and it
24 gives them a sense of relief. It gives them a sense of
25 relief, it gives them a sense of calm and it gives them a

1 sense of control over their distress.

2 Now, that feeling of relief and calm doesn't last.

3 It will build back -- the feelings of anxiety and distress

4 will build back up again, and that will, of course, lead

5 to another cutting episode to sort of relieve the

6 distress. And it becomes a habit or a pattern of coping

7 with unwanted emotional distress and pain and anxiety.

8 Q. Is there an incidence of depression in children who

9 have been victims of sexual abuse?

10 A. Yes.

11 Q. If so, what is it and why?

12 A. Well, I've talked about feelings of powerlessness and

13 helplessness, and those are really part and parcel with

14 feeling depressed or feeling sad. If you feel helpless to

15 change your circumstances and you feel that your

16 circumstances are harming you, then that is very much the

17 recipe for a feeling of depression. So depression and low

18 self-esteem are certainly expected symptoms for some

19 victims of sexual abuse.

20 Q. And you stated that most of this is during this

21 accommodation scenario or going through the whole process

22 they go through. Once they go from the stage of

23 accommodation, what's the next stage that we normally see

24 children go into?

25 A. If they are to disclose, it will be what we call the

1 tentative disclosure stage where they may decide to test
2 the waters so to speak and begin to tell about what's
3 happening to them.

4 Q. And why is it tentative and why might not they tell
5 everything?

6 A. Well, children have very good reasons not to tell.
7 They have both rational and irrational fears and
8 apprehensions about telling. So they've built often --
9 you know, whether that's been over weeks, months or years,
10 they've built up a way of thinking about not telling, all
11 of the benefits of not telling. So when they make the
12 decision to change that and to tell, they can be very
13 concerned that some of their worst fears will come true.
14 So you know, they are risking a lot with that step towards
15 change. They don't really know if -- for example, if the
16 offender made threats that certain things will happen, you
17 know, they're going to now test and see if those threats
18 are going to come true or not. So rather than just
19 telling it all in one fell swoop, they may very well sort
20 of test the waters, tell a little bit and see how their
21 care-givers respond, see how -- whether they're believed,
22 whether they're protected, whether terrible things happen.
23 So it's a process of testing to see if it's safe to come
24 forward and disclose.

25 Q. And once they have disclosed, do they continue to

1 experience these or different symptoms?

2 A. They very often get worse at that point in time
3 because it's very destabilizing. In fact, in the process
4 of disclosing and kind of the investigating that may
5 happen next, there is a lot of upheaval. So a lot of
6 family relationships are shaken up. A lot of changes may
7 happen. Children may be placed in foster care. Children
8 may see their mothers despair. They may fear that they've
9 ruined things for their siblings. They can have all kinds
10 of destabilizing changes happening in the name of
11 intervention and protecting them, but still it's a lot of
12 upheaval and change and uncertainty. So during that time
13 we see victims who are often under quite a bit of
14 distress.

15 Q. Is it common or uncommon to see children who might
16 acknowledge the abuse to some of the people in their
17 lives, the adults in their lives and their peers, and deny
18 it to others or not disclose it to others in the same time
19 frame?

20 A. Certainly.

21 Q. And why would that be?

22 A. It's a real gaging at that moment in time as to
23 whether to tell, who to tell. You know, who does the
24 child think can handle it and respond? And also, who
25 would it be too embarrassing to tell or who would it be

1 too frightening to tell? So victims make a lot of
2 decisions. And it can have to do with how well they know
3 the person. It can have to do with whether or not they
4 were trying to take care of that person or do they feel
5 like that person can take of them. So they'll make
6 judgments about their friends, about their teachers, about
7 counselors and about investigators.

8 Q. And did you see that pattern of conduct in **Minor**

9 **[REDACTED]**

10 A. Yes.

11 Q. And is that consistent or inconsistent with what you
12 do see in children who are victims of sexual abuse?

13 A. It can be consistent.

14 Q. Again, it's not a dispositive factor, but just
15 something that you do see?

16 A. Yes, it's definitely a pattern that we see.

17 Q. Okay. And once the disclosure is out there, you
18 stated that things got worse. Is this kind of the final
19 stage that they go through, or do they move beyond that?

20 A. Disclosure patterns fall into certain categories.
21 They can move from that tentative stage of disclosure,
22 which means the testing of the waters, into what we call
23 active disclosure which is when the really -- you know,
24 the cat's out of the bag, if you will, and they're going
25 to come forward now and tell as much as they remember and

1 can tell. That's the active stage of disclosure.

2 Depending on how circumstances go, some of these true
3 victims of sexual abuse may go through a stage of
4 recantation where they actually just take it back because
5 the consequences of telling may just be so overwhelming,
6 the changes may be so great that, you know, we'll have
7 victims who say, I just wish I'd never opened my mouth.

8 And then there can also be a stage called
9 reaffirmation or rehabilitation where they'll come back
10 around and say, I just got scared so I took it back, but
11 it really was true.

12 So disclosure -- in our field we talk about how
13 disclosure is a process. It's not a single event. And it
14 is something that sort of takes shape over time.

15 Q. And you reviewed Minor [REDACTED] record and heard the
16 testimony today about her being placed in this mental
17 health facility and being in the strict home and the
18 running away and the self-mutilation and those type
19 things. What did you see in that sequence of events or
20 that chronology that is consistent with what you see in
21 children who are victims of sexual abuse or inconsistent?

22 A. Both in terms of the behavior and the way she
23 described it, to me it was quite consistent with that
24 accommodation stage. The allowing behaviors to get her
25 out of the circumstance as opposed to verbalizing what was

1 happening. And it was, to me, classic accommodation for
2 an adolescent.

3 Q. And you stated that they may act out in these other
4 ways. What do they seek to gain in terms of the truancy
5 you said that you see? In other words, the runaways, the
6 self-mutilation. What is the goal of that, or is there
7 one? Are they just doing it out of stress or anxiety or
8 anything?

9 A. The key way -- escape is one. Literally escaping the
10 abusive circumstances. That's one motivating factor right
11 there. Now, self-mutilating in and of itself doesn't
12 necessarily allow you to escape circumstances, but running
13 away does. So some of it is mental escape, and some of it
14 is physical escape. What we know about trauma is that --
15 I mean, this is trauma whether it's from a car accident or
16 child abuse or any other kind of trauma. Victims want to
17 avoid any exposure to cues that remind them of the
18 upsetting event. So escaping and avoiding, whether it's
19 mentally escaping or physically escaping, that's what
20 victims want to do. So that's kind of the motive behind
21 that kind of behavior.

22 Q. All right.

23 MS. HERVEY: The Court's indulgence on moment
24 Your Honor.

25 THE COURT: All right.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Cross Examination by Mr. Stoddard

253

1 MS. HERVEY: We have nothing further of this
2 witness at this time, Your Honor.

3 THE COURT: Cross examination?

4 MR. STODDARD: Beg the Court's indulgence a
5 moment.

6 CROSS EXAMINATION

7 BY MR. STODDARD:

8 Q. Hypothetically -- now, you're basing what you've said
9 on the records you reviewed?

10 A. I'm basing my testimony on the records I reviewed,
11 the testimony I heard today and my experience and
12 training.

13 Q. Yeah. I knew as soon as I asked it, it's like based
14 on -- partly it's on the records you reviewed?

15 A. That's correct.

16 Q. And if a record showed a history of self-mutilation
17 prior to the alleged abuse occurring, would that be
18 inconsistent with -- first of all, let ask you this. Are
19 there other things that cause -- that can cause someone to
20 self -- be involved in self-mutilation besides sex abuse?

21 A. Certainly, yes.

22 Q. And so if you have an individual who's self-
23 mutilating and then this allegation arises, if you found
24 the record that showed a history of self-mutilation prior
25 to the alleged event, would that be inconsistent with sex

1 abuse?

2 A. No. It would suggest that they learned that activity
3 before. However, they may come back and use that as a
4 coping mechanism with the added stress of sex abuse. It's
5 not inconsistent. It just means it was learned as a
6 coping mechanism maybe to some other stress or to some
7 other dynamic prior to. So it's not as if one disproves
8 the other.

9 Q. Well, did the police -- all right. To the extent
10 that self-mutilating is -- you've given us, I guess,
11 finding things that are consistent with this allegation.
12 being true. Wouldn't it be correct to say that at least
13 there was something else that caused self-mutilation if
14 you found that -- if you found it occurred prior to the
15 alleged sex abuse?

16 A. Certainly, that would suggest that something else
17 caused that self-mutilation. If it happened before, it
18 would suggest that something else caused that.

19 Q. Would that be something that's important to you in
20 reviewing the records, to find out when the self-
21 mutilation began?

22 A. Yes. If I was trying -- if I'm trying to link the
23 self-mutilation with the onset to sex abuse and the onset
24 was prior, then that would certainly be information, sure.

25 Q. The conduct that my client is charged with today is

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Cross Examination by Mr. Stoddard

255

1 March 1st, 2002 through May 1st, 2003. Were you aware of
2 those parameters?

3 A. I think so, yes.

4 Q. I'm handing you a record. Does this look like some
5 of the records you reviewed, a portion of one of the
6 records you reviewed?

7 A. I'm looking at -- opening up my briefcase to see if
8 that's one I've seen before.

9 (Pause.)

10 A. Okay. I did not receive that specific document
11 although I do have information pertaining to that month,
12 June of 2003.

13 Q. Does it look like that's a portion of the record --
14 maybe you didn't read that specific record, but that's
15 from the Greer -- you've reviewed records from Greer, the
16 facility in Greer that I think is called the -- I can't
17 remember. I always -- The Children's Center or something.

18 A. Well, I can tell you this is The Carolina Center for
19 Behavioral Health.

20 Q. And that's in Greer?

21 A. I'm not sure. I'm sorry.

22 Q. Did you review Carolina Center for Behavioral Health
23 records?

24 A. Yes, sir. What I reviewed was The Carolina Center
25 for Behavioral Health Admission Psychiatric Evaluation and

1 Discharge Summary.

2 Q. Having reviewed that record, does it indicate -- what
3 period of time does it indicate self-mutilation began?

4 A. It would suggest -- I mean, if -- you know -- there
5 was a note. Should I read the note out?

6 Q. Sure.

7 A. There's an identification of the idea that there's a
8 symptom of self-mutilation, cutting self, for three years.
9 And this comes from a document dated June 19th of '03. So
10 it could suggest an approximate time of 2001, 2002, 2003.
11 Is that what you're asking me?

12 Q. Yes. It had been going on for three years in June of
13 2003, according to that anyway.

14 Let me ask you this. Hypothetically, if someone,
15 [Minor], had been abused during the period of time -- I
16 call her [Minor] because I think -- I think it's [Minor]
17 [Minor] but I think she goes by [Minor]. If someone is
18 abused during that period of time [Minor] alleges and as
19 [Minor] says, wanted to get away from her father, wanted to
20 -- while she's hospitalized doesn't want contact from him,
21 if she told the therapist or if the therapist notes this,
22 "He also did not make an effort to contact her while she
23 was at the children's home" -- it says -- "in North
24 Carolina. This caused [Minor] a great deal of stress. She
25 felt like this man had adopted her eight years ago but now

1 did not want to talk with since she was not talking to her
2 mother." Would that be something you would find
3 significant in the record that you reviewed?

4 A. Tell me the date of that, please, if you wouldn't
5 mind.

6 Q. I'm going to give you the record. In fact, I'll give
7 you one. If I can find my copy that is highlighted, it
8 might help you zero in on it. By the way, that is
9 purportedly offered by who? The one I just handed you.

10 A. Michelle Matthews.

11 Q. And I believe if you were in the courtroom, **Minor**
12 stated that she counseled **Minor** ?

13 A. Yes. Okay, I've just scanned the highlighted area
14 and a little bit of the next paragraph, but now I've lost
15 your question.

16 Q. Okay. That initial paragraph that's highlighted --
17 well, anyway, I'm going to ask you this. Is that
18 something that would be significant in evaluating this
19 allegation of sex abuse?

20 A. No.

21 Q. The fact that she expressed -- let me get what she
22 expressed.

23 MS. HERVEY: Your Honor, I object to the form of
24 the question. He's saying if she expressed. This is a
25 counselor's summary if she did in fact express this to the

1 counselor because I don't think we've ever truly
2 attributed the quote to [Minor] herself. This is all
3 a summary that also includes a conversation with her
4 mother. So I think I just object to the wording of the
5 question to make sure it truly represents the document
6 he's addressing.

7 MR. STODDARD: If I could be heard?

8 THE COURT: Certainly.

9 MR. STODDARD: She just went into a lot of
10 things that she found in the records that are consistent
11 -- that she says are consistent with sex abuse, most of
12 which that's what she just -- her objection just applies
13 to. We don't know what the source is. We don't know
14 whether they're true. We don't know if they're from the
15 mother or from [Minor]. This is the same -- is this one of
16 the ---

17 THE COURT: Just ---

18 Q. Is this the kind of -- a kind of record when you're
19 looking at these records to evaluate the allegations, is
20 this the type of record you would look at?

21 A. In fact, typically speaking it is not. Now, I'd like
22 to explain that.

23 Q. Okay.

24 A. There is a difference, of course, between forensic
25 evaluation and treatment. For the purposes of forensic

1 evaluation, our issue when we're doing forensic
2 evaluations is to get back to what we call primary data.
3 So primary data would be -- would not be a summation
4 letter, but it would be going back to the appointment
5 notes. Okay. That would be primary data. This is a
6 secondary level because it's a -- like a clinical summary.
7 It would be the same as if I reviewed affidavits. That
8 would be information, but it would be of a different level
9 than primary data. However, this is a customary kind of
10 document to look at in trying to understand the time line,
11 in trying to understand treatment concerns. So from a
12 treatment perspective, it would be.

13 Q. Okay. Well, let me ask you this from a forensic
14 standpoint. Do you have the treatment notes of Michelle
15 A. Matthews? Did you review her treatment notes?

16 A. No, I did not.

17 Q. You don't have her treatment notes?

18 A. No.

19 Q. She's the therapist that was counseling **Minor** during
20 the time that she revealed this alleged abuse, right?

21 A. I believe so.

22 Q. And you don't -- now, let's say you're evaluating
23 forensically and you don't have the treatment notes for
24 whatever reason. And by the way, I can't just get -- you
25 understand the HIPPA laws and all that, I'm sure?

1 A. Yes.

2 Q. I can't just ask -- call over there and get those
3 records myself, can I?

4 A. Well, you represent the biological -- you represent a
5 parent. And my agency's interpretation of HIPPA in fact
6 would be that if you subpoenaed records and you represent
7 a parent that you would in fact have the ability to have
8 those records.

9 Q. I don't mean to get into a legal issue you don't know
10 the answer to. But do I have subpoena power in Georgia?

11 A. Well ---

12 MS. HERVEY: Your Honor, I object to the
13 relevance of this question. He may have the ability to
14 get it counter-signed. He's going beyond the area of her
15 expertise. He's asked her whether or not she reviewed the
16 document. The relevance of this issue is she's explained
17 it, he should move on. I don't think the relevance of her
18 legal knowledge really goes into the issue at hand.

19 MR. STODDARD: Well, she's saying I can get
20 records. I'm just ---

21 MS. HERVEY: And what is the relevance of that?

22 THE COURT: I think the witness testified that
23 she based her testimony on the review of records, her
24 training and experience.

25 Q. Let me ask you this.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Cross Examination by Mr. Stoddard

261

1 MR. STODDARD: I'm sorry. I'm sorry, I didn't
2 realize you were talking. I'm sorry. I apologize.

3 THE COURT: All right. Go ahead.

4 MR. STODDARD: I'm sorry.

5 Q. Let me ask you this question. If the prosecutor
6 wanted you to have these records ---

7 MS. HERVEY: Your Honor, I'm going to object.
8 And I think we need to approach at this point.

9 THE COURT: I'll tell you what. I'm going to
10 ask the jury to go out so I can hear you.

11 Again, Mr. Foreman, ladies and gentlemen of the jury,
12 please do not undertake a discussion of the case among
13 yourselves.

14 (WHEREUPON, the jury exited the open court at
15 approximately 3:22 p.m.)

16 THE COURT: Yes, ma'am?

17 MS. HERVEY: I think the line of questioning is
18 getting a little far afield. She was given the record.
19 He can say that there were records she didn't review. But
20 he's starting to ask the question, well, if the prosecutor
21 wanted you to have those records, she could have gotten
22 them and she could have given them to you. He's getting
23 into my position and my ability to respond to that. You
24 know, is Michelle Matthews still with that agency? Can
25 she even be located? Are those records available? Did he

1 make an effort to get to those? And how is that all
2 relevant to the jury's determination? And I understand
3 his ability to cross-examine her as to the limits of the
4 record she did or did not do. But to pose these questions
5 to her regarding his subpoena power and can he get it
6 counter-signed or could he get a court order, I think both
7 goes beyond the scope of her expertise, but goes beyond
8 the relevance of this trial at hand.

9 THE COURT: Well, why don't we keep it in this
10 trial at hand? She said she testified from the review of
11 records and her training and experience. And she also
12 testified before other matters that this is the type of
13 thing that she would have considered if it was a part of
14 the record. Not that it was a first primary source
15 record, but I think that she would look at it if it was a
16 part of the record.

17 And again -- excuse me. And I think all she's doing
18 is giving effect to your presentation of the witness in
19 the first place. You asked the question. Are there any
20 consistent or inconsistent things in the record that she
21 considered?

22 MS. HERVEY: My objection is solely to him
23 asking her about ---

24 THE COURT: Why don't you listen to me and maybe
25 you'll find out why I'm going to have to keep this case

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Cross Examination by Mr. Stoddard

263

1 going and not just let you determine what is inconsistent
2 because her reply was I didn't see anything. Now I feel
3 that that opens the door that if you had seen this would
4 this make a difference to you.

5 MS. HERVEY: And I don't have an objection to
6 that question.

7 THE COURT: Well, then why don't you sit down
8 and -- okay. Go ahead and state it because that's where
9 this whole thing has been. This jury has a hard enough
10 time trying to determine this case based on all of the
11 evidence available. And you put an expert up, qualified
12 expert, who says that she bases her decision or her
13 opinion on the records reviewed. Now, if one ---

14 MS. HERVEY: I ---

15 THE COURT: Yes, ma'am.

16 MS. HERVEY: And I'm not trying to disagree with
17 the Court in any way, shape or form. And it's not that
18 line of questioning ---

19 THE COURT: Why don't you listen to the Court
20 and then you can say if you need to disagree or not
21 disagree. Now ...

22 MS. HERVEY: Yes, sir.

23 THE COURT: She's been offered the opportunity
24 to say is this a record that you would consider. Not that
25 she would consider favorably or anything else, but is it

1 the type of record? And if it isn't and she says, no,
2 this is a complete fabrication without reliability and I
3 discount it altogether, that's one thing. But if she says
4 that this is a record, a type of record, that she did not
5 consider because it wasn't offered to her, that's where we
6 are. Now it's being offered to her. And does it have any
7 effect on her opinion?

8 All right.

9 MR. STODDARD: The last question she objected
10 to, could I rephrase it here to see if it's ---

11 THE COURT: I wish you would. I wish y'all
12 would realize that you're after -- you have to forgive me
13 -- the truth.

14 MR. STODDARD: I understand.

15 THE COURT: And I might quote a little ---

16 MR. STODDARD: Uh ...

17 THE COURT: Excuse me, both of you, now. I
18 might quote a little something from our Supreme Court.
19 Excuse me. The Court of Appeals. "The assessment of
20 credibility is for the trier of fact and not for
21 psychotherapists." So my understanding -- and I'm sure
22 that's what the doctor wants to do is to give the jury the
23 facts or the information that is necessary to determine
24 what the facts are.

25 All right.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Cross Examination by Mr. Stoddard

265

1 MR. STODDARD: Well, my question had been -- I
2 started to interject but she had made the comment that she
3 believes I can get the records.

4 THE COURT: All right. Well, that's not the
5 question. The Solicitor is correct. I don't care what
6 the laws are in Georgia. What I want to know is if this
7 is the type of information she would consider. Not
8 consider favorably, not consider in the sense of adopting
9 it. And I'm sure you have other things to deal with in
10 that area or in a similar area. That's the only thing I'm
11 concerned about. I'm not concerned about the laws in
12 Georgia or anything else. But I thought your presentation
13 I sustained or rather overruled the objection that your
14 presentation of the witness was that she was to provide
15 consistent and inconsistent factors. And all I'm doing is
16 trying to assist her in doing that.

17 MS. HERVEY: But my objection was solely to his
18 line of questioning regarding her access or my access to
19 certain documents. That was the ---

20 MR. STODDARD: I asked the question -- all I
21 want to know is this simple, to ask the expert witness for
22 the State, don't you have equal access, at least equal
23 access to me. I have another follow-up question though.
24 If **Minor** is an adult now, her statement that I can get
25 them with father's consent, I don't think ---

1 THE COURT: Well, let's don't get into that. As
2 I say, I don't want to be -- I'm not a family court judge,
3 and I'm certainly not an administrative law judge. All I
4 want to do is to get this case to the jury in a fashion
5 that will permit them, no one else, to determine and
6 assess the credibility of the evidence that's presented to
7 them.

8 All right. Anything else?

9 MR. STODDARD: Nothing from the Defense.

10 THE COURT: Anything else?

11 MS. HERVEY: Nothing from the State.

12 THE COURT: Very good. All right. Ask the jury
13 to join us, please.

14 (WHEREUPON, the jury entered the open court at
15 approximately 3:29 p.m.)

16 THE COURT: All right. You may proceed.

17 Q. I think you had indicated that the document I handed
18 to you is not normally one you would rely on in evaluating
19 -- doing the kind of evaluations you do, whatever you call
20 the evaluation, normally because you would go to the
21 source notes rather than the summary. Is that what you
22 said?

23 A. Yes. And to clarify, if the source notes were
24 available, I would use those.

25 Q. If they were not available, you would use this?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelce, M.D. - Cross Examination by Mr. Stoddard

267

1 A. Yes, I would.

2 Q. And you don't have the source notes?

3 A. That's correct.

4 Q. Now, is the fact that there's a record -- this record
5 says -- does it indicate that when Michelle Matthews began
6 counseling **Minor** her initial remarks were in regards to
7 his not speaking to her when he called to talk to his
8 three children. "He also did not make an effort to
9 contact her while she was at the children's home in North
10 Carolina. This caused **Minor** a great deal of stress. She
11 felt like this man had adopted her eight years ago but did
12 not want to talk with since she was not talking with her
13 mother." Is that at all significant?

14 A. To me, it is consistent with that state of
15 accommodation.

16 Q. Okay.

17 A. The sentence just before, you know, indicates that
18 she's now made disclosure, but prior to that she had
19 described her distress as being ---

20 A. Right, later on she makes the disclosure.

21 Q. But before she made the disclosure, she's basically
22 complaining that I'm not -- doesn't this indicate she's
23 basically saying I'm not getting enough attention from my
24 father? Adopted father?

25 A. What it says to me is she's being asked to explain

1 why she's distressed, and these are the explanations she's
2 providing.

3 Q. Okay.

4 A. At that time.

5 Q. All right. Would the fact that -- did you find
6 anything in the record that the -- there is something in
7 the record that the biological father abandoned her at a
8 very young age; is that correct?

9 A. I don't remember if I saw it in the record, but I
10 certainly heard it in testimony.

11 Q. Okay. If there was anything -- now, if -- and if he
12 told her in front of her that he didn't want her, would
13 that be something significant in what might cause her
14 stress and some of the symptoms we've seen?

15 A. If a father figure, adopted, step or biological
16 asserts to his child that he doesn't want to have anything
17 to do with them, any mental health professional would
18 expect that to cause an adolescent to feel distress, yes.

19 Q. If she has a turbulent relationship with her mother,
20 would that cause stress and problems?

21 A. Certainly.

22 Q. Hypothetically, let's say you're given those factors.
23 You have a -- by the way, you said if that were in the
24 record. I'm handing you a document. Look at this and
25 tell me if this appears to be a type of document that you

1 would review in doing your evaluation to form the opinions
2 you've talked about today?

3 A. Yes, it is.

4 Q. Does it indicate that the biological father said to
5 her face he wants nothing to do with her?

6 A. I'm not sure that I've reviewed this document, so I'm
7 just going to take a moment, if that's all right, to look
8 at it.

9 (Pause.)

10 A. Okay. I'm sorry, sir. Will you repeat your
11 question?

12 Q. Does it indicate that the biological father said in
13 front of her that he doesn't want to have anything to do
14 with her?

15 A. It does suggest that, yes.

16 Q. Okay. Now, if you had that and a turbulent
17 relationship with your mother, perhaps feelings of
18 rejection from your mother, if you have an opportunity
19 under those circumstances -- came about that you had an
20 opportunity -- let's say custody the custody case is filed
21 where the adoptive father, Max Sipes, is seeking custody,
22 and it's very important to mother that Maxwell Sipes not
23 get custody, and you, the child, under the circumstances
24 I've described to you, have these feelings because you've
25 been abandoned by your father, feelings of rejection from

1 your mother. Under those circumstances if you have an
2 opportunity to provide help in your mother keeping custody
3 such that in effect you become the shining star all of a
4 sudden, would that be a powerful motivation for a child
5 under those circumstances?

6 A. Allegations of sexual abuse hardly make a person a
7 shining star. If you're asking -- I'm not sure I know how
8 to answer your question. There are reasons -- there are
9 motives for false allegations. And certainly child
10 custody situations is one that is linked in the literature
11 to false allegations. So I can tell you that. I'm not
12 really sure how else to answer that question.

13 Q. Okay. So you don't know whether that would -- that
14 could provide a powerful incentive? One of the things you
15 said in dealing with forensic interviews and all this, we
16 look for motives ---

17 A. Uh-huh (affirmative). That's correct.

18 Q. --- for false allegations. And what I just described
19 you don't know how to -- you can't answer whether that
20 would be a motive or not?

21 A. I think I did say that is a motive. I said child
22 custody -- we know -- in the state of South Carolina there
23 was a great study done where they looked at all of the
24 custody dispute actions in divorce litigation for a period
25 of time. Ron Perinsic (phonic) at the University of South

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Cross Examination by Mr. Stoddard

271

1 Carolina published this. And in all of the different
2 court actions around contested custody and visitation
3 disputes, in two percent of them they included an
4 allegation of sexual abuse, okay, as part of that custody
5 dispute. And it is believed that the rate of false
6 allegation under those court actions is higher than in
7 what we call the general population.

8 Q. Okay. So you just discussed the general population.
9 But regarding the hypothetical I gave where a child has
10 these feelings, the kind of thing that would cause self-
11 mutilation because of rejection from both the father and
12 perhaps the mother, and now she has an opportunity to in
13 effect help her mother out in the custody case, you can't
14 say whether that would be something that might cause that
15 child an incentive to come forward with false allegations?

16 A. I think what I'm having trouble with in this
17 hypothetical -- I do think that the possibility for false
18 statements to some secondary gain certainly has to be a
19 hypothesis. I think the way you gave me the hypothetical
20 though is that she's having problems with mother and
21 problems with father. And I'm just trying to figure out
22 how this decision's being made and why this particular
23 allegation would provide her with a benefit. I just was
24 not -- I'm not understanding if the -- if she's having
25 problems with both parents why one parent would suddenly

1 win out over the other one.

2 Q. Well, the father -- I meant the biological father has
3 rejected her.

4 A. Oh.

5 Q. And if she has the type of relationship with her
6 mother, biological mother, that is one that she feels
7 rejected, would she have an incentive to do anything to
8 try to get in good with her mother or gain the love of her
9 mother?

10 A. By doing ---

11 Q. Well, for example, if she knew that her mother needed
12 her help in this custody case, would that be a powerful
13 incentive for her?

14 A. Collusion between a parent and a child is a
15 phenomenon that happens when there's a false report of
16 child abuse. So I think I would have to say theoretically
17 yes. It's difficult for me to wrap my brain around that
18 hypothetical. But yes, it would be a possible motive.
19 Yes.

20 Q. Okay. Did you -- you said you did see the discharge
21 summary from The Carolina Center?

22 A. Yes, dated July 9th, '03 by Dr. Shane Shabonde
23 (phonic).

24 Q. And among the discharge diagnoses, one was -- was one
25 of them -- oh, gosh, I can't remember the name of this

1 disorder -- borderline personality disorder?

2 A. No. Axis I bipolar disorder and Axis N.O.S. which
3 means not otherwise specified. And then Axis II which
4 really is a class of disorders called personality
5 disorders. Borderline personality disorder traits. That
6 means it doesn't meet the diagnosis and really can't
7 because you have to be eighteen years of age minimum to be
8 given that diagnosis. But the doctor documented
9 borderline personality disorder traits which is like
10 saying features. Kind of be on the lookout for this in
11 the future.

12 Q. And borderline personality features is something that
13 -- or borderline personality disorder is something that
14 starts out very young in childhood usually?

15 A. A personality disorder cannot be diagnosed until
16 minimum of the age of eighteen. Personality development
17 happens, of course, over the child adolescent life span.
18 And then, of course, our personalities continue to develop
19 into adulthood. So to say it starts in early childhood, I
20 think there is clinical literature about some of the
21 underling causes for borderline personality disorder that
22 have to do with family environment and how a child is
23 raised. And then the diagnosis would not occur until
24 adulthood.

25 Q. Okay. Is one of the traits of -- a borderline

1 personality trait -- is one of the traits perceiving
2 abandonment from care-givers and perceiving rejection from
3 care-givers?

4 A. Perceiving abandonment and rejection from loved ones,
5 I would say. Not just care-givers. You know, romantic
6 partners, siblings, bosses.

7 Q. And is one of the traits when you perceive this
8 rejection from a loved one, do you act out in anger?

9 A. Adults with borderline personality disorder often
10 have angry outbursts and problems with -- really the
11 hallmark is emotional regulation problems. So it can be
12 angry outbursts and suicidal behavior. A range of things
13 like that.

14 MR. STODDARD: Beg the Court's indulgence.

15 (Pause.)

16 MR. STODDARD: I've got no further questions.

17 THE COURT: Re-examine?

18 REDIRECT EXAMINATION

19 BY MS. HERVEY:

20 Q. Let's kind of start our way backward. First, would
21 you tell me when she was diagnosed with bipolar? Being
22 bipolar or however -- what does that mean? What does that
23 diagnosis mean?

24 A. The bipolar disorder also describes in large part the
25 -- some of the same kinds of symptoms as the borderline

1 personality disorder which has to do with a pattern of
2 mood fluctuation. It classically follows a pattern of
3 kind of a manic episode where there's a ramping of energy
4 level and decreased agitation, decreased appetite.
5 Sometimes there can be a psychotic break at the end of
6 that. If you think about somebody who's kind of hyper and
7 ramped up and not eating and not sleeping, after a while
8 their brain gets pretty loopy and they can kind of have a
9 mental break.

10 And then that's followed often by a valley of
11 depression. And that's why it's called bipolar because
12 it's two ends of the poles, so it's bipolar. Kind of mood
13 fluctuations. And it can follow a few different patterns.

14 So given that she was a teenager when this happened,
15 when that particular discharge was written, Dr. Shabonde
16 diagnosed bipolar disorder not otherwise specified meaning
17 he doesn't have enough information to know if it will --
18 what kind of pattern it really follows.

19 Q. And borderline personality traits, what is that
20 diagnosis? You and Mr. Stoddard talked about that.
21 Beyond that, what is the -- what are we looking for?

22 A. Borderline personality disorder suggests -- bipolar
23 suggests sort of this more of a chemical imbalance idea
24 and the idea that there's a cycle like I was describing.
25 Borderline personality is more the idea that it's not a --

1 it's not so much a chemical process in the brain but a
2 learned pattern of behavior. The very personality the
3 person with -- the person is likely going to approach
4 relationships over the lifetime in this problematic way
5 where there's a lot of emotional kind of irrational
6 emotional responses and emotional outbursts that don't
7 really make sense in reality and trouble kind of
8 modulating your relationships, modulating your behavior.
9 And so they have a lot of problematic relationships in
10 their life.

11 Q. What's the significance of not being able to diagnose
12 somebody with that until they're the age of eighteen? Why
13 is that?

14 A. Not to be overly humorous about it, but an adolescent
15 sort of by definition is an emotional roller coaster. So
16 there is a whole lot of development going on, and there is
17 a whole lot of hormonal changes and social changes and
18 growth going on. So, you know, on any given day we might
19 want to diagnose every adolescent with something, and
20 that's just part of adolescence. And so a lot of these
21 psychiatric disorders are really inappropriate to place on
22 -- well, by the book technically speaking they are
23 inappropriate -- it is inappropriate to place a
24 personality disorder on a child. You have to wait until
25 they're a legal adult.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Redirect Examination by Ms. Hervey

277

1 Q. And did you see any indication that they also
2 diagnosed her as depressed or having depressive symptoms
3 or those kind of things?

4 A. They certainly describe those symptoms of anxiety,
5 depression. All of that is described and documented. I
6 would have to go back and look at the record. But
7 certainly that's the kind of symptoms that are being
8 described.

9 Q. And let me take you back to Dr. -- not Doctor,
10 Mister. I don't mean to give him medical qualifications
11 instead of lawyer ones. But Mr. Stoddard's questions
12 about custody disputes and the collusion that you
13 sometimes see between a parent and a child, are there
14 things that an evaluator and a forensic interviewer are
15 looking for when you do these type interviews or
16 evaluations that are hallmarks of that or symbols or signs
17 of that?

18 A. Certainly. And I want to assert here that I do train
19 nationally on the issue of false allegations in custody
20 disputes and fabrications. And some of the issues we look
21 at in addition to whether or not there can be some motive
22 is how the disclosure occurs, how the telling of the story
23 unfolds, to whom, what is the emotional state, that
24 language, behavior and emotions and how they go together,
25 what kinds of concerns the victim witness has. And of

1 course, additionally all of that process of corroborating
2 over time what is said. So corroboration comes from
3 taking that -- the plausibility of what is said, looking
4 at the symptoms of the victim over time, the consistency
5 of statements over time and various collateral pieces of
6 information that will either confirm or refute the
7 statements.

8 Q. What are those signals? Do you look to medical or
9 forensic evidence?

10 A. Certainly we look at the medical examination as a key
11 piece of the corroborating evidence. That's -- when I say
12 corroboration, that's -- you know, we're looking at the
13 child's statements, the medical exam, the treatment
14 process, the process of disclosure, you know, whether
15 various things the child has said can be confirmed. I had
16 another thought that just left my brain.

17 Q. If you found a story that was inconsistent with the
18 medical or forensic evidence that you found, what would
19 that tell you about the child's story or their propensity
20 for collusion or false allegations?

21 A. It would raise concerns. You know, if we -- I
22 remember the point, too, I wanted to make. Most
23 oftentimes with the collusion phenomenon where you have a
24 child -- I guess children by and large don't come up with
25 false allegations. They do it at the behest of an adult

1 who has the idea. So they tend to have this pressure to
2 tell because they want -- they're doing the bidding. They
3 know that there are things that need to be said.

4 So we tend to see those kids in terms, again, of my
5 testimony about language, behavior and emotion. We don't
6 find that congruence. We find that they come in and
7 before that rapport is even established, before the
8 conversation has even begun they're wanting to tell us
9 something very personal that we're not typically expecting
10 a child to divulge that quickly.

11 So it has sort of a scripted sense to it. But
12 certainly when we find that children provide statements
13 that we can go out and have the capacity to corroborate
14 and we find out that they're not accurate, then that
15 suggests that we need to continue to look for alternative
16 explanations or ask ourselves why a child would tell
17 something that wasn't true in a forensic interview.

18 Q. Has it ever been the case or have you ever been
19 familiar with an instance where the medical or forensic
20 exam revealed more than what the child disclosed, so it's
21 not necessarily inconsistent with in terms of
22 contradiction, but inconsistent in terms of scope or
23 range?

24 A. Yes. Disclosure -- I've already testified about the
25 fact that two thirds of true victims don't even tell in

1 childhood. So we know there's a propensity towards
2 holding in and we know that there's a propensity toward
3 minimized disclosure.

4 We also know that discovery of abuse can come through
5 two channels. One is accidental and the other is
6 purposeful. Purposeful is when a child does decide to
7 tell or divulge certain information.

8 Accidental discovery sometimes comes in the form of
9 medical exams. So we may have a child who presents to a
10 medical doctor for a symptom. And the next thing you
11 know, perhaps a sexually transmitted disease is diagnosed.
12 And yet the child hasn't -- has not provided an
13 explanation. And so sometimes -- that's what we call the
14 accidental discovery where the child is essentially it's
15 -- sexual abuse is discovered prior to the time a child
16 has made the decision to fully or to tell at all. And so
17 then in that scenario you have medical evidence that does
18 justify going to the suspected victim and directly asking.

19 Q. Those issues of collusion that you talked about, do
20 you normally see more collusion on the part of older
21 children or younger children? Or is there a range? Does
22 it kind of run the full spectrum?

23 A. It runs the full spectrum. It looks different at
24 different ages, but it can run the full spectrum.

25 Q. ~~And you see any suggestions of collusion on the part~~

1 of Ciera Nicole and her mother?

2 A. I did not. I will say that definitely the
3 I mean, it's been testified to. There was a concern about
4 custody. But to me that was consistent with the dynamic
5 of disclosure because of a concern over protection of a
6 sibling.

7 Q. And Mr. Stoddard asked you about that record that
8 indicated that she had been cutting on herself for three
9 years. And the bulk of the testimony being that 2002,
10 2003 period, did you ever become aware that Minor
11 reported any other allegations of molestation or abuse on
12 the part of her father earlier in her life?

13 A. Yes.

14 Q. And would that precede that three-year time frame
15 that was noted in that record?

16 A. Well, it might. That -- it's -- she says in her --
17 said in her testimony and then in her video-recorded
18 forensic interview that I reviewed it was also noted
19 there. But this idea that something happened around the
20 age of eleven. And she was born in 1987. So I don't
21 know. But it would seem to me that the two may have
22 developed together.

23 Q. Is it common for sexual abuse to come and go, to be
24 sporadic, or is it always on some type of continuum?

25 A. No. Child sexual abuse has to happen -- there are

1 certain conditions for a sex offender to be -- forgive me
2 for this word, but -- successful, which means being able
3 to complete the act and not be caught. So it has to
4 happen in secret. They have to have some degree of
5 assurance that their victim won't tell and that it won't
6 be discovered. So the abuser has the ability to make
7 those choices as to when and under what conditions abuse
8 may occur. And so that may ebb and flow depending upon
9 the relationship with the victim and the family
10 circumstances or the other environmental circumstances.

11 Q. I think that's all I have.

12 THE COURT: Redirect [sic]?

13 RECROSS EXAMINATION

14 BY MR. STODDARD:

15 Q. On the possible signs, I guess, of collusion, if your
16 -- you saw evidence that the mother had involved the child
17 in the family court case by stating that the father -- she
18 was -- that they split up because he was having an affair,
19 for example, especially if that was false, and if the
20 mother, for example, said the father is seeking custody of
21 your siblings but not you, if that were false, would that
22 raise any issue of possible manipulation on the mother's
23 part?

24 A. Yes.

25 Q. And by the way, when somebody -- if someone were to

1 have true borderline traits or if later in life they
2 retroactively decided, yeah, they are borderline
3 personality, is that person more easily manipulated by a
4 loved one?

5 A. I would say it's the other way around. Typically,
6 those who love their borderline family members find that
7 they're the manipulated ones kind of trying to balance and
8 keep their borderline family member stable.

9 Q. All right. Let me ask you this. Hypothetically, if
10 in connection with the scenario where we have the
11 molesting case, if the initial disclosure was very similar
12 to an incident that the parent -- of abuse that the parent
13 had learned of in temporal proximity for when this -- let
14 me back up. I'm having trouble forming my question.

15 Let me try to make this simple. If **Minor** mother
16 learned of an incident that was very similar to the
17 initial disclosure of **Minor** if she learned of that in
18 temporal proximity to **Minor** disclosure, a similar event
19 in the living room, all that, age was similar, would that
20 cause any suspicion that there might be collusion?

21 A. If **Minor** mother learned of a similar sexual abuse
22 incident occurring to someone else?

23 Q. Yes. In other words, if the initial disclosure
24 seemed to be a very close description of one that they had
25 learned, that **Minor** mother had learned had happened

1 somewhere else, does that raise any red flags at all?

2 A. Yes. At the onset of a forensic investigation,
3 something like that would be noteworthy. We'd want to
4 look at similarities and differences and that kind of
5 thing.

6 Q. No further questions.

7 MS. HERVEY: Nothing further.

8 THE COURT: Very well. May the witness be
9 excused?

10 MS. HERVEY: Yes, Your Honor.

11 THE COURT: Any objection?

12 MR. STODDARD: No objection.

13 THE COURT: All right. You may be excused.

14 Thank you very much, Doctor.

15 THE WITNESS: Thank you very much.

16 MS. HERVEY: The State rests, Your Honor.

17 THE COURT: Mr. Foreman, ladies and gentlemen of
18 the jury, I need to take up some matters with the
19 attorneys. So I'll ask you, if you would, please, retire
20 to the jury room. Again, you have not heard all the
21 testimony, we haven't had all the arguments or anything of
22 that nature or the charge on the law. So please do not
23 undertake a discussion of this case among yourselves.

24 Very good. Thank you.

25 (WHEREUPON, the jury exited the open court at

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Allison DeFelice, M.D. - Recross Examination by Mr. Stoddard

285

1 approximately 3:56 p.m.)

2 THE COURT: All right. Anything further from
3 the State?

4 MS. HERVEY: Nothing further from the State.

5 THE COURT: Anything from the Defendant?

6 MR. STODDARD: I make a motion for a directed
7 verdict. First a general motion on the ground that
8 there's no evidence from which a jury could -- a
9 reasonable jury could find guilt.

10 The second is a little bit more specific. There's no
11 evidence of aggravated coercion or the type of force that
12 requires criminal sexual conduct in the first degree.

13 MS. HERVEY: Specifically, Your Honor -- and
14 I'll -- specifically, the State calls the Court's
15 attention to State v. Brown which is 602 S.E. 2d 392, a
16 Supreme Court case in 2004. It was in that case it was
17 challenged again aggravated force. They cite a litany of
18 cases in that case of cases in South Carolina that talk
19 about aggravated force being holding somebody down,
20 pinning someone down grabbing their hands, holding them
21 down, this all being evidence ---

22 THE COURT: Well, I understand there was
23 testimony as to a pillow.

24 MS. HERVEY: And I believe also that he held her
25 hand over her mouth and those kind of things.

1 THE COURT: Obviously it goes to your motion for
2 directed verdict too. I'm not concerned about the weight
3 of the testimony, but whether there's any evidence to
4 support the allegations.

5 All right. Motions denied. Both motions denied.

6 What's the Defense proposal as far as how you wish to
7 proceed?

8 MR. STODDARD: I'm at the Court's -- I do have
9 one witness.

10 THE COURT: That's what I mean. We were at one
11 point concerned about whether we were going to get as far
12 as three thirty. Now we're a little bit beyond.

13 MR. STODDARD: Well, my concern at that time was
14 if we got past three thirty, I didn't know what would
15 happen. I just know when you've got one witness that can
16 be there at a specific time what happens when you run out
17 of witnesses. My witness that I was concerned about at
18 three o'clock is here, and I would like to put him up. In
19 fact, I probably have two experts that -- one sort of
20 quasi fact expert witness that if we could get them both
21 -- if not I'll bring her back.

22 THE COURT: All right. I'll tell you what.
23 Well, obviously this case is not going to the jury today.

24 MR. STODDARD: No.

25 THE COURT: But my policy is usually to quit

1 about five o'clock. The reason for that -- and again,
2 I'll explain to the jury -- is people usually have other
3 things they have to do at five o'clock and later on. And
4 I don't want to interfere any more than is necessary. At
5 the same time I will take witnesses beyond five just so we
6 don't break the testimony. So if you'll permit me, I'll
7 probably go ahead and I'll tell the jury -- well, I will
8 take the first witness and see how we do, and then I'll
9 decide on the next witness if we can get the second one in
10 or not.

11 MS. HERVEY: And Your Honor, I just don't know
12 who his second witness is. And I understand the
13 production of these records may have developed new
14 witnesses for Mr. Stoddard. I'm not objecting to that.
15 But I think it may be necessary to voir dire the jury as
16 to their knowledge or familiarity with those witnesses
17 just like we do the normal witness list before that person
18 is qualified or called as a witness just to avoid that
19 impropriety in that it is a new addition. And don't know
20 if that's the case or not, but I could be ---

21 MR. STODDARD: Yeah, Cindy Stichnoth was not on
22 my list.

23 THE COURT: Is she here?

24 MR. STODDARD: She's here.

25 THE COURT: She's the only one?

1 MR. STODDARD: That's the only new witness that
2 I'm -- yeah.

3 THE COURT: All right. Well, do you need a
4 break or anything before we start?

5 MR. STODDARD: Not really a break. I would like
6 just about two or three seconds with the next witness.

7 THE COURT: All right.

8 MS. HERVEY: May I use the restroom, Your Honor?

9 THE COURT: That's what I mean. Exactly. All
10 right. We'll take about five minutes.

11 (WHEREUPON, court stood at recess for a short break.)

12 THE COURT: Is the State ready to go forward?

13 MS. HERVEY: Yes, sir. I believe the Defense is
14 at his point.

15 THE COURT: I mean ---

16 MS. HERVEY: Yeah. Oh, yeah.

17 THE COURT: --- go forward with the rest of the
18 case.

19 MS. HERVEY: Right.

20 THE COURT: The Defense is up.

21 MR. STODDARD: Just a minute. I've been handed
22 a note. I need to find out what it means.

23 (Pause.)

24 THE COURT: Is the Defense ready to go forward?

25 MR. STODDARD: Yes, sir.

1 THE COURT: All right. Ask the jury to join us,
2 please.

3 (WHEREUPON, the jury entered the open court at
4 approximately 4:11 p.m.)

5 THE COURT: All right. Mr. Foreman, ladies and
6 gentlemen of the jury, as the State announced before we
7 had a recess, the State has rested. We'll now go forward
8 with the Defense case. And there's a new witness that has
9 been added, and I need to ask you as I did when I
10 qualified the entire jury panel on this case as to a
11 potential witness. Is there any member of the jury panel
12 related by blood or marriage now or formerly, a close
13 personal friend or business associate of Ms. Cindy
14 Stichnoth, S-T-I-C-N-O-T-H? If so, if you would please
15 raise your right hand.

16 (No response.)

17 THE COURT: Very well. Thank you very much.
18 Any further questions from the State?

19 MS. HERVEY: None.

20 THE COURT: From the Defense? About the
21 witness.

22 MR. STODDARD: No, sir.

23 THE COURT: All right. Very good. All right.
24 You may proceed.

25 MR. STODDARD: We call Carl Lund to the stand.

1 **CARL LUND, M.D.,**

2 Being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. STODDARD:

5 Q. Dr. Lund, you're a medical doctor; is that correct?

6 A. I'm hard of hearing, David. I'm sorry.

7 Q. I'll try to speak louder. You're a medical doctor;
8 is that correct?

9 A. I am.

10 Q. And what is your specialty?

11 A. Gastroenterology.

12 Q. And briefly what is that?

13 A. The study of digestive disorders.

14 Q. Does that include the colon as a part of the area you
15 treat? The colon is part of the area you treat?

16 A. Yes.

17 Q. Including the rectum?

18 A. Yes.

19 Q. And you're board certified?

20 A. Board certified.

21 Q. I believe you're some -- you have some title that
22 makes you like a fellow or something?

23 A. Right.

24 Q. Can you tell us what that is?

25 A. It's just a Fellow of the American College. It says

1 you passed a quiz and you've studied for a period of time
2 and you've written a little something along the way.

3 Q. Okay.

4 A. I haven't embarrassed anybody in doing anything.

5 Q. Are there any others with that credential in town
6 that you know of?

7 A. Not in Anderson.

8 Q. Okay. And have you ever testified in court as an
9 expert witness?

10 A. No. I have reviewed cases, but I never appeared in
11 court.

12 MR. STODDARD: I would offer Dr. Lund as an
13 expert in gastroenterology.

14 MS. HERVEY: Just briefly if I could voir dire.

15 THE COURT: Certainly, go ahead.

16 EXAMINATION

17 BY MS. HERVEY:

18 Q. You stated that you treat the colon as part of that
19 gastrointestinal tract?

20 A. Yes.

21 Q. Do you actually perform rectal surgery?

22 A. No. Surgeons, we work together except for my time
23 with Marvin Schuster studying rectal centrific (phonic)
24 mechanism at Johns Hopkins. I've not been exposed to any
25 surgery directly. He is a gastroenterologist who likewise

1 studies the problem, tries to analyze exactly how we got
2 here, what the problem -- where it came from, what to do
3 about it. And then we get with our surgical colleagues
4 and set up a best scenario or best approach route if we
5 need surgery. Often there are other treatment modalities
6 available where we don't need surgery. But we're at the
7 front end of the equation trying to establish cause and
8 the current status and be part of the team to come up with
9 an appropriate management scheme. So we're at the front
10 end of making -- trying to decide what happened and why.

11 Q. And that focus being on gastrointestinal causes
12 specifically?

13 A. Gastro -- yeah, it's -- no, no. Any cause for
14 problems affecting the digestive tract.

15 Q. Have you ever treated a patient who's been the victim
16 of a forcible sodomy?

17 A. No, I'm not sure that I've ever been exposed to that.
18 I mean, I've never defended or been involved with a sodomy
19 case.

20 Q. So you've never treated a patient with those type
21 symptoms or seen that type of presentation?

22 A. I've seen a number of rectal prolapses and
23 procidentia. And there's a minor difference. Prolapse is
24 simply the dropping down of the mucosa or the inner
25 lining. Procidentia is the drop-down of the entire muscle

1 apparatus along with mucosa. And in the bit that I was
2 given to read, this is described as both prolapse and
3 procidentia. I've treated patients with this, yes. In
4 fact, we studied -- at Hopkins we studied rectal centrifric
5 mechanism trying to retrain -- what we were specifically
6 working on were ladies who had torn through delivering a
7 baby and distorted the pelvic apparatus. And we were
8 involved in a multi-center trial here, in fact, in
9 Anderson. We were part of that multi-center trial on
10 rectal centrifric mechanism.

11 Q. So you're working in the same area of you having
12 dealt with that particular causation itself?

13 A. I'm sorry. I couldn't ...

14 Q. You're working in the same particular area in terms
15 of the rectum, the colon, the intestine, those kind of
16 things, but you've never specifically in the past dealt
17 with a victim of forcible sodomy?

18 A. I've dealt with people with rectal prolapse, but not
19 with people with forcible sodomy. I don't see -- my
20 prolapsed patients have been a matter of constipation.

21 Q. So you've never seen a rectal prolapse not caused by
22 chronic constipation?

23 A. No. I've seen prolapse caused by, well, notably
24 constipation. In fact, in my practice that's basically
25 it. I've not seen anything that related instrumentation

1 except kind of wildly that if somebody was so badly
2 constipated for so long, that often these people are
3 children or adolescents when it comes to the four. And
4 the folks will have been up through to include enemas.
5 And so you wonder how much damage might have been done by
6 an enema. So I guess tangentially maybe something
7 manipulative or introductive. But basically my prolapsed
8 patients are constipation patients, and it's not an
9 unheard of thing.

10 Q. And ---

11 A. It causes trauma to the end of the system, and that's
12 why things prolapse is that these people will have
13 strickoral or stool associated ulcers. They'll have all
14 the problems that go with the tissue being boggy swollen
15 and drooping, but it comes about as -- it's certainly a
16 function of trauma, but the trauma is constipation.
17 They're unable to evacuate.

18 Q. And you -- would you actually treat that rectal
19 prolapse, or would you refer them to a colo-rectal
20 surgeon?

21 A. I'd analyze the situation first. Centideptotography
22 is a special x-ray where basically we put dye in the
23 patient's -- in the end of the pipe and the patient sits
24 on a specially designed commode and empties, and we take a
25 movie of the act of emptying. Emptying the bowel is a

1 horribly complex event. A lot of things have to happen on
2 a que. Angles change, relaxation, straightening. There
3 are a number of events involved in that action. And we
4 want to know specifics before we refer to surgery. We
5 want to know if, in fact, we got an interoseal, rectoseal,
6 rectal prolapse.

7 Additionally if we're contemplating surgery down low,
8 an important test is something called rectal sphincteric
9 manometry. You can't put your finger in somebody's bottom
10 and tell anything at all about tone. You have to do
11 manometry. Manometry is a matter of inserting an
12 apparatus with three balloons on it, one for the rectum
13 and one for each of the two sphincters. And they all
14 ought to work in concert at the special time and special
15 -- well, concert is the best word -- to evacuate. And
16 qualitative or digital exam -- when we do a rectal exam,
17 not to offend, by insertion of the finger we can get a
18 qualitative idea about internal anal sphincter tone with
19 insertion. How much resistance you meet. Once you're
20 there to have the patient squeeze down like they're on I-
21 85 but not at the rest stop yet tells you about the
22 external muscle and the pelvic floor, the muscle called
23 the levator sling. That's qualitative and it's not much
24 use.

25 Q. And I don't mean to cut you off. But my question was

1 do you actually treat that rectal prolapse surgically, or
2 would you refer them to someone else?

3 A. We treat the rectal prolapse medically, and if we
4 need surgery we send them to a surgeon.

5 Q. And are the surgical cases the more extreme cases?

6 A. They're cases where we didn't get the job done. We
7 try medically first.

8 MS. HERVEY: I have nothing further of this
9 witness and would stipulate to him being an expert in
10 gastroenterology with the limitation that he's not a colo-
11 rectal surgeon.

12 MR. STODDARD: Your Honor ...

13 THE COURT: Just a moment. All right. I find
14 that the witness is an expert in the area of
15 gastroenterology and as far as the treatment of --
16 diagnosis and treatment of such ailments contributed or at
17 least located in that area as well as a medical physician.

18 All right. Mr. Foreman, ladies and gentlemen of the
19 jury, again, this witness has been qualified in the area
20 of gastroendro (phonic) -- endri (phonic) ---

21 THE WITNESS: Gut mechanic.

22 THE COURT: I'll do better than that for the
23 record. ... enterology and as well as the related fields
24 in the practice thereof.

25 All right. Very good. Again, the testimony -- the

1 value of the testimony is for your evaluation as any other
2 witness.

3 You may proceed.

4 DIRECT EXAMINATION

5 CONTINUED BY MR. STODDARD:

6 Q. Doctor, first of all, do you know what is the most
7 common cause of prolapsed colon in teenagers?

8 A. ~~I would say in my practice that trauma is almost~~
9 ~~invariably constipation.~~

10 Q. All right. And you reviewed the records of Dr. Payne
11 regarding Minor [REDACTED] ?

12 A. I'm sorry. I couldn't hear that.

13 Q. Did you review the records of Dr. Payne regarding
14 Minor [REDACTED] ?

15 A. Was he the surgeon? I wasn't paying attention to
16 names. Was he the surgeon or the psychiatry people?

17 Q. Well, you got the records of both; is that correct?

18 A. I did, yeah. Forgive me. I don't recall the name.

19 Q. He's the surgeon.

20 A. Okay. Well, I read his records.

21 Q. And we got a new record today that I gave you that
22 you reviewed that also?

23 A. Yes.

24 Q. All right. He made -- he voiced an opinion that the
25 -- I think he called it the rectal muscles -- and I may

1 have the wrong body part -- were normal toned. Is there a
2 special test that you have to run before you can make that
3 statement?

4 A. Actually, he says in his notes slightly weak.

5 Q. Okay.

6 A. But it doesn't matter.

7 Q. Okay.

8 A. It's not of any use. I tried to say earlier that
9 qualitative and quantitative don't match up very well at
10 all. What you get on exam, rectal exam, frequently has
11 nothing to do with what you find when you study the
12 apparatus. So to make a comment about rectal tone
13 mandates a rectal sphincteric manometry, this balloon
14 apparatus that I mentioned. Qualitative and quantitative
15 have nothing to do with each other. I've reviewed that,
16 and there's just no association.

17 Q. All right. Well, when you say qualitative versus
18 quantitative -- let me stop you for a minute.

19 A. Well, qualitative is the rectal exam I described and
20 what you perceive on rectal exam. Quantitative is the
21 balloon apparatus I described.

22 Q. Did you see any evidence that the quantitative exam
23 was done?

24 A. I didn't. In what I got to review, it was not there.

25 Q. So the qualitative would be what you perceive with

1 your senses on examination; is that right?

2 A. Right.

3 Q. But the quantitative would be with instruments?

4 A. It would be definitive. Quantitative or the balloon
5 test does not match up well at all with qualitative.

6 Q. Another opinion given in court was that -- it was my
7 understanding because there was normal muscle tone of the
8 rectum, this made it unlikely that it was caused by
9 constipation, but more likely that it was from sodomy. Do
10 you have a -- do you agree with that?

11 A. No. And I heard that had come up, so I ran that back
12 through my database and can find no data for that concept.

13 Q. Did you seek out another opinion of a colleague?

14 A. I did. I ---

15 MS. HERVEY: Your Honor, I'm going to object as
16 to him testifying as to what his colleague says. He can
17 testify as to his own opinion.

18 THE WITNESS: Actually, everything I have to say
19 is hearsay. It's either I read it in a book ---

20 THE COURT: Doctor, thank you very much. I
21 promise not to practice medicine. But he's absolutely
22 right because that's one area that we permit experts to
23 do, and that is to rely on other information if it's
24 utilized in their practice. And I think that's what the
25 doctor was saying.

1 MS. HERVEY: All right.

2 Q. Whose opinion did you seek out?

3 A. I sought the opinion of Dr. Vendie Hooks and Mallory
4 Lawrence in Augusta. Vendie was one of the first four
5 guys worldwide to remove the entire colon and have bowel
6 movements the way you always did. Okay? Not in the
7 United States, but in the world.

8 Q. All right.

9 A. And his associate Mallory Lawrence is really a guru
10 for these fourth-degree lacerations that I mentioned or
11 kids with incontinence and problems with the pelvic floor.
12 And I called Mallory and addressed these issues with him.

13 Q. And what did they say about the statement that a
14 normal muscle tone in the anal -- if I'm using the right
15 body part -- correlates or indicates sodomy? What was
16 their opinion of that?

17 A. There's no support for that in anything I could find.
18 From books to talking to folks to running it by
19 authorities, there's just no support for that concept.

20 Q. I've got no further questions.

21 CROSS-EXAMINATION

22 BY MS. HERVEY:

23 Q. You've never examined her at all, have you?

24 A. I'm sorry. Say again.

25 Q. You've never physically examined or performed any

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Carl Lund, M.D. - Cross Examination by Ms. Hervey

301

1 tests on Minor [REDACTED], have you?

2 A. No, I have not.

3 Q. Are you being paid for your testimony here today?

4 A. I'm being paid for my time.

5 Q. And what are you being paid for your time?

6 A. I was paid -- I'm paid a hundred dollars -- a hundred
7 and fifty dollars to prepare or go through records, and
8 I'm paid two hundred dollars to be here. Those are hourly
9 rates.

10 Q. And how do ---

11 A. I take that from the lawyers who have worked with me
12 over the years in other matters.

13 Q. And how much time did you take in preparing here
14 today?

15 A. We're right at two hours.

16 Q. And then your time waiting here this afternoon and
17 then your time here on the bench?

18 A. Right. David has already -- I asked for a
19 prepayment, and he's, you know -- but, yeah, I'm being
20 paid. That's a fact.

21 Q. He's prepaid you?

22 A. I told him that in order for me to appear I expected
23 prepayment.

24 Q. And how much did he prepay you?

25 A. Six hundred dollars.

1 Q. And you stated that the bulk of your work is dealing
2 with constipated teenagers; is that correct?

3 A. No. I work with all areas. It's just that when I
4 see prolapse, it's generally -- it's a matter of
5 constipation. It's a matter of trauma to the end of the
6 pipe. And these patients invariably have constipation.

7 Q. Is constipation the only cause of rectal prolapse?

8 A. Trauma is the only cause. And constipation causes
9 trauma.

10 Q. What are other causes of trauma?

11 A. I guess I don't really know of any, how you could
12 instrument the anus. I mean, I'm not saying you couldn't
13 in trauma ties.

14 Q. Would ---

15 A. It's just I don't see it. I don't see it. I've seen
16 maybe six or eight people that got this far. Now, I've
17 seen tens, maybe dozens -- maybe twenty -- forty or fifty
18 kids with problems related to this sort of thing with an
19 ulcer down low or with weeping, oozing problems. But in
20 terms of tissue actually hanging out, I have a half dozen
21 cases in thirty-two years of doing this. And in that
22 thirty-two years, every one of them was constipated.

23 Q. But you're not ruling out that there are other
24 causes?

25 A. No. But I did notice that this young lady was

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Carl Lund, M.D. - Cross Examination by Ms. Hervey

303

1 constipated.

2 Q. And what was that? Where was that noted?

3 A. That was in the records that came -- all I got really
4 was the stuff from, I think it's, North Fulton Hospital.

5 I got a bundle of data from the psychology law people
6 worried about the allegation at hand. And then I got the
7 surgeon's note and the -- by note I mean the operative
8 note, his discharge summary, the progress notes while the
9 patient was in the hospital. That's all I've got.

10 Q. Okay.

11 MS. HERVEY: The Court's indulgence for one
12 moment.

13 THE COURT: Certainly.

14 Q. And do you remember if that notation of constipation
15 came from the psychiatrist or if it came from the surgeon
16 himself?

17 A. I don't. And I don't have my file with me.

18 Q. Would it be significant if it came from someone other
19 than the surgeon who treated her?

20 A. Frankly, a good history here -- unless somebody is
21 jumping on the allegation -- and this is going to -- it
22 seems to me that everybody had a preconceived notion that
23 this was a function of a sexual event. And the history is
24 kind of flagging. The history is not a very good history.
25 It doesn't really get into when did you have onset of

1 constipation, infantile bowel habit. It really kind of
2 has got a lot of gaps in it.

3 Q. And let me show you these two documents and ask you
4 if those are the documents of the surgeon that you
5 reviewed?

6 A. This is the discharge summary, and this is the op
7 note. It doesn't go into some of the forms that were
8 filled out. And I'm not sure if they were in the forms.
9 The younger child also had a -- a lot of docs use these
10 forms where you have a checklist, do you now or have you
11 ever had da da ta da da ta da da ta da. And for her colon
12 -- constipation and anal leakage or encopresis were
13 listed.

14 Q. Is it anywhere in the surgeon's notes a history of
15 constipation noted?

16 A. I don't know.

17 Q. Could you -- were those the documents that you ---

18 A. This is his discharge summary and his op note, and it
19 would not have covered that.

20 Q. What about his other summary? Would it have covered
21 it?

22 A. The admission history and physical?

23 Q. Uh-huh (affirmative).

24 A. I would think so. But I mean, I don't have that.

25 Q. And let me show you ---

1 MR. STODDARD: I think he's got the one you gave
2 me today.

3 Q. Do you have a document that you were given today by
4 Mr. Stoddard?

5 A. It's the same thing you've just given me.

6 Q. Okay. It's just a duplicate of that?

7 A. Exactly the same.

8 Q. Okay. Let me show you this document from Children's
9 Health Care and ask you if this is what you're referring
10 to when you stated that this patient had a history of
11 constipation.

12 A. I believe this is what I saw. And the soiling
13 accidents as well.

14 Q. And that's the only document you're using to diagnose
15 her with constipation that would cause a rectal prolapse?

16 A. Well, I've got bits and pieces of a document here. I
17 don't have the surgeon's or whoever evaluated this case
18 prior to surgery.

19 Q. Well, what ---

20 A. This case would likely have involved evaluation
21 preoperatively. And I don't have any of that data. I
22 don't have any of those notes.

23 Q. But you're coming in here and you're saying that her
24 rectal prolapse was the result of constipation. Then what
25 in the records you reviewed -- I need to see it.

1 MR. STODDARD: I object to ---

2 A. My point I'm trying to -- ~~I'm trying to say that~~
3 ~~prolapse is generally a matter of trauma. The trauma I~~
4 ~~see is related to the trauma of constipation over a long~~
5 ~~period of time.~~

6 THE COURT: Just a moment. I'm going to ask the
7 jury to step out for a moment.

8 Again, do not undertake a discussion of the case
9 among yourselves, this case among yourselves.

10 (WHEREUPON, the jury exited the open court at
11 approximately 4:32 p.m.)

12 THE COURT: You know, we must be careful about
13 the questions we ask. It's obviously improper to ask
14 questions that misquote a witness or misstate the
15 evidence. My notes reflect that the victim never told the
16 doctors in the E.R. or Dr. Payne about cause of rectum
17 falling out and didn't tell about constipation or taking
18 laxatives. So I don't know if there's any evidence that
19 that was ever revealed to Dr. Payne or the doctors in the
20 E.R. So there wouldn't be any history of -- I mean, I'm
21 just saying that that's what the record is. Now, if you
22 have something beyond the record, then the question would
23 be proper. But otherwise ...

24 MS. HERVEY: And I would be relying on the
25 doctor's testimony where he stated that she had told him

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Carl Lund, M.D. - Cross Examination by Ms. Hervey

307

1 about the sodomy.

2 THE COURT: That's not the question you asked.

3 The question was about constipation.

4 MS. HERVEY: Right. And the question I asked
5 him is where in the records that he reviewed did he see a
6 notation of constipation.

7 THE COURT: Well, what I'm saying is the victim
8 testified she never told the doctors in the E.R. and
9 didn't tell Dr. Payne about constipation or taking
10 laxatives.

11 MR. STODDARD: My objection really ---

12 THE COURT: Again, I'm just trying to -- if
13 you've got something in the record that says that she did,
14 then that would be fine. But otherwise if she didn't, it
15 wouldn't be in Dr. Payne's or the E.R. records.

16 MR. STODDARD: My objection was her question was
17 you've stated the opinion that constipation caused the
18 prolapse, and that wasn't -- I don't believe he state --
19 she misstated that.

20 THE COURT: I'm not concerned about -- all
21 right. You've got an objection. What's the objection?

22 MR. STODDARD: That she's misstating his
23 testimony.

24 THE COURT: Well, again, I'm just saying that we
25 all know that it's improper to misquote the testimony or

1 the evidence or misstate the evidence. And that's Berger
2 v. United States, 295 U.S. 78.

3 MR. STODDARD: My interpretation ---

4 THE COURT: All right. The thing is let's stay
5 within the record. Now, if you've got something there
6 that I haven't seen -- do you have a record that shows
7 that constipation was considered?

8 MS. HERVEY: No. And I may have been
9 misunderstanding the witness. But I thought he said he
10 saw a record of constipation. And I want to know where
11 that is.

12 THE COURT: Well ---

13 MR. STODDARD: He answered.

14 THE COURT: Okay.

15 THE WITNESS: Well, you handed it to me.

16 MS. HERVEY: That sole document?

17 THE WITNESS: I don't -- I've gotten several
18 things to review. I've made note of this. I don't recall
19 seeing it elsewhere. I can ---

20 THE COURT: Well, there has been testimony of
21 constipation. In fact, I think it's in some of the other
22 records. Again, all I'm trying to do is to be sure that
23 this jury is not misled by something that is not there.
24 That's why I sent them out rather than anything else. And
25 as I say, if you have something where any of the doctors

1 were told that -- the testimony that I have is not.

2 All right. Anything else from the -- I mean, about
3 my concerns?

4 MS. HERVEY: No.

5 THE COURT: Anything from the Defense? Now,
6 what's your -- yours is about what?

7 MR. STODDARD: Well, what I was saying is she
8 first said you diagnosed constipation. And I don't think
9 he did that. He said I saw in the record constipation.

10 THE COURT: Well, all right.

11 MR. STODDARD: But she also said that he stated
12 the opinion that constipation caused prolapse. And the
13 three opinions he stated was, number one, constipation is
14 the most common cause.

15 THE COURT: Well, I'll tell you what. You know,
16 that's called credibility. What you do is on re-exam, you
17 rehabilitate your witness. I'm not going to be able to
18 disabuse people of things that they might have heard. I'm
19 certainly going to be sure the record reflects -- at least
20 the questions reflect the record.

21 All right. Anything else from the State? I want to
22 be sure we're ready to go back. Anything further from the
23 Defense?

24 MR. STODDARD: Nothing from the Defense?

25 MS. HERVEY: (Shook head side to side in the

1 negative.)

2 THE COURT: All right. Ask the jury to join us.

3 THE WITNESS: Am I excused?

4 THE COURT: No, sir.

5 (WHEREUPON, the jury entered the open court at
6 approximately 4:37 p.m.)

7 THE COURT: All right. You may proceed.

8 CROSS EXAMINATION

9 CONTINUED BY MS. HERVEY:

10 Q. This document that I showed you, you stated that that
11 was at least the primary basis or the primary history of
12 constipation that you used to state in your medical
13 opinion that Minor suffered from constipation and
14 that that constipation caused her rectal prolapse?

15 A. Let me try to clarify what I said or meant to say.
16 That trauma is generally the cause of rectal prolapse. In
17 the years I've done this, constipation has been basically
18 uniformly the cause for the trauma. In the bits that I
19 got -- and I didn't get a lot of data -- notations made on
20 an inlet form. Again, folks have, have you ever had any
21 past, present -- and there's a notation of constipation on
22 this on Nicole. And also a notation of soiling which for
23 little guys often there's -- we won't go into that. They
24 frequently will come in to me when they're four, five, six
25 years old when they're starting school and they're pooping

1 my pants and kids are making fun of them. And it's a
2 constipation problem. It goes back. It's often
3 associated with families that are dysfunctional or
4 families that there's a lot of upheaval. But I think the
5 soiling carries me back to that wondering how long she'd
6 had constipation. She said she'd had -- or the form said
7 that she'd had constipation, and the form said that she's
8 had soiling. And I just wondered in that constipation is
9 what I see when I see prolapse how far back that went.

10 Q. But you've never seen a forcible sodomy case?

11 A. No, ma'am, I've never seen a forcible sodomy case.

12 If it was something like that, I didn't know it.

13 Q. And do you state -- is it in your opinion that
14 forcible sodomy cannot cause a rectal prolapse?

15 A. I see the concept that it could, but it is just to me
16 a wild stretch. Or it's a much less likely etiology than
17 constipation.

18 Q. And that's just statistically you see more
19 constipation?

20 A. That's right. It would be statistical. That's
21 right. ~~I can't say that poking anything in your bottom~~
22 ~~couldn't cause prolapse. That's fact.~~

23 Q. And you can't say to a reasonable degree of medical
24 certainty that Minor was not forcibly sodomized,
25 can you?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Carl Lund, M.D. - Cross Examination by Ms. Hervey

1 A. Oh, I don't have any basis to know yes or
2 just telling you the statistics.

3 Q. So it's purely statistical. ~~You're not disputing~~
4 ~~that it could happen?~~

5 A. ~~I'm saying trauma is the cause, and trauma of any~~
6 ~~sort. Trauma is banging away at something. And banging~~
7 ~~away at something could be done a lot of different ways.~~
8 ~~It's just that I see it with constipation.~~

9 Q. And you picked up constipation from this chart, but
10 the history also indicates headaches, dizziness, seizures,
11 problem with vision or speech, ear infection, sinus
12 infection, cough, nosebleed, wheezing, asthma, chest pain,
13 recurring stomach pain, recurring nausea, loss of
14 appetite. Pain or injury in the rectal area is actually
15 checked as well, is it not?

16 A. Yes.

17 Q. You're ---

18 A. Pain is going to be part of prolapse.

19 Q. All right. Urinary tract infection, correct?

20 A. Yes.

21 Q. Daytime or nighttime wetting, correct?

22 A. Yeah, but that may or may not have -- there's a lot
23 of causes for that that don't have anything to do with
24 sodomy.

25 Q. Well, there's a lot of causes for diarrhea too,

1 correct?

2 A. Absolutely.

3 Q. And soiling your pants, there's a lot of causes of
4 that that don't have anything to do with constipation?

5 A. Well, in a child when I get that history, it
6 certainly raises that spectrum, particularly one who's got
7 anatomic disfigurement, if you will, of the apparatus at
8 the end of the pipe.

9 Q. Pain with urination, vaginal discomfort, vaginal
10 discharge, bleeding from genital area, itching in genital
11 area, injury to genital area.

12 A. All prolapse is going to cause pain through the
13 saddle, discomfort throughout the saddle.

14 Q. But there's a lot of alternative causes to a lot of
15 this medical history ---

16 A. Absolutely.

17 Q. --- that may or may not have anything to do with it.

18 A. Absolutely, absolutely. I don't know. All I can
19 tell you is when what I read, learned, studied and
20 consulted people about over thirty years of doing this,
21 trauma is the cause of prolapse generally. In my practice
22 and the practice of others and in the statistical -- with
23 a statistical analysis of the situation, if you will,
24 constipation is the leading culprit in causing that
25 trauma. People can't empty their bowel and finally the

1 end of the bowel gives up.

2 Q. But that's just statistical. Because we don't see
3 sodomy, it must be constipation because we see that all
4 the time?

5 A. Well, statistically that's a fact. I don't see
6 sodomy or again I don't get that history. I take that
7 history with the HIV epidemic now. Most of the people who
8 engage in anal intercourse share that with me. So I can't
9 say I've never -- I've never seen prolapse in somebody who
10 engages in anal intercourse. I can put it that way.

11 Q. Would you agree that there's a difference between
12 consensual anal intercourse and forcible anal intercourse?

13 A. I guess. But you know, the thing about that is that
14 the first insertion is going to be traumatic no matter
15 what, whether it's forced or consensual, I guess. I
16 wouldn't argue that point. Yeah, force is a bad thing.

17 Q. And when we talk about this chronic constipation that
18 you want to focus on, how bad of a constipation are we
19 talking?

20 A. I'm sorry?

21 Q. What do you -- how much constipation? Can you
22 quantify it? Does it have to go on for a number of years,
23 a number of months? What are we talking about?

24 A. It's generally a chronic problem that goes back to
25 childhood. It often goes unrecognized because the kids

Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
D. - Cross Examination by Ms. Hervey

315

will be soiling their pants, and it's taken for diarrhea.

And the folks will see a child stretched out on the john,

3 you know, trying to -- the parent takes it -- to go.

4 Correction. Trying not to go because they're trying to

5 avoid messing the pants or messing up when in fact they're

6 trying not to go because it's like having a baby. They've

7 held stool for so long -- the rectum is a capacitor.

8 When we fill the rectum, we receive the sensation

9 it's time to empty. We find a commode. For little guys,

10 that's a learned response. Toilet training is basically a

11 matter of wait till you find the right spot to go. And

12 little guys will lose track of it, so their rectums

13 stretch a little bit. And then next time a little bit

14 more. And then finally what they've got is the muscles

15 like the atlas, trying to hold things up. And it's like

16 having a baby. These people will have to -- these

17 families will have to call the plumber out and unplug

18 commodes. And these kids have gigantic bowel movements

19 when the problem has been stool withholding for a time.

20 I don't know this patient individually. I'm just

21 citing data and literature.

22 Q. What would repeated forcible trauma to the rectum in

23 terms of forcible sodomy -- how would that affect an

24 individual?

25 A. I would think it would be very harmful to the very

1 ~~end of the appendix~~

2 Q. ~~Could it cause a rectal prolapse?~~

3 A. ~~Yes.~~

4 Q. And so you're disregarding the testimony of the
5 surgeon who treated her and relying on this check mark of
6 constipation to contradict him and saying that
7 constipation caused ---

8 THE COURT: Just a moment. Now, we don't pit
9 witnesses against each other.

10 MS. HERVEY: I apologize.

11 THE COURT: Disregard that. You're the sole
12 judges of the credibility and the reliability of the
13 witnesses.

14 Very well. You may proceed.

15 Those rules apply to both the State and the
16 Defendant.

17 Q. Would a surgeon have an opportunity to examine the
18 rectum and the surrounding area above and beyond what you
19 could do from the outside in a non invasive procedure?

20 A. Well, yes. The surgeon is there to -- he's already
21 established a game plan when he goes in. The data that
22 would be very useful before you went in would be this
23 defacography, the special x-ray that I mentioned, and this
24 manometry, this balloon study that lets you study the
25 system. There's only so much we can do with physical

1 exam. And that's a fact. That's absolutely true. The
2 appropriate testing in my view and in the view of others
3 that follows a notation of this sort of problem is
4 manometric evaluation of the pelvic floor musculature and
5 evaluation radiographically of the more proximate or the
6 higher -- how the pipes are slung in the bowel.

7 Q. Are you talking about ---

8 A. And that would precede surgery.

9 Q. Are you talking about a barium enema?

10 A. No, no. I'm talking about defecography. You put dye
11 in somebody's bottom, they sit on a specially designed
12 commode, and you take a movie of the act of defecating.
13 Defecation is quite an involved event.

14 Q. Do you know whether or not he did that?

15 A. In the records I got, there was neither manometry nor
16 defecography.

17 Q. Does it indicate any tests?

18 A. Not really.

19 Q. Would it be unusual for a surgeon to operate on an
20 individual without doing that?

21 A. I guess it depends on the surgeon.

22 Q. So it is possible that he performed these tests, but
23 they just weren't included in the surgical summary that
24 you were given?

25 A. Of course, everything is possible.

1 Q. Nothing further of this witness.

2 THE COURT: Re-examine?

3 REDIRECT EXAMINATION

4 BY MR. STODDARD:

5 Q. You had mentioned that there are gaps in the record
6 that you have; is that right? There are gaps in the
7 record that you have? You mentioned that.

8 A. I don't -- I mean, I've got what I've got. Some of
9 the stuff you guys were talking about before, there are
10 parts I don't have.

11 Q. But those two tests would be related to whether or
12 not there's muscle tone; is that right? Or normal? The
13 two tests you just mentioned are the tests that would need
14 to be run to ---

15 A. One balloon test let's you know precisely how the
16 apparatus is working by way of how do these two muscles,
17 the internal and external sphincters, respond to rectal
18 distention. So you get a feel for the ability of the
19 muscles at the end of the pipe to do the necessary work.
20 The x-ray on the special commode let's you see exactly
21 what's hanging down. Is it an interoseal? Is it small
22 bowel or a higher bowel? Is it a sigmoid? And part of
23 the sigmoid was resected. Eighteen centimeters of the
24 sigmoid were resected. And that's one of the standard --
25 I mean that doesn't mean anything except that's one of the

1 approaches. But you would have liked to know exactly what
2 all was hanging down so that when you went to the
3 operating room you tended to everything you needed to tend
4 to while you were there, I guess is the way to think about
5 it.

6 Q. Now, that question I just asked had to do with
7 whether there was normal muscle tone. The other thing you
8 mentioned is even if you had normal muscle tone, that's in
9 no way related to whether sodomy, forced sodomy, caused
10 it?

11 A. There's no support for that.

12 Q. And I don't believe you did come in here and say
13 sodomy was not the cause. That was not ---

14 A. No. I'm just trying to address the issue of
15 prolapse.

16 Q. But you're saying a possible cause in general of
17 prolapse is chronic constipation. When you -- by the way,
18 you mentioned little people. By the way, if I feel like
19 I'm shouting, it's because of your hearing. Seeing this
20 in little people, is it unusual for the prolapse to occur
21 in a teenager because of chronic constipation?

22 A. Often these kids will come in in their teenage years,
23 particularly if they've come from situations where there's
24 a lot of -- how to say -- it's not a traditional family
25 unit. There's -- often they'll be raised by a grandparent

1 or Mom will be out of the home or Dad will be out of the
2 home or there have been a lot of moves around. It's just
3 an unrestful situation. And they've tried to keep it kind
4 of a secret not to add to the hassle the family has
5 already -- they don't want to draw attention to themselves
6 in an unpleasant environment. So it's not uncommon for a
7 kid to come in in this age group, in the adolescent age
8 group.

9 Q. I've got no further questions.

10 THE COURT: Recross?

11 MS. HERVEY: Just one question.

12 RECROSS EXAMINATION

13 BY MR. HERVEY:

14 Q. This notation of constipation that you relied upon,
15 what's the date of that, Sunday?

16 A. I don't see it. Oh, here it is. April 14th, '04, about
17 the box that's checked says past. And I don't know
18 where past -- if that's six weeks ago or ten years ago.

19 Q. And you don't know if it was once or chronic?

20 A. No. It just says it was -- it had been present in
21 the past on April 14th, '04.

22 Q. And this is after the surgery, is it not?

23 A. I'm sorry. I didn't notice the dates of that
24 surgery.

25 Q. That's okay. Nothing further.

1 THE COURT: Any re-redirect?

2 MR. STODDARD: No redirect.

3 THE COURT: All right. You may step down.

4 May the witness be excused? You want the witness to
5 be excused?

6 MR. STODDARD: Yes, sir.

7 THE COURT: Any objection?

8 MS. HERVEY: No, Your Honor.

9 THE COURT: All right. You may be excused.
10 Thank you, Doctor.

11 THE WITNESS: Thank you.

12 THE COURT: Let's see.

13 MR. STODDARD: I have one witness who is ill and
14 has indicated to me -- she came on up here from out of
15 town and may not be able to come back tomorrow. I expect
16 her to be brief.

17 THE COURT: All right. Mr. Foreman, ladies and
18 gentlemen of the jury, usually I stop about five o'clock
19 because I know y'all have other things you need to do
20 after five. But if we could go a little bit beyond five
21 today. If anybody needs to make a phone call or
22 something, we'll recess to do that. But if we could, if
23 you'd check with your jury, Mr. Foreman. Anybody...

24 JUROR: Sounds like we're okay, Your Honor.

25 THE COURT: Very good. Thank you, sir.

1 You may call your next witness.

2 MR. STODDARD: I'd call Donna Burney.

3 **DONNA BAILEY BURNEY,**

4 Being first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STODDARD:

7 Q. Donna, where do you reside?

8 A. Bowersville, Georgia.

9 Q. And I mentioned your being ill. Do you have some
10 kind of illness going on right now?

11 A. Yes, sir. I have fibromyalgia which is chronic, but
12 I've also had a very bad case with vertigo for about four
13 weeks now.

14 Q. And you're -- sitting here has been difficult?

15 A. Yes.

16 Q. And it would be difficult for you to travel back
17 tomorrow, I'd imagine?

18 A. Yes, extremely.

19 Q. What is your -- how do you know Max Sipes?

20 A. I'm his exwife.

21 Q. When were you married?

22 A. In 1989.

23 Q. And when were you divorced?

24 A. 1991.

25 Q. And do you have any children together?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Donna B. Burney - Direct Examination by Mr. Stoddard

323

1 A. Yes. We have one son who's sixteen.

2 Q. And has Max been a part of his life, and do y'all
3 communicate since your divorce?

4 A. Yes.

5 Q. Do you -- have you been able to form an impression of
6 Max's character for peacefulness versus violence, him
7 being violent or peaceful?

8 A. He's peaceful with me.

9 Q. Okay.

10 A. I think maybe in the two and a half years we were
11 together there might have been one fight. I am more
12 likely to be agitated and confrontational than he is. He
13 just doesn't like confrontation.

14 Q. How is he with your son?

15 A. He's very good with him.

16 Q. Would you describe him as gentle?

17 A. Sure.

18 Q. Do you have an opinion about his character for
19 truthfulness?

20 A. He's honest with me.

21 MS. HERVEY: Your Honor, I object as to his
22 character for truthfulness. I'm not sure that's been put
23 in as an issue of yet.

24 THE COURT: I beg your pardon.

25 MS. HERVEY: I'm not sure that's an issue as of

1 yet.

2 MR. STODDARD: Well, I understand that.

3 THE COURT: He's taking the witness out of
4 order.

5 MS. HERVEY: That's fine.

6 THE COURT: If it's not an issue, then it won't
7 be an issue.

8 MR. STODDARD: I have no further questions.
9 Well, beg the Court's indulgence.

10 (Pause.)

11 MR. STODDARD: No further questions.

12 THE COURT: Cross examination?

13 MS. HERVEY: I apologize, Your Honor. The
14 Court's indulgence.

15 CROSS EXAMINATION

16 BY MS. HERVEY:

17 Q. Does he pay child support on your son?

18 A. It is court ordered. He is not current.

19 Q. It's -- pardon me?

20 A. It's court ordered, but he is not current.

21 Q. And what do you mean by he's not current?

22 A. It's not paid up to date. That's what not current
23 means.

24 Q. And I apologize. We are in a little gap. And I
25 thought I heard current, but I just wanted to make sure.

1 You stated that he's always been peaceful with you.

2 How has he been with your son?

3 A. As far as I know, he's peaceful with him. When I see
4 them together, they're peaceful.

5 Q. Has he ever struck your son, ever spanked him or
6 otherwise?

7 A. He doesn't spank my son. That has been an issue in
8 the past because I do spank him. Or I did. I don't now.
9 He's sixteen.

10 Q. Have you ever known Max to drink?

11 A. Yes.

12 Q. Have you ever described him -- does he drink a lot?

13 A. I don't know if he does or not.

14 Q. Have you ever reported his drinking problem to the
15 authorities?

16 A. No.

17 Q. And you stated that he's not current in your child
18 support? How far back is he in child support?

19 MR. STODDARD: I'm going to object to relevance.

20 Well, no, since it's already come out. Go ahead. I'm
21 sorry. I shouldn't have objected. Go ahead.

22 Q. How far out of date is he? Do you know?

23 A. He's not paying the full amount. He's making monthly
24 payments. I can't give you an exact date if backtracked
25 as to what date it would be.

- 1 Q. You don't know how much in arrears he is?
- 2 A. I do know a dollar amount. I don't know a date.
- 3 Q. What's the dollar amount?
- 4 A. Around four thousand dollars with medical bills.
- 5 Q. So he's paying some amount, but he's just not able to
- 6 pay the full amount?
- 7 A. Correct.
- 8 Q. And he's gotten about four grand behind?
- 9 A. Correct.
- 10 Q. Has he ever lied to you about anything?
- 11 A. Not that I'm aware of.
- 12 Q. And you said that you ended your relationship in 1991
- 13 with him. You all continue to have this child in common,
- 14 but you were no longer dating him or involved with him
- 15 romantically?
- 16 A. Correct.
- 17 Q. In about sixteen years. Would that be fair to say?
- 18 A. Correct.
- 19 Q. And about how often do you see him?
- 20 A. Three or four times a year.
- 21 Q. And is that about how often he sees your son ---
- 22 A. No.
- 23 Q. --- or does your son see him more than that?
- 24 A. He sees him more than that.
- 25 Q. And when you see him those three or four times a

1 year, approximately how much time do you spend with him?

2 A. Ten or fifteen minutes depending on if I happen to be
3 at his family's. If it's a gathering I've taken my son, I
4 may spend thirty minutes. Not a prolonged amount of time.

5 Q. Not a significant amount of time?

6 A. No.

7 Q. Do you have any knowledge of his relationship with
8 other women beyond yourself?

9 A. Nothing that wouldn't be hearsay.

10 Q. Well, have you ever spent time with him and other
11 women?

12 A. No.

13 Q. So you haven't seen him with other women beyond you.
14 That would be fair to say, correct?

15 A. No.

16 Q. So he could have been a different person with other
17 people; you just don't know about it?

18 A. He could have.

19 Q. All right. And approximately how much is he supposed
20 to pay you a month?

21 A. It's fifty dollars per week.

22 Q. And about how much is he paying you, or does it vary?

23 A. It varies.

24 Q. Sometimes half of that, sometimes two thirds, that
25 kind of thing?

1 A. Right. Just depending on what his circumstances are
2 for the month.

3 Q. All right. Nothing further.

4 REDIRECT EXAMINATION

5 BY MR. STODDARD:

6 Q. Regarding child support, are you aware of any event
7 in Max's life that caused him to start paying less than
8 the full amount?

9 A. Yes. Unemployment.

10 Q. Okay. Do you know how he became unemployed?

11 A. The plant closed down. I know he switched jobs a
12 couple of times. Whenever that happens he's had moving
13 expenses. Different things.

14 Q. Do you know what he's doing -- is he unemployed now?

15 A. Yes, he is.

16 Q. And do you know what he's doing to find employment?
17 Have y'all discussed that?

18 A. I don't discuss that with him. I know he is
19 attending school to try to do a different career maybe,
20 one that would be more suitable than textiles because
21 that's what he's been in.

22 Q. Is it your understanding from your conversations with
23 him that what he does in textiles you just can't find it
24 anymore?

25 A. Right. It's moving overseas.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Donna B. Burney - Redirect Examination by Mr. Stoddard

329

1 Q. But he still pays. Even though he's unemployed, he
2 pays regularly?

3 A. He pays some, yes.

4 Q. And -- I'm sorry. I forgot the question I was going
5 to ask. Oh, when you mentioned the frequency that y'all
6 see each other, apparently y'all do have communication
7 that's not face-to-face more frequently like phone
8 conversations and whatever, it sounds like?

9 A. Right, if we need to. My son is old enough now that,
10 you know, he talks to him directly. He has his own cell
11 phone. So, you know, unless there's a problem or unless
12 he specifically needs to tell me something, he's more
13 likely to talk to my son which I think he probably does
14 two or three times a week. There again, my son can drive.
15 So it's a lot easier for him to see them and I don't.

16 Q. I have no further questions. Thank you for coming.

17 THE WITNESS: May I be excused?

18 THE COURT: Well, let's see if ...

19 MS. HERVEY: Nothing further.

20 THE COURT: Any objection to the witness being
21 excused?

22 MS. HERVEY: None, Your Honor.

23 MR. STODDARD: None.

24 THE COURT: Very well. You may be excused.

25 Thank you very much, madam.

1 Do you rest?

2 MR. STODDARD: I've got other witnesses, but
3 none of them brief. I mean, I could keep going or not.

4 THE COURT: All right. I don't know. Let's do
5 break for the day. I think this would be a good time.

6 Mr. Foreman, ladies and gentlemen of the jury, as I
7 said, we're not going to be able to complete the trial
8 today anyway. And it has been and is my experience that
9 people have two days. One begins early in the morning and
10 goes till about five o'clock, then another one begins
11 about five o'clock and sometimes it seems like it goes on
12 forever. But the point is I do not like to go much beyond
13 five.

14 Sometimes, as I thought I might have to today in
15 order to get a witness in or not to break the witness'
16 testimony -- in other words complete the witness'
17 testimony, the direct, cross and then the redirect -- I
18 might go beyond five. Sometimes we might have to, if
19 we're going to have a lengthy witness, quit before. So
20 you can plan pretty much being out by five. Now, today
21 we've met that or at least had until I started talking.

22 Tomorrow morning I would suggest that we begin at ten
23 o'clock. I've got some things I need to do, and I want to
24 talk to the attorneys too before we get -- because I
25 regret we had to wait this morning, but there were things

1 that needed to be done and were intended -- and they did
2 -- to make things go a little bit more smoothly even
3 though we did have things we had to take up.

4 Now, I might mention just about those times that you
5 have to retire to the jury room, that's not to keep
6 anything from you as much as I can hear what the lawyers'
7 concerns are. And as I say, everything is on the record.
8 And sometimes things might be said that are not necessary
9 for your decision in this case. In other words, they're
10 irrelevant or they're inadmissible or things of that
11 nature.

12 The thing is we want to be sure that the information
13 that you get that you have to rely on to make your
14 decision in this case is the most trustworthy and reliable
15 information available. And so I try to see that that's
16 the type of information that you get and not something
17 that might not be relevant, as we say, or important or
18 significant to your decision or better yet helpful. And
19 so for that reason I need to talk to the lawyers sometimes
20 out of your presence. But it's not to keep anything from
21 you as much as to be sure that what you get is what you
22 can rely on.

23 All right. With that, I'm going to excuse you and
24 ask you to be back at ten o'clock in the morning and then
25 we'll continue with the case. Again, I was here about

1 eight thirty this morning, and I didn't see anyone. So I
2 trust that everything went along all right. But again,
3 please, I think you understand this is a very important
4 case to everybody involved and it needs to be decided in a
5 proper fashion. So do not discuss the case among
6 yourselves or permit anybody to discuss it with you. And
7 I'll see you in the morning.

8 Everyone else remain seated while the jury retires
9 from the courtroom.

10 (WHEREUPON, the jury exited the open court at
11 approximately 5:04 p.m.)

12 THE COURT: All right. I'll tell you. Counsel
13 approach.

14 (WHEREUPON, a bench conference was held off the
15 record.)

16 THE COURT: All right. Anything from the State
17 before we recess for the evening?

18 MS. HERVEY: Nothing.

19 THE COURT: Anything from the Defense?

20 MR. STODDARD: Nothing from the Defense.

21 THE COURT: All right. Mr. Sipes, I'm going to
22 ask you to stand, please. You know you're still under
23 oath?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. And I'll continue you on

1 the bond on the same terms and conditions that you have
2 been and were and have been and will continue during this
3 trial, which of course means that if you're not here in
4 the morning at ten o'clock, the trial will continue in
5 your absence. And if you are convicted, then you'd be
6 sentenced in your absence. In other words, you will waive
7 your right to be present. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. The other thing is I
10 don't know what you're going to do. But I explain to
11 anyone who's charged with an offense that you have certain
12 rights. And this has to do with whether you want to
13 testify or not. If you do not understand anything I say,
14 please let me know. If you want me to explain anything in
15 more detail, please let me know and I'll do that. Do you
16 understand this?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: We've now reached the stage in the trial
19 where you may present your defense. You have the right to
20 claim the protections given to you by the Fifth Amendment
21 to the Constitution of the United States. This amendment
22 states in part, "No person shall be compelled in any
23 criminal case to be a witness against himself." This
24 means that you cannot be required to testify in this case.
25 You have the right to testify on your own behalf.

1 However, no one can make you testify. This is a personal
2 right, and no one can waive this right except you. Do you
3 understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You need to speak up so ...

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Thank you, sir. If you decide to
8 testify, you will be subject to the same rules that govern
9 other witnesses, and you may be examined and
10 cross-examined on any relevant issue in the case.

11 In addition, if you have any convictions involving
12 dishonesty or false statements or for crimes punishable by
13 imprisonment for more than one year and this Court
14 determines that the probative value of admitting this
15 evidence outweighs its prejudicial affect to you, the
16 Solicitor will be able to introduce your record to attack
17 your credibility. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If you decide to testify, this
20 decision on your part must be freely, voluntarily and
21 intelligently made with knowledge of the protections given
22 to you by the Fifth Amendment and the consequences of your
23 decision to testify. Do you understand?

24 THE COURT: Yes, sir.

25 THE COURT: If you decide not to testify, I will

1 instruct the jurors that they cannot give the fact that
2 you did not testify any consideration whatsoever and that
3 there is to be absolutely no prejudice to you because you
4 did not testify. You may talk with your attorney, your
5 family and your friends or anyone else. But the final
6 decision will be left entirely up to you. Now, do you
7 understand what I've explained to you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions about what
10 I have to explained to you?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. So I'm going -- as I
13 say, you can consider whether you want to testify or not
14 to testify, but it will be your decision alone. But you
15 can now consult with your attorney or your family or
16 friends, but again I'll ask you before your case has ended
17 whether or not you want to testify.

18 Very good. Thank you, sir.

19 Anything else from the Defense?

20 MR. STODDARD: Nothing from the Defense.

21 THE COURT: All right. Then I'll see y'all --
22 how many witnesses do you think you'll have tomorrow?

23 MR. STODDARD: I think three.

24 THE COURT: So we'll probably be going to the
25 jury sometime tomorrow afternoon at least. If you have

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Donna B. Burney - Redirect Examination by Mr. Stoddard

1 any requests for charges, if you haven't already given
2 them to Ms. Cato, give them to her in the morning so she
3 can begin preparing the charge.
4 Very good. Thank you so much. I'll see y'all in the
5 morning.

6 (WHEREUPON, court stood at recess for the day.)

7 END OF VOLUME I

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ANDERSON

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

MAXWELL SIPES,)

DEFENDANT.)

2005-GS-04-0381

MARCH 5 - 9, 2007

TRANSCRIPT OF RECORD

VOLUME II

BEFORE:

THE HONORABLE ALEXANDER MACAULAY, JUDGE

APPEARANCES:

MINDY HERVEY, ESQUIRE
ASSISTANT SOLICITOR FOR 10TH JUDICIAL CIRCUIT
ATTORNEY FOR THE STATE

DAVID STODDARD, ESQUIRE
ATTORNEY FOR THE DEFENDANT

RENEE H. TOLLISON
CIRCUIT COURT REPORTER

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Dolford F. Payne, M.D.				
Hervey	57		79	
Stoddard		75		
Garland James Major, Jr.				
Hervey	81			
Minor				
Hervey	108		176	
Stoddard		141		
Tina Goodwin				
Hervey	183		212	
Stoddard		191		214
Allison Foster DeFelice, MD				
Hervey	218		274	
Stoddard		253		282
Carl Lund, MD				
Stoddard	290		318	
Hervey		300		320
Donna Bailey Burney				
Stoddard	322		328	
Hervey		324		
Ouida Blackburn				
Stoddard	342			
Hervey		349		
Cindy B. Stichnoth				
Stoddard	355		396, 411	
Hervey		367		406, 411
Lorena Sipes				
Stoddard	416			
Hervey		418		
Jeffrey Charles Burney				
Stoddard	430		438, 440	
Hervey		432		439
Maxwell Eugene Sipes				
Stoddard	442		499, 504	
Hervey		465		504

<< INDEX >>

	PAGE
Batson	5
Jury Voir Dire	6
Opening Statements	
Hervey	45
Stoddard	53
Closing Statements	
Stoddard	511
Hervey	531
Charge	557
Verdict and Sentencing	600
Certificate of Reporter	612

EXHIBITS

No	DESCRIPTION	ID	EV
D-1	Letter from Michelle Matthews of 11/18/03	172	
D-2	Letter from Michelle Matthews of 5/3/04	172	
D-3	Affidavit of Service 10/26/2003	412	507
C-1	Jury Question	575	
C-2	Jury Note	584	

1 MARCH 7, 2007

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: All right. Have we got any proposed
5 charges from the State? Now, you don't have to exchange
6 them. I just mean if you have any requests at all so that
7 I can consider them for my charge?

8 MS. HERVEY: No. I spoke actually with your law
9 clerk this morning. The only thing I really looked at
10 last night was aggravated force. And what I found is
11 there really is not a lot there. They kind of define it
12 as -- you know, in very simple terms and then don't really
13 go beyond that. I would just defer to what she had found.

14 THE COURT: So in other words, you would -- the
15 definitions in State v. Green, 327 S.C. 581, Court of
16 Appeals 1997, and State v. Lindsay, 355 S.C. 15, Supreme
17 Court 2003, those are the ones that you'd rely on?

18 MS. HERVEY: I didn't read those actual cases,
19 but she discussed what she found, the verbiage of them.

20 THE COURT: Do you want to read them before we
21 go to the jury?

22 MS. HERVEY: Well, I'll go read them.

23 THE COURT: Well, that's what I'm asking because
24 I have to have something to know what y'all -- your cases
25 are based on.

1 MS. HERVEY: Well, it might -- you know, it's
2 defined ---

3 THE COURT: And that's not just you. I'm
4 talking about also Mr. Stoddard too.

5 MS. HERVEY: Right. And it's defined
6 statutorily in § 16-3 -- I think -- 651 tries to define
7 it, but it doesn't go nearly far enough in the definition.
8 I think those cases go to the -- you know, that necessary
9 to overcome the victim. Again, I think they could go a
10 little bit farther, but I don't have any opposition.

11 MR. STODDARD: And I don't have any special
12 charges. I'm sure you have some standard for this type of
13 case.

14 THE COURT: No, sir, I don't. That's what I'm
15 saying. I don't have standard charges because every case
16 is different. And I need to know what you think is
17 significant.

18 Now, I will put charges together based on what I find
19 the law to be. But I don't have a standard charge as
20 such.

21 All right. Go ahead. Anything else before we start?

22 MS. HERVEY: They gave me these records this
23 morning. Some of them are duplicates of the records that
24 we've already got in. I don't know what order of
25 witnesses -- he says he's going to call one of, I think,

1 the people that work at this hospital.

2 Is that your first witness?

3 MR. STODDARD: Second witness, but she'll come
4 up pretty quick because the first one I think will be
5 short.

6 MS. HERVEY: I wasn't able to get to her between
7 the time that I got these this morning. I didn't have a
8 cell phone number and I think she was in route. I was
9 wondering if I could just maybe have ten or fifteen
10 minutes to talk to her before she goes on the stand just
11 to kind of go -- get a little bit of a feeling for what
12 some of these records say just because it is all new to
13 me. And that's all.

14 MR. STODDARD: What she's talking about these
15 are records -- you remember you had to issue an order for
16 this witness to come? And a lot of these records are the
17 records that got faxed earlier in the week, but because --
18 it's the same facility, but there were additional records
19 when she came in person. You know, we had about that much
20 before, now there's about that much (indicating).

21 THE COURT: You want to say ten thirty?

22 MS. HERVEY: Yeah, easily.

23 THE COURT: Very good. We'll stand in recess
24 until ten thirty. Explain to the jury that I've got to
25 take up some matters that I did not expect, and it will be

1 about twenty minutes.

2 (WHEREUPON, court stood at recess for a short break.)

3 THE COURT: All right. Anything from the State
4 before we bring the jury back?

5 MS. HERVEY: Nothing from the State.

6 THE COURT: From the Defense?

7 MR. STODDARD: Just one thing. I have -- I hate
8 to do this -- another potential witness that my client
9 informed of last night named Jeff Burney. So you might
10 want to voir dire the jury about a Jeff Burney that's not
11 on my witness list.

12 THE COURT: Is it related -- is it the same as
13 Donna Burney? Same spelling?

14 MR. STODDARD: Spouse.

15 THE COURT: Her husband?

16 MR. STODDARD: Husband.

17 (Off record discussions.)

18 THE COURT: All right. Jeff Burney? J-E-F-F
19 B-U-R-N-E-Y?

20 MR. STODDARD: That's right.

21 THE COURT: All right. Very well. Anything
22 further from the Defense?

23 MR. STODDARD: Nothing further.

24 MS. HERVEY: No, sir, Your Honor.

25 THE COURT: From the State?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Donna B. Burney - Redirect Examination by Mr. Stoddard

341

1 MS. HERVEY: Sorry, Your Honor.

2 THE COURT: No problem. Thank you. Ask the
3 jury to join us.

4 (WHEREUPON, the jury entered the open court at
5 approximately 10:33 a.m.)

6 THE COURT: All right. Let the record reflect
7 the jury and alternates are in the jury box.

8 There may be another potential witness in this case.
9 So I'm going to ask you again about this one as I've done
10 on the other witnesses. Is anyone related by blood or
11 marriage or close personal friend or business associate of
12 Jeff Burney, B-U-R-N-E-Y? If so, please raise your right
13 hand.

14 (No response.)

15 THE COURT: Jeff, J-E-F-F, Burney, B-U-R-N-E-Y.
16 Any association or relationship with the potential witness
17 that might create -- or just any association or
18 relationship with the witness? If so, please raise your
19 right hand.

20 (No response.)

21 THE COURT: Very good. Let the record reflect
22 that no one responded.

23 All right. Mr. Stoddard, you may call your next
24 witness.

25 MR. STODDARD: I call Ouida Blackburn.

1 OUIDA BLACKBURN,

2 Being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STODDARD:

5 Q. Ms. Blackburn, tell us how you know Max Sipes.

6 A. He's my grandson.

7 Q. And where do you reside?

8 A. Central.

9 Q. And was there ever a time when Max Sipes and Tina
10 Sipes lived either with you or near you in Central?

11 A. They lived in Central at one time, yes.

12 Q. And let me ask you this. Did Tina -- when she was
13 married to Sipes, did she ever talk to you about -- did
14 she ever accuse Max of having affairs and make that known
15 to you?

16 A. Every day.

17 Q. It was -- what do you mean every day?

18 A. If he left the house for a minute, he was accused of
19 going somewhere.

20 Q. And when you say going somewhere, just ...

21 A. Well, you know, seeing a woman or something. And if
22 he had to work over late, he was out seeing someone.

23 Q. And did that cause problems between Max and her?

24 A. Of course.

25 Q. Was there a time when -- and it probably had to do

1 with Minor problems and stuff. But was there a time
2 when D.S.S. -- there was a threat to Tina that the
3 children might be taken into foster care?

4 A. Yes. They were still living in Anderson here at that
5 time. And ---

6 Q. I don't want to know the circumstances. Did Tina
7 make any comments to you? What was her reaction to that
8 threat?

9 MS. HERVEY: Your Honor, I'm going to object to
10 hearsay as to her saying what Tina said to her. I think
11 that's inappropriate.

12 THE WITNESS: I heard it.

13 THE COURT: Just a moment.

14 MR. STODDARD: I'm offering it for state of
15 mind.

16 THE COURT: She's been a witness, so I would
17 think that she's still subject to cross examination. So
18 I'm going to overrule. You may proceed.

19 Again, the objection is based on hearsay. And the
20 reason we don't permit hearsay is because it's -- as I was
21 telling you about notes at the very first of the trial,
22 hearsay is what we hear somebody say. Two things about
23 that is that, one, we might not hear everything they say
24 or we might miss the context of it. And so it's not as
25 reliable as when the person actually testifies themselves.

1 But there are exceptions to the hearsay rule. Of course,
2 it also has to be for the truth. In other words, what you
3 hear somebody say or think you heard, you're offering it
4 for the truth saying that it absolutely -- what they say
5 is or you heard them say is true.

6 Now, if it's not offered for the truth as the
7 suggestion has been made it's offered just to show what
8 the state of the mind of the person was at the time you
9 heard them make the statement or if the person is
10 available or subject to being examined about it. In other
11 words, they don't accept what is said, then of course,
12 those are exceptions that would permit what we call
13 hearsay. That way hearsay becomes -- or what you hear
14 becomes the same thing as any other sense. In other
15 words, just as you can see somebody and report what you
16 see or you can touch something and report what you touch,
17 you can also report what you hear. And that is not --
18 what is it -- hearsay in the sense because it is not
19 offered for the truth of what is said. It's just that
20 you're offering it because you exercised your sense of
21 hearing to hear what the person -- what you say -- what
22 you think you heard, the same as what you think you saw.

23 All right. Very well. You may proceed.

24 Q. Anyway, I think my question was what was Tina Sipes
25 reaction to that threat or what might happen?

1 A. She and Max brought the twins up one afternoon. And
2 she came roaring in the house and says, no way in 'H' will
3 anyone take my children from me. I said, Tina, what's
4 wrong? She says, somebody called the D.S.S. that ---

5 MS. HERVEY: Your Honor, I would object at this
6 point because it's now what Tina is saying somebody else
7 said. So it goes beyond just standard hearsay. We're
8 getting into double hearsay.

9 THE COURT: Overruled.

10 Q. Go ahead and finish what her reaction was.

11 A. Well, Taylor had told her teacher at school ---

12 Q. Now, I don't -- I'm not asking you what Taylor said.
13 What was Tina's reaction? Or what the circumstances were.
14 Just what her reaction was.

15 A. I said, what's wrong? She said D.S.S. came and said
16 someone told that **Minor** was abusing my children.

17 Q. And did she say anything else about her reaction to
18 that?

19 A. Yes. She says, over my dead body will anyone get my
20 children, for I will say or do anything to keep them from
21 taking them from me.

22 Q. Now, was there ever occasion -- you've heard the
23 description where Max is accused of, when **Minor** was eleven
24 years old, touching her inappropriately. Did you hear
25 that testimony? On a couch in the living room or den?

1 I'm not sure which.

2 A. (No response.)

3 Q. What I just described to you, I thought you might
4 have been in the courtroom and heard that earlier. Did an
5 incident like that ever happen to someone that came to
6 Tina's attention?

7 A. Yes.

8 Q. All right. When that incident happened -- I know you
9 probably don't know the exact dates -- but was **Minor** in
10 her -- she had been sent off and in some homes and some
11 institutions, right?

12 A. I had a neighbor across the street.

13 Q. Well, wait a second. I'm trying to establish a time
14 frame. When this happened, was **Minor** out of the home at
15 that time in the institution?

16 A. (No response.)

17 Q. Do you -- if you don't understand ---

18 A. Yeah, I think she was.

19 Q. Okay.

20 A. Yeah, I think she was at that time.

21 Q. Was that when Max and Tina were living in Central?

22 A. Yes.

23 Q. And that was the last place they lived before they
24 separated?

25 A. Correct.

1 Q. All right. Describe the event. What happened?

2 A. I had a neighbor across the street that had married a
3 lady that had a daughter. And she was around eleven. And
4 I came home one day from the store and there was some
5 police officers over there. Well, I came on in. I didn't
6 -- wasn't any of my business, I didn't see about it.

7 Next door -- I had an investigator that lived next
8 door. And his wife and I were friends. So she came over
9 and asked me if I knew what happened. And I said, no, I
10 don't. And she says ---

11 MS. HERVEY: Your Honor, again I'm going to
12 object as her going into what her neighbor told her. She
13 hasn't identified who this person is. The voracity of
14 that statement is out of this jury's consideration.

15 MR. STODDARD: And that -- what I'm going into
16 -- this is all going to be pretty much hearsay. She --
17 I'm having her describe an -- well, let me get to the end
18 of it.

19 Q. The things that you learned, did you discuss with
20 these people what had happened next door and why the
21 police were there?

22 A. Yes.

23 Q. And those things that you learned about what happened
24 next door, did you tell Tina Sipes?

25 A. I did. She came in the next day.

1 Q. Let me speak to the Judge a minute.

2 MR. STODDARD: Judge, and what I'm offering this
3 is for its effect on the hearer. Not necessarily for the
4 truth of the matter asserted, but that she imparted
5 knowledge to Tina Sipes that I think might be relevant to
6 this case.

7 THE COURT: So what you're saying is actually
8 she's the declarant?

9 MR. STODDARD: Well, the events that she
10 described she didn't witness, but she's ---

11 THE COURT: Listen to my question.

12 MR. STODDARD: Yes, she's the declarant.

13 THE COURT: The declarant. So it wouldn't be
14 hearsay.

15 MR. STODDARD: Yes, sir.

16 THE COURT: It's what she told. Regardless of
17 the truth of it, it's what she told somebody else.

18 MR. STODDARD: Right.

19 THE COURT: That's not hearsay. That's her
20 declaration. All right. Overruled if there's an
21 objection.

22 MS. HERVEY: And our objection is not to what
23 she told Tina; it's going into all these things that the
24 neighbor lady may have told her.

25 THE COURT: Well, again, it doesn't go into the

1 truth of what the neighbor lady told her or not. It's the
2 fact that she told -- maybe it's completely made up. You
3 can go into that on cross examination. But the fact as I
4 understand it is that she's going to testify to what she
5 told somebody else, what this witness told somebody else.
6 And what she tells somebody is not hearsay.

7 MS. HERVEY: Right. That's fine.

8 THE COURT: Very good. Thank you.

9 All right. Now you may proceed.

10 Q. Now, the stuff that you ended up telling Tina, can
11 you tell us again what you learned that you later told
12 Tina?

13 A. Well, the next day Tina came up. We kept the babies
14 a lot. And she came up to pick the babies up. And
15 another police officer was across the street the next day.
16 She asked me what was going on. ~~And I told her that the~~
17 ~~wife came in and found her husband on the couch with her~~
18 ~~eleven-year-old daughter, had her clothes down fondling~~
19 ~~her. And she called the police. That's what had~~
20 ~~happened. That's what the investigator next door saw and~~
21 ~~told me.~~

22 Q. I have no further questions.

23 THE COURT: Very well. Cross examination?

24 CROSS EXAMINATION

25 BY MS. HERVEY:

1 Q. You love him? You love Max, don't you?

2 A. Sure.

3 Q. And you -- he's lived with you on occasions, has he
4 not?

5 A. Some, yes.

6 Q. Did you participate in raising him a great deal?

7 A. I did.

8 Q. Did you more or less raise him?

9 A. Well, most of the time when he was young.

10 Q. So he's almost like a son than a grandson to you, is
11 he not, in some ways?

12 A. Sure.

13 Q. And you don't want him to get in any trouble, do you?

14 A. I'm not going to lie for him.

15 Q. But you don't want to get him into any trouble, do
16 you?

17 A. Well, of course not.

18 Q. And you don't really like Tina Goodwin, do you?

19 A. I have no objections to her whatsoever.

20 Q. You like it when she always accused Max of cheating
21 around on her?

22 A. Well, that was her tale. It wasn't mine.

23 Q. Did you appreciate that?

24 A. Well, there's some things I did not appreciate.

25 Q. So there's some things you didn't like about Tina?

- 1 A. Well, there's some things we don't like about
2 everybody.
- 3 Q. Did you love her like a daughter-in-law ever?
- 4 A. I did.
- 5 Q. Do you still?
- 6 A. I don't see her. I haven't seen her in years.
- 7 Q. When were the twins born? Do you remember?
- 8 A. In October of '02. '03. '02.
- 9 Q. What other children does Max have?
- 10 A. He has another daughter.
- 11 Q. When was she born?
- 12 A. And another son.
- 13 Q. When was the daughter born?
- 14 A. Taylor, she's about eleven or twelve now, isn't she?
- 15 I don't know when she was born. Her birthday was in
16 September.
- 17 Q. He doesn't have any children after the twins?
- 18 A. No.
- 19 Q. All right. Is he remarried?
- 20 A. Yes.
- 21 Q. And do you know when he got married?
- 22 A. No, I don't remember. It's been several years.
- 23 Q. Several years though? Could it have been 2003 when
24 he got married?
- 25 A. Do what?

- 1 Q. Could it have been 2003 when he got married?
- 2 A. Or '4.
- 3 Q. Maybe around -- if you don't remember, that's fine.
- 4 But you can't get the answers from somebody in the
- 5 audience. And I see you looking at him. And I'm not ---
- 6 A. I don't remember.
- 7 Q. Okay. That's fine.
- 8 A. Because he was married in Marion, and I don't
- 9 remember.
- 10 Q. So you didn't attend the wedding or anything?
- 11 A. No.
- 12 Q. All right. And who's the neighbor lady that we're
- 13 talking about? Do you remember the little girl's name or
- 14 your neighbor's name?
- 15 A. Yes. She was a Craig.
- 16 Q. A ...
- 17 A. A Craig girl.
- 18 Q. A Craig girl?
- 19 A. Uh-huh (affirmative).
- 20 Q. Like C-R-A-I-G?
- 21 A. That's right.
- 22 Q. And did that happen across the street from you, that
- 23 whole walking in on it thing?
- 24 A. It did.
- 25 Q. It did? Did Max know these people?

State of South Carolina v. Maxwell Eugene Slipes 2005-GS-04-0381
Ouida Blackburn - Cross Examination by Ms. Hervey

1 A. Yeah, Max knew the boy. I mean, he grew up

2 Central.

3 Q. Did that guy get into any trouble for doing that?

4 A. I'm sure he did. I have no idea. I didn't go into
5 details. It isn't any of my business.

6 Q. It was your business that it happened, but it wasn't
7 your business what happened to him after that?

8 A. Well, I didn't know what -- my neighbor just told me
9 what happened. I didn't know.

10 Q. But she never told you whether he went to jail or
11 anything?

12 A. No, I didn't know.

13 Q. Did you have this discussion with **Minor** herself?

14 A. Did I what?

15 Q. ~~Did you ever tell Ciera about what happened?~~

16 A. ~~Ciera wasn't there at that time. She was already~~
17 ~~somewhere else.~~

18 Q. ~~And you have no knowledge whether or not Tina ever~~
19 ~~told her daughter, do you?~~

20 A. ~~I don't know whether she did or not.~~

21 Q. So as far as you know, you don't know if these two
22 events are related or not?

23 A. Related to who?

24 Q. You don't know if you telling Tina has anything to do
25 with what Ciera said Max did to her?

1 A. I have no idea that it did.

2 Q. But that's your opinion. You have no knowledge? You
3 never saw Tina discuss it with [Minor] did you?

4 A. I did not.

5 Q. You never discussed it with [Minor] did you?

6 A. I did not.

7 Q. And this neighbor lady, did she ever -- did you ever
8 -- was there ever a description of forcible sodomy
9 involved?

10 A. I didn't ask.

11 Q. So you just limited it to that?

12 A. That's right.

13 Q. So the discussion that [Minor] -- the allegation she
14 made against Max about forcible sodomy, you never heard
15 that tale by any of your neighbors, have you?

16 A. No.

17 Q. Nothing further.

18 MR. STODDARD: No further questions.

19 THE COURT: All right. You may step down.

20 Thank you, ma'am.

21 Call your next witness.

22 MR. STODDARD: Call Cindy Stichnoth to the
23 stand.

24 **CINDY B. STICHNOTH,**

25 Being first duly sworn, testified as follows:

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Direct Examination by Mr. Stoddard

355

1 DIRECT EXAMINATION

2 BY MR. STODDARD:

3 Q. And how are you employed?

4 A. (Coughing.) Excuse me. I am the staff therapist at
5 The Carolina Center for Behavioral Health in the
6 adolescent unit. I provide group, individual, family
7 therapy, case management. I'm also in private practice at
8 the Family Therapy and Trauma Center in Greer, South
9 Carolina where I specialize in assessing and treating
10 sexual behavior issues and I conduct forensic assessments
11 and private consulting.

12 Q. The forensic assessments -- we've heard -- is that
13 forensic assessments of child sex abuse allegations?

14 A. Yes, sir.

15 Q. So we've heard about forensic interviews. Is that
16 part of what you do?

17 A. Yes, sir.

18 Q. Just a minute.

19 How long have you worked at -- how long have you
20 worked at The Carolina Center?

21 A. Approximately four years.

22 Q. And is -- the job description you just described, is
23 that what you've done the whole four years?

24 A. Yes, sir.

25 Q. And how long have you engaged in or done forensic

1 interviews?

2 A. Approximately ten years.

3 Q. And did you get some special training to do this?

4 A. Yes, sir.

5 Q. And can you describe that training?

6 A. I attended specialized training at the National
7 Children's Advocacy Center in Huntsville, Alabama through
8 the Spartanburg Children's Advocacy Center where I was
9 employed at the time. I received further training through
10 the Greenville Children's Advocacy Center where I was the
11 clinical director for a period of time. And I attend CEU
12 seminars every year to renew my license and keep my
13 certification as a diplomat on the American Board of
14 Forensic Counselors.

15 Q. Okay. And would you call yourself a forensic
16 counselor?

17 A. I say forensic therapist.

18 Q. Tell me what that is.

19 A. When one is performing as a forensic therapist, they
20 are a neutral fact-finder. They're not an advocate for
21 either side of the fence. They trace information, record
22 patterns of information or lapse of information, interview
23 individuals related to the allegations using neutral, non-
24 leading interview techniques that are approved in national
25 protocols.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Direct Examination by Mr. Stoddard

357

1 Q. And do you also treat -- do any treatment or
2 counseling aside from the forensic interviews?

3 A. Yes, sir. I provide treatment and counseling at The
4 Carolina Center, and I provide treatment and counseling at
5 my private practice.

6 Q. And do you have a title or degree?

7 A. I have an M.B.A. in clinical counseling from the
8 Citadel, and I'm a licensed professional counselor in the
9 state of South Carolina.

10 Q. And have you ever been qualified in court as an
11 expert in -- let me look at my notes -- assessment and
12 treatment of sexual trauma and behavior disorders?

13 A. Yes, sir.

14 Q. Approximately how many times have you been so
15 qualified?

16 A. Hundreds. I work primarily in Greenville County. I
17 do a lot of court-ordered work through the Greenville
18 County Family Court, and I've also worked with the
19 Greenville County Solicitor's Office. I've also testified
20 as an expert in Federal Court in Charleston County.

21 Q. In that area of sexual trauma ---

22 A. Yes, sir.

23 Q. --- and behavior disorders?

24 A. Yes, sir.

25 Q. And when you say I've worked with the Solicitor's

1 Office, do you sometimes help with the prosecution?

2 A. Yes, sir.

3 Q. Of sex offenders?

4 A. Yes, sir.

5 Q. So you do -- and you sometimes testify for the
6 Defense?

7 A. Yes, sir.

8 Q. And by the way, you were employed at The Carolina
9 Center at the time **Minor** was there; is that right?

10 A. Yes, sir.

11 Q. And I retained you on this case early on, did I not?

12 A. Yes, sir. Many months back you contacted me and
13 asked if I could review the records that you were in
14 possession of to consult privately for you. I do that
15 quite often. I interpret medical records. As I said,
16 trace information that's in the record or lapsing from the
17 record. It wasn't until we received the fax from The
18 Carolina Center of their records, I believe it was night
19 before last, and you saw my name in there as having been
20 involved in her treatment, that you contacted me and asked
21 me to testify.

22 Q. Okay. And prior to that we had talked -- you had
23 just helped educate me on some of the issues?

24 A. Yes, sir. I had not -- I would not be at liberty to
25 have divulged to you that I had any prior knowledge of the

1 case.

2 Q. And have you reviewed the records from The Carolina
3 Center and Behavioral Center?

4 A. Yes, sir, I reviewed them yesterday after the court
5 order was received by The Carolina Center to produce the
6 record and for me to testify.

7 Q. And previously I had also provided you with some
8 records of the forensic interviews and the police records
9 in this case?

10 A. Yes, sir.

11 Q. Things I have. . And you actually viewed the forensic
12 interview tape?

13 A. Yes, sir.

14 Q. Now, The Carolina Center, when they discharged **Minor**
15 **██████████**, one of the diagnoses was borderline traits. Do
16 you remember that?

17 A. Yes, sir.

18 Q. Can you describe what borderline traits, what they
19 mean by that?

20 A. Borderline traits fall under Axis II. We use
21 multiple axes to diagnose an individual. It has to do
22 with behavioral characteristics related to self-injurious
23 behavior related to over-dramatizing incidents, related to
24 highly manipulative and intrusive behavior, related to
25 hearing characteristics or symptoms disclosed by one

1 person and then adopting those symptoms as your own.

2 Q. Now, do people that have borderline traits or
3 especially borderline disorder, is it more likely than not
4 that they have a parent that has that same problem or vice
5 versa?

6 A. There is a pattern in the field of persons with
7 personality disorders raising children who end up -- grow
8 up to have personality disorders because of the parenting
9 style.

10 Q. What is it about the parenting style that would make
11 someone with borderline traits have a child that gets
12 those same traits?

13 A. The manipulative behavior. Children, during their
14 first five years, typically -- basically building a child
15 is like building a brick wall. And if you have a shaky
16 foundation in your first five years, then you have a shaky
17 wall, an unstable wall as it gets older. A parent with
18 personality disorder who would be injuring themselves in
19 front of the child, engaging in erratic behavior in front
20 of the child may manipulate information that they give to
21 the child in order to get the child to behave in a certain
22 way.

23 Q. Was there anything in the record to suggest -- that
24 you reviewed to suggest that Tina Sipes may have some
25 borderline traits?

1 A. Yes. **Minor** described her mother as cutting herself
2 in suicide attempts. She described her mother as chasing
3 her stepfather with a butcher knife. She described her
4 mother as engaging in multiple relationships with
5 different paramours during her early childhood. She
6 described very erratic behavior. She described her mother
7 as removing the affection of other family members if she
8 said or did something that her mother did not approve of.
9 Just a moment. ~~She described her mother as having~~
10 ~~threatened to kill her if she caused her mother to lose~~
11 ~~custody of the other children. She described her mother~~
12 ~~as having manipulated her in telling her that her~~
13 ~~biological father had terminated his parental rights when~~
14 ~~she was very young and reported that she had discovered~~
15 ~~paperwork that indicated that her biological father had~~
16 ~~only terminated his parental rights two weeks before her~~
17 ~~adoption by Max Sipes.~~

18 Q. And all that is consistent with Tina having some of
19 these traits?

20 A. Could be, yes, sir.

21 Q. Let me ask you this. One of the allegations in this
22 case -- of course, early on we learned about the problem
23 with the prolapsed colon. Did you review the records to
24 see if there was an opportunity for **Minor** to be examined
25 and for them to determine whether while she was at that

1 center whether there were any problems with her rectum or
2 colon?

3 A. There's a physical conducted for every inpatient at
4 The Carolina Center by our internist, and there's a form
5 that is filled out. It's multiple pages. The only reason
6 an individual would have a rectal exam would be if they
7 were over 45 years of age which means it's recommended
8 medically or if they complained of any problems, pain,
9 burning, difficulty defecating, having a bowel movement.
10 And that was not indicated. The page where that was was
11 checked that patient didn't indicate any symptoms.

12 Q. Was there any other indication in the record that she
13 was pain-free during her stay there?

14 A. Because The Carolina Center treats dual diagnosis
15 patients -- we treat patients with behavioral disorders as
16 well as patients with drug addiction -- we take their
17 vital signs every shift and we ask them every shift if
18 they're experiencing any type of pain or discomfort so
19 that can be monitored. At no time during her stay did she
20 indicate that there was any pain or discomfort.

21 Q. And were her vital signs normal?

22 A. Yes, sir.

23 Q. Does that tell you anything?

24 A. If an individual is experiencing significant pain,
25 their pulse and heart rate are elevated.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Direct Examination by Mr. Stoddard

363

1 MR. STODDARD: Beg the Court's indulgence.

2 Q. By the way, you mentioned people with drug abuse.
3 With **Minor** was there anything in the record about her
4 having a problem with drug abuse?

5 A. She admitted to significant drug abuse. Her drug
6 screen was clean though. So I don't know if that was
7 simply an adolescent trying to make themselves sound
8 tougher or worse than she really was or if she truly had
9 had a problem, but nothing recent enough to show up on the
10 drug screen.

11 Q. And the word that she admitted to was significant or
12 ...

13 A. That's how the doctor stated it. She indicated in
14 group to me that she really liked to do speed. That was a
15 quote.

16 Q. Did she mention any other drugs that you recall?

17 A. She mentioned abuse of diet pills, abuse of her
18 Aderal, ~~and abuse of diuretics to induce diarrhea~~. Not
19 diuretics. I'm sorry. ~~Maxwell Sipes~~

20 (Coughing.) Excuse me. I've been sick.

21 Q. Was there anything in the record to indicate the
22 father was not supposed to be -- Mr. Sipes was not -- was
23 taken off any visitation lists?

24 A. Yes, sir. He was on the telephone visitation list,
25 but **Minor** indicated to the admissions staff that she did

1 not want him to have any clinical knowledge about her.

2 Q. Okay. Was there -- and you kind of described this, I
3 guess. Did [Minor] mother -- did Tina take people off
4 the visitation list?

5 A. [Minor] maternal grandmother was on the list. I
6 believe it was maternal grandmother. At one point
7 [Minor] mother called after telephone time and was angry
8 that [Minor] had had a conversation with her grandmother
9 rather than calling her, so she ordered us to remove the
10 grandmother from the telephone list. However, the doctor
11 overwrote that because he felt that [Minor] grandmother
12 was the only positive support she had at the time.

13 Q. Was there an indication that Tina -- there were
14 indications in there that Tina did not -- she wanted to
15 stay at -- Not Tina. I'm sorry. [Minor] wanted to stay at
16 the center and did not want to return home?

17 A. At first she wanted to return home. She was informed
18 that she would be placed in a therapeutic foster home
19 after the hospital because we had received a court order
20 through the Department of Mental Health that that had been
21 ordered by a Family Court judge. She was upset about
22 that. What we processed in our therapy group was the fact
23 that it would be more beneficial for her to be in a
24 therapeutic foster home or a placement at that time due to
25 the significant conflict between she and her mother in the

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Direct Examination by Mr. Stoddard

365

1 home. She came to accept that and even indicated that she
2 was willing to go and glad that she was going to a
3 therapeutic placement rather than home. But she was
4 fearful when she left. She indicated fear that her mother
5 would not take her to the placement, that her mother would
6 take her home instead.

7 Q. How did she describe her relationship with her
8 mother?

9 A. ~~AS very problematic. She indicated a lot of~~
10 ~~aggression between she and her mother.~~ She indicated she
11 had been placed at the Department of Juvenile Justice
12 secondary to criminal domestic violence between she and
13 her mother. She indicated that her mother had numerous
14 times threatened her that if she told anyone about the
15 violence in the home or the problems in the home caused
16 her to lose her other children that she would kill her.
17 Her telephone conversations with her mother were always
18 followed by serious decompensation on **Minor** part. She
19 would get very angry, very tearful, a lot of harsh words
20 on the telephone.

21 Q. Did she also have problems with her father?

22 A. She described him as being out to get her. Indicated
23 that she felt he was siding with Mom. Mom was siding with
24 him. That they would lie for each other. She talked
25 about her adopted father being an alcoholic. She

1 described him as being drunk all the time. She talked
2 about him hitting her with a belt. She described him as
3 emotionally abusive. Indicated that he called her names,
4 primarily lazy and psycho.

5 Q. On the -- did she also -- calling her psycho, did she
6 attribute that to both of them?

7 A. Yes, sir. Both parents.

8 Q. Was there any indication in the way she said that
9 that -- whether that was accurate or not?

10 A. She laughed about it. She indicated she thought it
11 was funny, which I would describe as an incongruent
12 affect.

13 Q. You reviewed the record looking for things consistent
14 and inconsistent with these allegations; is that right?

15 A. The record from The Carolina Center?

16 Q. All of the records that you received.

17 A. Yes, sir. When I was doing the records review in
18 consultation for you many months ago, I reviewed all the
19 records. The complete record from The Carolina Center was
20 not in there at that time.

21 Q. Is there anything from The Carolina Center that you
22 haven't mentioned today that's inconsistent with these
23 allegations?

24 A. Not that I can recall.

25 Q. Does the record from The Carolina Center describe

1 what you'd call a chaotic lifestyle growing up for Minor

2 A. Oh, absolutely.

3 Q. The symptoms Minor presented with at The Carolina
4 Center, her lifestyle before even meeting -- before Max
5 came into the picture or apart from Max, could it have
6 caused the symptoms that she presented with and the
7 problems?

8 A. Possibly.

9 Q. Is it consistent with those symptoms?

10 A. Is what consistent?

11 Q. The way she was raised or causing that kind of ---

12 A. It's consistent with a cluster of symptoms that we
13 typically do see, yes, sir.

14 Q. I have no further questions.

15 THE COURT: Cross examination?

16 CROSS EXAMINATION

17 BY MS. HERVEY:

18 Q. Were you actually paid by Mr. Stoddard to consult
19 with him on this case?

20 A. I was. I was paid for the review of records that I
21 did many weeks ago.

22 Q. And how much were you paid?

23 A. My forensic fee is a hundred and seventy five dollars
24 an hour. I couldn't tell you right now how many hours I
25 had for that work.

1 Q. A couple? Ten?

2 A. Well, it's typically an hour an inch of paperwork.

3 And there was, I would say, about between two and three
4 inches of documentation that he provided to me. I don't
5 retain numbers very well in my head.

6 Q. So would it be correct to say around five hundred
7 dollars give or take a few?

8 A. Give or take, yes, ma'am.

9 Q. And you stated that you were, at the time that **Minor**
10 was in this facility, her treating therapist or counselor?

11 A. Yes, ma'am.

12 Q. And do you agree that a treating counselor or
13 therapist should not serve the same role as a forensic
14 interviewer?

15 A. Oh, absolutely. It's two very different roles.

16 Q. And this training that you've attended, is that the
17 same training that Dr. DeFelice conducts or you attended
18 the training with her or both?

19 A. Back when we were both starting in the field many
20 years ago, we were at similar trainings. We crossed paths
21 many times. She conducts national trainings now. I don't
22 conduct national trainings. I conduct local trainings.

23 Q. Have you ever attended any of the trainings that she
24 has actually conducted?

25 A. I would have to say possibly. I'm not sure.

1 Q. And so as the treating therapist, if **Minor** had
2 disclosed to you sexual abuse at The Carolina Center, it
3 wouldn't have been appropriate for you to then conduct a
4 forensic interview on her regarding assessing that
5 disclosure, would it?

6 A. One can't be a treating therapist and a forensic
7 assessor for the same patient.

8 Q. And did **Minor** ever disclose either to you or to other
9 people in The Carolina Center that possibly at least some
10 father role had sexually abused her in the past?

11 A. Yes, she did.

12 Q. And what did she disclose?

13 A. She disclosed that her biological father had
14 attempted to rape her in the past.

15 Q. And did he rape her vaginally or anally or was that
16 ---

17 A. It was not questioned. We didn't go into it because
18 the disclosure came on the heels of her roommate
19 discussing her own sexual abuse by her biological father,
20 and we had concerns that **Minor** was attempting to seek the
21 same type of comfort and attention that the other patient
22 was receiving.

23 Q. And did you disclose it for any other reasons,
24 specifically that she had identified the address as being
25 her biological father?

1 A. I'm sorry. I don't understand the question.

2 Q. You stated that you had concerns. Was one of those
3 concerns that she attributed it to her biological father
4 and you either knew then or learned afterwards that her
5 biological father really hadn't had access to her?

6 A. Yeah. I believe her mother indicated to me later
7 that she didn't think that could have happened because her
8 contact with the biological father had been very limited.

9 Q. Okay. But you didn't really go further in assessing
10 that? Did you ever really question her about that again?

11 A. No, ma'am. We focused on the aggression between she
12 and her mother because that seemed to be the primary
13 trigger at the time that was driving her behavior and
14 preventing her from being successful in the home
15 environment.

16 Q. Would it be fair to say that at some point there is a
17 clinical obligation to go further to see if this
18 disclosure really did have any validity?

19 A. It was -- the records were made available to the
20 Department of Mental Health which was driving her
21 placement and ongoing therapy at that time.

22 Q. So it was really their responsibility and not yours?

23 A. I would say yes.

24 Q. And do you know whether or not they followed up with
25 it?

1 A. I do not. But we did also make a report to the
2 Department of Social Services while she was in the
3 hospital regarding our concerns about the multiple claims
4 she had made about the drunkenness and violence in the
5 home and past abuse coupled with the fact that we were
6 informed by the Department of Mental Health that the
7 parents had not followed through with her after-care
8 treatment after she was discharged from the Department of
9 Juvenile Justice.

10 Q. Did you report to D.S.S. or D.M.H. whether the -- the
11 disclosure of sexual abuse or the allegation? Was that
12 part of it? You said the abuse in the past and those kind
13 of things.

14 A. Yes, ma'am.

15 Q. Was the sexual abuse part of that?

16 A. Yes, ma'am, it would have been.

17 Q. Do you know whether or not they followed up on it?

18 A. I do not.

19 Q. Have you ever known these kind of people to actually
20 fall through the cracks and those things not being
21 followed up and ---

22 A. Oh, absolutely. The majority of victims of sexual
23 abuse never even report.

24 Q. And you stated that part of the reason that you
25 discounted this was because it was her biological father

1 and you learned that he really didn't have access to her,
2 correct?

3 A. That was what I was led to believe, yes, ma'am.

4 Q. Is it typical for victims of sexual abuse to
5 tentatively either identify either a stranger perpetrator
6 or kind of a safe perpetrator in lieu of the actual
7 perpetrator to test the waters?

8 A. That does happen, yes, ma'am.

9 Q. It happens quite frequently, does it not?

10 A. Yes, ma'am.

11 Q. So it's very possible that when **Minor** attributed it
12 to her biological father who everybody knew was not in the
13 picture and perhaps not available, that that was a
14 tentative type disclosure on her part?

15 A. Yes, ma'am. It's related to the accommodation
16 theories that Dr. DeFelice spoke about yesterday.

17 MS. HERVEY: I apologize, Your Honor.

18 (Pause.)

19 Q. Do you know where in your records this discussion
20 about her disclosure is?

21 A. About which disclosure?

22 Q. About the abuse by her biological father. Because
23 I'm looking through it, and I'm convinced it's going to
24 take me a while.

25 A. It was on a nursing note.

- 1 Q. Here. I think I have it.
- 2 A. Okay.
- 3 Q. Amazingly enough.
- 4 A. Okay.
- 5 Q. Let me ask you if this is the note I'm talking about.
- 6 Are we on the same page?
- 7 A. Yes, ma'am.
- 8 Q. Does she indicate -- this is my question. When she
- 9 attributes this possible rape by her biological father,
- 10 does she indicate that it was vaginal or anal intercourse?
- 11 A. No, ma'am.
- 12 Q. Let me draw your attention to -- what does she mean
- 13 by that question? Is that coming from **Minor**
- 14 A. Yes, ma'am. When her roommate that I mentioned
- 15 earlier -- when in group she disclosed her own history of
- 16 sexual abuse by her biological -- and let me say that
- 17 child had been removed from the home by D.S.S. It was
- 18 verified abuse. It had occurred over a long period of
- 19 time. When she was tearfully discussing this in group,
- 20 **Minor** laughed and said, 'Did he get you up the butt?'
- 21 Q. So she was inquisitive about that?
- 22 A. She was confronted for making an inappropriate
- 23 comment that was clearly unfeeling to the peer's
- 24 experience and asked not to repeat a question like that.
- 25 Q. But she did engage in -- she did ask her about that

1 specifically?

2 A. Yes, ma'am.

3 Q. And it was subsequent to this that she discloses when
4 she says her biological father, that he had raped her?

5 A. Yes, ma'am.

6 Q. So this is all part of the same conversation?

7 A. No, ma'am. She disclosed to the nurse in the evening
8 later that day, this nurse that wrote the note, later that
9 evening that her own biological father had attempted to
10 rape her.

11 Q. Okay. But we're talking the same day?

12 A. It's the same day, same 24-hour period, yes.

13 Q. All right. And you stated a couple of times that
14 **Minor** would laugh at inappropriate times, and that was one
15 of your concerns with her. Is that ever a coping

16 mechanism of children who have been abused? Do you ever
17 see them kind of create this kind of contradictory affect?

18 A. It is. Our concern with **Minor** was that it was more
19 related to a disregulated affect. When an individual has
20 grown up with a mental illness such as bipolar disorder,
21 they often have a disregulated affect because they kind of
22 train their brain not to respond. An example would be
23 experiencing something that's very sad that would make you
24 cry, and they would laugh at it because they're
25 uncomfortable feeling sad.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Cross Examination by Ms. Hervey

375

1 Q. So a normal person who would obviously laugh at these
2 times, if she had this bipolar disorder, that's actually
3 consistent and not inconsistent?

4 A. Well, it's consistent with a diagnosis of bipolar
5 disorder. It is an incongruent affect.

6 Q. But if it was a bipolar victim of ---

7 A. Symptom.

8 Q. --- sex abuse -- right. If it was a bipolar victim
9 of sexual abuse, is it still incongruent?

10 A. It would be congruent with bipolar symptoms of
11 someone who had experienced sexual abuse.

12 Q. When Mr. Stoddard asked you to consult on this case,
13 at that time did you make the connection that you had
14 treated **Minor** in the past?

15 A. When I saw The Carolina Center discharge summary, I
16 could tell from the date that it had occurred after I was
17 already employed there. The name -- I thought maybe I
18 remembered that we had had a problem with -- she went by
19 **Minor** and wanted to be called **Minor** and her mother
20 consistently called her **Minor**. And that had kind of been
21 a joke in the nurses' station. So when I saw **Minor** up at
22 the top, I wondered if that was the same patient. But I
23 didn't connect the information until I reviewed The
24 Carolina Center record.

25 Q. And that was in the last couple of days?

1 A. Yes, ma'am.

2 Q. So at the time that you consulted with Mr. Stoddard,
3 did you realize that you potentially had a conflict of
4 interest?

5 A. I wouldn't consider it a conflict of interest. I've
6 many times been a private consultant on a case in the
7 background reviewing records, offering educational
8 information and had some type of clinical connection to
9 the case myself through another realm. I'm very, very
10 experienced at keeping my two jobs separate and wearing
11 two different hats because my ethical reputation is my
12 life. I support my family.

13 Q. But you didn't disclose that in any of these things
14 to Mr. Stoddard at the time?

15 A. No, ma'am.

16 Q. Part of that was you didn't really connect the two.
17 Would that be fair to say?

18 A. Well, even if I had connected the two, I would not
19 have disclosed it. When Mr. Stoddard called me the
20 evening before last to tell me that he had received the
21 records from The Carolina Center and had realized that I
22 worked there and that I had worked with this particular
23 person, I told him then that I couldn't discuss anything
24 about The Carolina Center work with him without
25 appropriate releases or subpoenas being in place. He

1 asked me if I would accept a subpoena and come to court.

2 I informed him that I could not accept a subpoena on
3 behalf of The Carolina Center because that was not my
4 right, that the subpoena process had to go through The
5 Carolina Center and be approved by my bosses.

6 Q. Do you have any obligation to disclose to the patient
7 that you're going to potentially wear these two different
8 hats in a role in their life?

9 A. No, ma'am.

10 Q. Did you take any -- so how long did you see **Minor**
11 would you say? About a month?

12 A. She was there about a month, yes, ma'am.

13 Q. And you would see her about how frequently within
14 that period of time?

15 A. For two hours of process group, and I'm on the unit
16 consistently working out of the nurses' station. Very
17 rarely in my office because it's off the unit. So I was
18 around her a great deal.

19 Q. Did you see her after that at all?

20 A. No, ma'am, not to my knowledge.

21 Q. So you never treated her or had any clinical
22 involvement with her post her discharge from here?

23 A. No, ma'am.

24 Q. And most significantly, you never had a relationship
25 with her post the disclosure of forcible sodomy?

377

ma'am.

you make any attempts to talk to Denise Houston
lle Matthews, people who had served in that

critical role post disclosure?

5 A. No, ma'am.

6 Q. You did say though that you reviewed the tapes,
7 correct?

8 A. Yes, ma'am.

9 Q. The forensic interview tapes. The same tapes that
10 Allison DeFelice has been talking about and Minor talked
11 about going there?

12 A. Yes, ma'am. But only for the same reasons of
13 educating the attorney. I in no way was conducting a
14 forensic assessment of this patient or this case.

15 Q. ~~Can you render an opinion whether or not her~~
16 ~~language, behavior and emotion during these tapes was~~
17 ~~consistent with a victim of sexual abuse?~~

18 A. ~~Yes, ma'am. I found her affect consistent.~~

19 Q. ~~So you agree with Dr. DeFelice with that assessment~~
20 ~~at least, that during that interview she seemed~~
21 ~~appropriate for a victim of sexual abuse?~~

22 A. ~~Yes, ma'am.~~

23 Q. Did you further find it consistent with victims of
24 sexual abuse that she had this first disclosure of an
25 earlier event of molestation and then came back in a

1 second interview and revealed more?

2 A. That would be one explanation for it, yes, ma'am.

3 Q. And you talked a lot about Tina Goodwin kind of
4 having these borderline personality traits. Have you ever
5 actually diagnosed her with that disorder?

6 A. No, ma'am.

7 Q. Do you have sufficient information to diagnose her
8 with that disorder?

9 A. No, ma'am.

10 Q. Could all of these concepts that you talked about be
11 attributed to other causality?

12 A. It's an awful big cluster symptom for her not to be
13 experiencing some type of personality disorder, but that's
14 simply based on my experience in the field and my
15 knowledge of personality disorders. It's not in any way
16 connected to me doing an assessment of her.

17 Q. And this is mostly coming from **Minor** as being the
18 historian and not some type of political relationship with
19 Ms. Goodwin, correct?

20 A. Up until the conversations I had with Mom on the
21 phone and the family therapy sessions that I conducted
22 with Mom. I got information directly from Mom. I made
23 observations of Mom in those two instances.

24 Q. But -- and this is what I -- teenagers often have
25 skewed view of their parents. Would that be fair to say?

1 A. Oh, absolutely.

2 Q. So everything **Minor** said as her interpretation of
3 that reality is not necessarily an accurate history of Ms.
4 Goodwin's lifestyle, is it?

5 A. Absolutely, except for the two things that Ms.
6 Goodwin did admit to in the family session.

7 Q. Okay. And you stated that **Minor** had reported that
8 her mother possibly had a suicide attempt. Did she ever
9 report the same type of self-mutilation and cutting on the
10 part of her mother? Or was it limited to that suicide
11 attempt?

12 A. Well, it was described as cutting. I don't know how
13 many times Mom cut herself or in how many places she cut
14 herself. But Mom did admit to attempting suicide by
15 cutting herself in the family session.

16 Q. Is cutting yourself in an attempted suicide, is that
17 the same as the type of self-mutilation of cutting
18 yourself habitually over and over again to dispel the
19 pain?

20 A. Well, oftentimes an individual who has a personality
21 disorder reports that they're cutting themselves in
22 attempted suicide, but in fact it is diagnosed as para-
23 suicidal behavior because it is done in -- often in an
24 attention-seeking manner or a manipulative manner to force
25 someone to comply with their wishes and is not in fact an

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Cross Examination by Ms. Hervey

381

1 actual suicide attempt. I wouldn't be able to tell you
2 that about Mom unless I reviewed her own clinical records
3 or conducted an assessment with her.

4 Q. Other people -- and you agree that **Minor** did have
5 these symptoms of self-mutilation or cutting herself. Did
6 you see any scars on her?

7 A. She had numerous superficial lacerations, yes, ma'am,
8 on her thighs and arms.

9 Q. Would you consider that a suicide attempt, or is that
10 a different ---

11 A. No, ma'am. I would consider that para-suicidal.

12 Q. Para-suicidal?

13 A. Yes, ma'am.

14 Q. Just because it's more attention-seeking and that
15 kind of thing?

16 A. It can be attention-seeking. It can be focused on,
17 as you said, relieving pain.

18 Q. So she could very much have been -- if she was
19 experiencing this type of sexual trauma in her past, that
20 could have been her coping mechanism, could it not?

21 A. Certainly.

22 Q. So could not -- it could have an alternative
23 explanation other than just attention-seeking?

24 A. Yes, ma'am.

25 Q. And you stated that part of -- that one of your

1 questions concerning Ms. Goodwin maybe possibly having
2 this disorder but you didn't really have the information
3 to do it is [Minor] report about learning that her father
4 hadn't really signed over rights to her as early as her
5 mother had reported, correct?

6 A. That was one of the issues, yes, ma'am.

7 Q. Could it be possible that he just gave up rights to
8 her verbally and then ultimately when she wanted to be
9 adopted signed the papers?

10 A. I don't know how -- I can't tell you at this point
11 how in-depth her conversation was with her mom about
12 T.P.R., whether it was a verbal or a written thing.

13 Q. Have you ever experienced in your own work with these
14 type of issues parents who don't necessarily sign
15 terminating parental rights to a child, but for all other
16 intents and purposes advocate any responsibility towards
17 the child?

18 A. Sure.

19 Q. And that's generally considering I've given up that
20 child and those kind of things?

21 A. Yes, ma'am.

22 Q. And this goes back to [Minor] just having a teenage
23 view of the world, correct?

24 A. Well, [Minor] spoke specifically about termination of
25 parental rights.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Cross Examination by Ms. Hervey

383

1 Q. You stated that she didn't have this exam because at
2 the time she hadn't disclosed to you all that she had been
3 the victim of forcible sodomy, correct?

4 A. She did not.

5 Q. So nobody actually even looked to see if there was
6 any trauma there of any kind?

7 A. No, ma'am.

8 Q. And you don't know when the last encounter she had to
9 be alone with Maxwell Sipes was prior to that, do you?

10 A. No, ma'am.

11 Q. You're not a colorectal surgeon; you don't know
12 whether those symptoms come and go or are exacerbated by
13 other lifestyle or things like that?

14 A. I do not.

15 Q. So you have no knowledge as to whether or not her --
16 perhaps at least not saying she was having these signs at
17 the time, whether or not that effect -- whether or not
18 this rectal prolapse was caused by events prior to her
19 hospitalization?

20 A. No, ma'am.

21 Q. And you stated that people with significant pain
22 would experience some kind of difference in vital signs.
23 Minor discomfort and irritation or intermittent pain
24 wouldn't necessarily have that same sign?

25 A. There would be a mild elevation, but not an elevation

1 worthy of a nurse's note.

2 Q. So, again, that's not really a good indicator of
3 whether or not she was having those symptoms at the time
4 of the hospitalization?

5 A. It would depend on the level of symptoms.

6 Q. Did either Maxwell Sipes or her mother come to visit
7 -- or Tina come to visit **Minor** while she was in the
8 hospital?

9 A. No, ma'am.

10 Q. Is that unusual?

11 A. It is.

12 Q. Does that indicate anything to you about how **Minor**
13 was dealing with her world and the type of support that
14 she had from the normal traditional family lifestyle?

15 A. Well, it was clear that they did not have a normal
16 traditional family lifestyle. **Minor** was not receiving
17 emotional support from either parent. She was receiving
18 emotional support from the grandmother. Both parents did
19 attend the family session after failing multiple
20 appointments for a family session. It was reported that
21 Mom was in the hospital with possible gallstones and the
22 dad was home with the twins.

23 Q. Was home with the twins?

24 A. Yes, ma'am.

25 Q. So there could have been an alternative causality?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Cross Examination by Ms. Hervey

385

1 A. Certainly.

2 Q. But certainly not the normal support that you do see
3 in a lot of your patients?

4 A. Yes, ma'am.

5 Q. And how would that affect a victim of sexual abuse in
6 terms of disclosing the abuse to someone? Would that lack
7 of emotional support exacerbate delayed disclosure,
8 reluctance to disclosure, those type things?

9 A. I would actually expect it to increase the amount of
10 disclosure to focus how important it was to her that she
11 receive support given the fact that she was making
12 disclosures about other types of abuse that she was
13 experiencing or reportedly experiencing.

14 Q. And that would be the verbal and possible physical
15 abuse?

16 A. Yes, ma'am.

17 Q. But obviously sexual abuse for all intents and
18 purposes is kicked up a notch, correct?

19 A. It is.

20 Q. And a girl disclosing that, especially at that age,
21 does involve a certain level of embarrassment, humiliation
22 and shame. And that might affect her willingness to
23 disclose, would it not?

24 A. It would in some settings. We talk about it a lot in
25 the hospital. A lot of the patients in the hospital have

1 experienced sexual abuse. Children with mental illness
2 are at higher risk to experience sexual abuse. Children
3 of parents with mental illness are at higher risk. Single
4 ---

5 Q. So **Minor** was at a higher risk?

6 A. Yes, ma'am. So it's discussed a lot on the unit.
7 And the roommate in particular that I mentioned, you know,
8 she was certainly discussing a lot of details regarding
9 ---

10 Q. Do you remember whether or not the roommate had any
11 rectal symptoms or a rectal prolapse?

12 A. No, she did not.

13 Q. Have you ever seen a victim of sexual abuse with
14 those signs?

15 A. I have.

16 Q. And what do you associate that symptom with?

17 A. The symptom of rectal prolapse?

18 Q. Uh-huh (affirmative).

19 A. I saw one adolescent male many, many years ago when I
20 first started in the field and I was working at what used
21 to be the Anderson Youth Association. He was a resident
22 there. He had had the repairatory surgery for the rectal
23 prolapse and it was caused by multiple rapes. He was
24 being -- I can't think of the term. I'm sorry. Pandered.
25 He was being offered in sex activities in trade for drugs

1 by his family members.

2 Q. Specifically anal intercourse?

3 A. Yes, ma'am. He was being offered as a boy child.

4 Individuals in perpetration would have to engage in anal
5 intercourse with him.

6 Q. So you would consider that a highly unusual symptom?

7 A. Well, not for someone who had been sodomized by ten
8 or fifteen people.

9 Q. But in terms of -- or ten or fifteen times?

10 A. Or ten or fifteen times.

11 Q. So it really doesn't matter the perpetrator; it's
12 really the frequency of the event?

13 A. Sure.

14 Q. But you said in all your years you've seen it once?

15 A. I don't see it -- yeah, in all my years I've seen it
16 once.

17 Q. And that's what I meant by the term highly unusual.
18 It's not so much for that particular act. But for victims
19 of sexual abuse, it is very unusual and very alarm-
20 raising. Would that be fair to say?

21 A. Oh, absolutely.

22 Q. You discussed that **Minor** had these problems in terms
23 of her mom and dad siding with each other and those kind
24 of things?

25 A. Yes, ma'am.

1 Q. Could those also make her more reluctant to disclose,
2 even to her mother, what was going on especially while Max
3 was in the home?

4 A. Possibly.

5 Q. And you said that **Minor** disclosed in terms of the
6 abuse at the hands of Mom. Did she ever disclose any
7 really bad beatings resulting in bruising of any kind or
8 hospitalizations or those kind of things?

9 A. She described whelps.

10 (WHEREUPON, a bench conference was held off the
11 record.)

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, I need to make a phone call real quick. I'm
14 going to ask you to retire to the jury room. Again, do
15 not undertake a discussion of this case in any way. Thank
16 you very much.

17 (WHEREUPON, the jury exited the open court at
18 approximately 11:36 a.m.)

19 THE COURT: You may step down, but please
20 understand you're still under oath.

21 THE WITNESS: Can I just stay here?

22 THE COURT: You can stay there, but you just
23 can't discuss your testimony with anyone.

24 THE WITNESS: I won't talk to a soul.

25 (WHEREUPON, court stood at recess for a short break.)

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Cross Examination by Ms. Hervéy

389

1 THE COURT: All right. Anything from the State
2 before we bring the jury back?

3 MS. HERVEY: No, Your Honor.

4 THE COURT: From the Defense?

5 MR. STODDARD: Nothing.

6 THE COURT: All right. Ask the jury to join us,
7 please.

8 (WHEREUPON, the jury entered the open court at
9 approximately 11:48 a.m.)

10 THE COURT: All right. Let the record reflect
11 the jury and alternates are in the jury box. You may
12 continue with your examination.

13 Q. I just have a few follow-up questions for you. Do
14 you still have that document that I showed you earlier?

15 A. I do. And I was looking through the papers that I
16 have during the break we just took. And I have one
17 correction I need to make with you and one correction I
18 need to make with Mr. Stoddard, if I'm allowed to do that.

19 Q. Okay. Go ahead. Have at it.

20 A. Does it matter which one I do first?

21 Q. Well, just pick me, but no.

22 A. Well, they ---

23 (Laughter.)

24 A. They connect.

25 Q. I see.

1 A. That's what reminded me. You asked about any other
2 statements that **Minor** made while at the hospital related
3 to allegations of sexual abuse. She did state in group
4 that -- she stated that her father, meaning Mr. Sipes, had
5 sexual thoughts about her and that he had invited her
6 little sister to have sex with he and his girlfriend. I
7 don't have, you know, verification for whether that
8 happened or not, but she did state that.

9 And that reminded me of the family session. And Mr.
10 Stoddard had asked me earlier if there were any other
11 things indicating that Mom may have a personality
12 disorder. In the family session, **Minor** confronted her --
13 could I read the family session note? It would be easier
14 than explaining it.

15 Q. Let us read it first just to make sure because there
16 are some things in here that aren't ...

17 A. Okay.

18 (Pause.)

19 MS. HERVEY: I don't have any objection. Do
20 you?

21 A. I'm going to discuss it whether I read the note or
22 not because the question has already been asked.

23 MR. STODDARD: The question has been asked and
24 no objection.

25 A. That's how I work. Sorry.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Cross Examination by Ms. Hervey

391

1 Q. And maybe you can just instead of reading it line-
2 for-line, let's get back to what question was asked that
3 you think this is appropriate to just to give a context to
4 the jury.

5 A. Mr. Stoddard asked me if there were any other
6 behaviors on the part of the mother that indicated that
7 she may have a possible personality disorder which could
8 be in fact inculcating personality disorder in her child.

9 Q. And what in that note reminded you of something?

10 A. Well, actually your question about anything else
11 about sexual abuse connected me to this which connected me
12 to this.

13 Q. All right.

14 A. I apologize. I'm normally much more prepared for
15 cases like this. I only found out yesterday afternoon I
16 was going to be testifying.

17 But this -- the patient in the family session
18 confronted her mother about telling her father --
19 confronted mother about telling her, the patient, that
20 father, Maxwell Sipes, quote, "would only have sex with
21 Mom in my bed." The mother denied that, but there was a
22 great absence of what I would consider appropriate affect
23 in Mom's denial of that which led me to believe that Mom
24 had in fact said to **Minor** your dad will only have sex
25 with me in your bed. Why a mother would say that to a

1 child for any other reason other than manipulating them in
2 some way or causing them to have an opinion about a parent
3 in some way is beyond me.

4 Q. Could it -- and let me just suggest an alternative
5 because you said you can't fathom one. Could it be -- if
6 it were true -- because you really did nothing to
7 ascertain the voracity of that statement?

8 A. Yes.

9 Q. You did?

10 A. No. I -- in -- that's where the clinical skills, the
11 forensic skills come into play because I'm very
12 experienced in deeming the voracity of a statement based
13 on one's body language, verbal responses, nonverbal
14 responses.

15 Q. Did Mr. Sipes deny that that was the case, or did he
16 even comment on it?

17 A. He looked very shocked and bewildered. He didn't
18 verbalize anything.

19 Q. So it could have been shocked and bewildered about
20 the disclosure, shocked and bewildered about what was
21 going on in front of him or ...

22 A. Well, my interpretation at the time was that that was
23 the first time he had heard anything like that.

24 Q. Could -- if it were true, giving the benefit of the
25 doubt that they did have sex in her bed for whatever

1 reason, would a mother find that alarming? Could that
2 raise concerns with her regarding whether or not something
3 inappropriate was going on between her husband or
4 boyfriend and her daughter?

5 A. But according to **Minor** it was not shared with her in
6 a manner of investigating whether something inappropriate
7 were going on between her and Dad. It was shared with her
8 in a manner of girl talk which would be a very
9 inappropriate boundary between a mother and a child.

10 Q. But we've acknowledged that there's lots of
11 inappropriate boundaries going on?

12 A. Which is also consistent with personality disorders,
13 which is why all this came to mind. Also in this note,
14 this is where Mom admitted that she had chased Dad with a
15 butcher knife and that that was in front of **Minor** And
16 Dad stated that Mom was drunk at the time and he minimized
17 the damage of that to **Minor** Mom admitted that she was
18 drunk at the time she was engaging in that behavior.

19 Q. But he minimized that so that it really wasn't as bad
20 as **Minor** made it out to be?

21 A. He clearly was protecting his wife.

22 Q. Or, while it seemed shocking and amazing to the rest
23 of us, there could have been something much more innocuous
24 about it? Is that possible?

25 A. It was apparent to me he was protecting his wife.

1 Q. Okay. Did anybody visit Minor And there is one
2 question that I did want to ask you. When was Minor at
3 your facility or at The Carolina Center for Behavioral
4 Health?

5 A. She was admitted on 6/19/03 and discharged the first
6 or second week of July '03.

7 Q. And at the time were you aware of whether or not
8 there was an ongoing custody dispute?

9 A. There was not. At the time Mom and Dad were
10 together. They had been separated and back together.

11 Q. Is it fair to say that you stated that Minor was very
12 vulnerable given her home life to sexual abuse, correct?

13 A. Yes, ma'am.

14 Q. Given that vulnerability, would probably have less
15 support and emotional support towards disclosing the
16 sexual abuse, correct?

17 A. Say that again.

18 Q. Given -- in a child who is more vulnerable like that,
19 are they more likely not to disclose the sexual abuse?

20 A. Certainly, because they have less support systems
21 available to them.

22 Q. And while she did do possibly this tentative
23 disclosure in your facility, you have no knowledge of
24 whether anybody really followed up on that to ascertain
25 its voracity?

1 A. No, ma'am, I do not.

2 Q. And in essence, she did fall through the cracks if
3 there was some voracity in her statement?

4 A. Certainly.

5 Q. And how would that affect her toward disclosing
6 further information?

7 A. That would depend on her support system. If an
8 individual's support system is tied to -- if perceived
9 loss of your support system is tied to whether you
10 disclose or not, then a child is more likely to not
11 disclose because they will then lose their support system.
12 It's my understanding that -- and I could be wrong. But
13 it's my understanding that when **Minor** made the disclosures
14 of abuse by her dad, he was already outside of her support
15 system because at that point Mom and Dad had separated and
16 were disputing custody.

17 Q. Do you oftentimes see victims of sexual abuse
18 disclose once the perpetrator is removed from their world?

19 A. It does happen. It often happens -- not often, but
20 sometimes happens during the course of a custody dispute.

21 Q. Does it often happen, custody dispute or not, when a
22 perpetrator is removed from their world? Say just Mom and
23 Dad divorced. Dad dies. Perpetrator, you know, moves to
24 wherever.

25 A. Yes, ma'am.

1 Q. That kind of thing.

2 A. It does.

3 Q. So it's not just necessarily a type of custody
4 dispute. Just in general when they feel safe enough when
5 that person is removed, then they may feel capable of
6 disclosing?

7 A. Yes, ma'am.

8 Q. I have nothing further.

9 THE COURT: Re-examine?

10 REDIRECT EXAMINATION

11 BY MR. STODDARD:

12 Q. You got into something that I -- and you two were
13 going so fast I could barely keep up. I'm very much of a
14 layman on this kind of stuff. I'm kind of getting
15 educated. But you mentioned something about a
16 disregulated affect regarding a comment **Minor** made. And I
17 think you said that's consistent with borderline
18 personality disorder?

19 A. Bipolar disorder.

20 Q. Bipolar disorder. And -- but it also happens to be
21 consistent with sex abuse maybe. Is that what you said?

22 A. It can.

23 Q. It can. Which is it most consistent with?

24 A. I couldn't answer that question because every
25 individual is different, and every individual develops

1 their own coping strategies to deal with the things that
2 they experience in their lives.

3 Q. The alleged -- when she made an allegation, my
4 father, biological father, tried to rape me, I think she
5 asked is it possible that was an initial disclosure. She
6 was actually -- if these allegations are true, that was
7 her first attempt. You said that's possible?

8 A. It's possible.

9 Q. Are there other possible explanations?

10 A. It's possible that she was copy-cattling the real-life
11 experience of her roommate. Her roommate was getting a
12 lot of attention and a lot of support from the group and
13 the staff. It's also possible that she was making it up
14 for reasons of her own.

15 Q. The copy-cattling, was that kind of y'all's conclusion
16 at the time?

17 A. We had concerns about that because of all the AXIS-II
18 or personality trait issues that we believed we were
19 seeing, that it was very likely that she was taking on
20 symptoms of other people trying to garner that attention.

21 Q. All right. That is one of the characteristics of
22 borderline you mentioned, taking on others?

23 A. Yes, sir.

24 Q. And by the way, do minors ever get reinforced -- if
25 minors that have troubles and emotional problems, the kind

1 of background **Minor** was raised in as has been described in
2 these records, do they ever get reinforcement by making a
3 false sex abuse allegation?

4 A. It's possible.

5 Q. Well, did **Minor** witness another child get a lot --
6 you said she got a lot -- saw somebody else get a lot of
7 support by making an allegation; is that right?

8 A. Well, it wasn't an allegation. She was discussing
9 real-life events that had happened to her.

10 Q. Well, I'm saying not -- yeah, I didn't mean an
11 allegation. But by saying that it happened ---

12 A. Yes, sir.

13 Q. --- whether real or not, you've got some
14 reinforcement.

15 You mentioned that the father's T.P.R. issue about --
16 between **Minor** and her mother whether the mother disclosed
17 the T.P.R., you know, said it happened earlier than it
18 really happened. And if **Minor** had misunderstood that, if
19 the mother had not intentionally misled **Minor** on that, say
20 you disregard that issue, does that change your impression
21 that the mother may have borderline personality traits?

22 A. No, sir.

23 Q. There's enough other stuff in the record. Is that
24 what you're saying?

25 A. I believe from my phone conversations with her and

1 the family session and also with **Minor** reports. That
2 would be my concern. I can't say that I could diagnose it
3 or say it as a definite.

4 Q. Well, you'd have to do a full work-up?

5 A. Exactly. And I haven't done that. That wouldn't be
6 fair to the woman.

7 Q. You mentioned that you sometimes do see false sex
8 abuse allegations in connection with -- I mean, a sex
9 abuse allegation is revealed sometimes in a custody case.
10 You've seen that?

11 A. Yes, sir.

12 Q. Do you see false allegations made in connection with
13 a custody case?

14 A. Yes, sir.

15 Q. Is it frequent?

16 A. Define frequent.

17 Q. Well, let me make -- let me change that. Is that a
18 -- is that something you've seen more than once?

19 A. Yes, it is. But I have to qualify that by explaining
20 I'm no longer working at an advocacy center such as Dr.
21 DeFelice where you get a true sampling of the population
22 because everyone that's reported in that county to
23 experience sexual abuse goes through the advocacy center.
24 I do forensics in my private practice. The majority of
25 the cases that come to me for assessment are cases that

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Redirect Examination by Mr. Stoddard

400

1 have been in litigation for years. Cases where there has
2 been a contentious, often a violent relationship between
3 the parents for a long time. So by the time they get to
4 me, there's typically three to five years worth of court
5 documentation and therapist documentation to be reviewed
6 to have a good global understanding of the case. That's
7 why the judges court order those types of cases to me
8 because it is somewhat my specialty to be able to explore
9 all that material and ferret out information that is then
10 helpful in determining what has or has not happened. .

11 Q. If Tina Sipes has borderline personality traits or
12 disorder, does that make her more likely to try to
13 manipulate her daughter?

14 A. Yes.

15 Q. If that's the case, given the background in the
16 records that you've seen, if Ms. Sipes wanted to push a
17 false allegation on Maxwell Sipes -- well, let me ask you
18 this. From the records you've seen, do you think there is
19 a possibility that what happened in this case is because
20 of the custody allegations ---

21 MS. HERVEY: Your Honor, object as to this
22 question. I think we're going into the providence of the
23 jury in an ultimate conclusion.

24 THE COURT: No. I think he's asking the
25 possibility. And we've had many questions about

1 possibility. I'm going to overrule the objection.

2 You may answer.

3 Q. Is there a possibility that there's collusion between
4 Tina Sipes and Ciera because of the custody to make a
5 false allegation?

6 A. The word collusion implies that both individuals are
7 working in concert purposely and specifically to defraud
8 someone. I can't say that I suspect collusion. What I
9 can say to you is that a child with borderline personality
10 traits raised by a parent with borderline personality
11 traits is going to have a very, very fragile connection
12 with that care-giver.

13 You remember yesterday Dr. DeFelice talked about
14 accommodation, how children will often not report or deny
15 something based on accommodation. Accommodation means
16 that I need this care-giver. This care-giver needs this
17 care-giver. Therefore, in order to not lose the care-
18 giver I need, I have to accommodate the abuse that is
19 going on by this care-giver. All right?

20 So if **Minor** felt that her report of Dad abusing her
21 would solidify her relationship with her mother and make
22 her more important to her mother, then that would be a
23 motivating factor for her to state a false allegation. If
24 her mother had questioned her in a leading manner -- say
25 totally hypothetically a mother discovers that a child has

1 redness in their vaginal area, and a mother says, did your
2 daddy touch you down there, it's okay if you tell me, I
3 won't be mad at you, you can tell me if your daddy did
4 that, the child's understanding is Mom wants me to say,
5 yes, my daddy touched me down there. That's a big reason
6 that false allegations occur, especially during the course
7 of custody and litigation -- because if people aren't
8 living together and trusting each other anymore, then they
9 don't like each other anyway. So they're more suspicious
10 of each other. But for people who are experiencing mental
11 illness, I don't feel like I could say that it is
12 purposeful collusion as much as wishful thinking. Is this
13 what happened? Oh, yeah, that's what happened. Good,
14 because that means this.

15 Q. Okay.

16 A. Do you understand the difference?

17 Q. I think so. And that is something that could occur
18 with someone **Minor** age?

19 A. Absolutely. I see that a lot in my private practice.

20 Q. Dr. DeFelice was -- I asked a question about
21 something that's in the counseling notes from the
22 counselor that counseled **Minor** where it said that, **Minor**
23 shared with me -- it says, "I've seen **Minor** and her
24 family since October 13th, 2003. I've seen her five times
25 during that period of time. **Minor** has shared with me

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Redirect Examination by Mr. Stoddard

403

1 some accounts of inappropriate behavior by her step-
2 father. Her initial remarks were in regards to his not
3 speaking with her when he called to talk to his three
4 biological children. He also did not make an effort to
5 contact her while she was at the children's home."

6 There's another one. There were actually two
7 letters. And one of them, I believe, was very similar,
8 but it said, her initial remarks were, yeah, "She felt
9 like this man adopted her eight years ago but now did not
10 want to talk with her since she was not talking to her
11 mother." And Dr. DeFelice said -- I think she said that
12 -- she attributed that as part of the accommodation. Did
13 you agree or disagree with that assessment?

14 THE COURT: Just a minute. No, we don't pit
15 witnesses against each other.

16 MR. STODDARD: Okay.

17 THE COURT: She can give her -- what is it --
18 interpretation, but not whether she agrees or disagrees.
19 Q. Is that inconsistent or do you find that inconsistent
20 with the allegations in this case?

21 A. It is my understanding that Mom and Dad were already
22 separated at that time and living in different states.

23 Q. Yes.

24 A. And it was expected that this would ---

25 MS. HERVEY: Your Honor, I'm going to -- she's

1 going with her understanding, and he's saying yes like
2 he's adopting that as the voracity of it. I think ---

3 MR. STODDARD: I'll make a hypothetical.

4 THE COURT: Well, she's just saying don't
5 editorialize on the answer. All right. Go ahead.

6 A. It's my understanding that Mom and Dad were already
7 separated and living in different states at that time. I
8 would question if accommodation would apply to that
9 situation because the basis of accommodation, as I
10 explained, is I need this care-giver, this care-giver
11 needs this care-giver. Therefore, so I don't lose this
12 care-giver, I have to accommodate the abuse by this one.
13 But if they were already separated and Mom was no longer
14 needing that care-giver, I'm not sure how accommodation
15 could apply to Minor reports at that time that she was
16 upset over her father not being in contact with her.

17 Q. Well, if her -- if she's made allegations that I
18 wanted to get out of the house to get away from him and
19 would do anything to get out of the house, would her
20 complaining that I'm not having enough contact with my
21 father at that time in October of 2003 be inconsistent
22 with that?

23 A. It would be.

24 Q. I've got no further questions. Well, in the record,
25 did you find other motives for her wanting to be out of

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Redirect Examination by Mr. Stoddard

405

1 the house besides, I've been abused -- or let me make that
2 sexually abused.

3 A. I could write you a list longer than my leg of
4 reasons that teenagers want to be out of the house. But
5 her consistent reports were regarding lack of privacy.
6 She didn't have a room after returning from D.J.J. The
7 only place she had to go to have any privacy was a closet.
8 Her reports that she didn't have any freedom. She didn't
9 get to go out and do things. Her reports that she had too
10 many chores, too many things were expected of her at home.
11 This was during the time that the infant twins were not
12 very old, so I'm sure it was a pretty chaotic situation
13 just encapsulated there.

14 She talked about her father's drinking and the
15 aggression with her mother. I believe she had in fact --
16 yes, she had in fact threatened to burn down the house
17 with all the family members in it prior to coming into our
18 hospital. That was one of the reasons she was admitted.
19 Did -- when she -- in the records when she said -- talks
20 about not wanting to be at home, if she names father or
21 mother, which one does she most often name as the reason
22 she wants to -- doesn't want to go home?

23 A. She did most often named mother.

24 Q. I have no further questions.

25 THE COURT: Recross?

1 **RECROSS EXAMINATION**

2 BY MS. HERVEY:

3 Q. If she doesn't want to be with her mama, why is she
4 lying about her daddy? Wouldn't it have made more sense
5 that she come up with more abuse at the hands of her
6 mother to get away from her?

7 A. She could have been lying about her mama. I -- all I
8 have is what's reported and what I observed from people's
9 physical behavior when they talk about these things.

10 Q. But Mr. Stoddard is asking you all these questions
11 about her wanting to be out of the house. You attribute
12 that to her mother. Therapeutically it would be most
13 consistent that she would tell lies about her mother to
14 get away from her mother, would it not?

15 A. It could, yes, ma'am.

16 Q. And this letter that he asked you about, that was
17 Michelle Matthews, did you review that document?

18 A. I did back when I reviewed records for him some
19 months ago.

20 Q. Do victims of sexual abuse, especially at the hands
21 of a family relationship, specifically a father, do they
22 often have mixed feelings about them?

23 A. Certainly.

24 Q. So it's not unusual for a victim of sexual abuse to
25 feel nonetheless neglected by a man who has sexually

1 abused them?

2 A. It would certainly -- it could certainly be part ---

3 Q. Well, let me rephrase it. To want attention from

4 that man even though that attention may be coupled -- you

5 know, you may not only get good attention but bad

6 attention?

7 A. Certainly, especially in a child with very poor

8 boundaries.

9 Q. And Nicole was one of those?

10 A. Certainly had very poor boundaries.

11 Q. So that's really consistent and not inconsistent with

12 ---

13 A. Yeah. I didn't say it was inconsistent with the

14 symptoms of abuse; I said it was inconsistent with

15 accommodation in my opinion.

16 Q. All right. But if you look at the global picture of

17 what was going on, it is consistent with that?

18 A. It certainly could be.

19 Q. Michelle Matthews goes on to say that **Minor** has

20 recently divulged some sexual abuse in the past. She

21 stated that her father forcibly sodomized her. She stated

22 that she did not feel that she could tell anyone and was

23 unsure of what to do when it was happening, that she did

24 not feel safe talking to her mother because her mother was

25 verbally abusive to her. That she stated that a lot

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Recross Examination by Ms. Hervey

408

1 acting out in the past dealt with wanting to get out of
2 the house. That she could not stand being around him,
3 that she felt trapped. That she stated that -- Minor
4 stated that he told her that even if she told authorities,
5 no one would believe her because she had been in this kind
6 of trouble in the past. Is that consistent with Minor
7 disclosure of sexual abuse?

8 A. She never made any of those statements to me.

9 Q. Is that consistent ---

10 A. But I mean, it could be consistent with a person's
11 disclosure.

12 Q. Is that consistent with the same Minor that you saw?

13 A. No, ma'am. She never made any of those statements
14 about her father to me. Her issues with him were -- tend
15 to be that he backed up mom on discipline, that she felt
16 that he didn't care for her as much as he cared for his
17 biological children, the name-calling, that he spanked her
18 with a belt. She did indicate on numerous occasions that
19 she wasn't safe at home, but she always spoke about it in
20 relation to her mother, not to her father. Only with the
21 drinking. But she really didn't indicate that he ever
22 became aggressive or anything like that when he was
23 drinking.

24 Q. But the not wanting to tell anybody, the not feeling
25 same, him telling her that the authorities wouldn't

1 believe her, that's consistent with her story of sexual
2 abuse? That's consistent of what a victim would
3 experience?

4 A. That is consistent with what a victim would
5 experience, yes, ma'am.

6 Q. And you stated that you've seen these false
7 allegations come up in custody dispute cases. When this
8 allegation was made, at least this tentative disclosure by
9 **Minor**, the custody dispute was not ongoing, correct?

10 A. What tentative disclosure?

11 Q. The comment about her biological father.

12 A. No. Her mother and father were reunited at that
13 time. Mother and adoptive father.

14 Q. Were you aware of whether or not there was any
15 custodial history between these parties, whether they had
16 ever been separated and custody been an issue in the past?

17 A. They had, yes, ma'am.

18 Q. And who got custody in the past?

19 A. I don't remember.

20 Q. If the mother got custody in the past and the mother
21 has more of a continuous relationship with the children
22 overall and you're dealing with very minor children in
23 this case in terms of the twins, would it be more likely
24 for a Court to grant custody to the mother or to the
25 father?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Recross Examination by Ms. Hervey

410

1 MR. STODDARD: Objection. I think it's beyond
2 her realm of expertise.

3 Q. Well, you deal with a lot of custody cases, correct?

4 A. Yes, ma'am.

5 THE COURT: You can ask her about her
6 experience.

7 Q. In your experience have you seen custody awarded more
8 to the mother than to the father in those situations?

9 A. Yes, ma'am.

10 Q. Have you ever seen a false allegation associated by
11 rectal prolapse?

12 A. No, ma'am.

13 Q. And in ever of Minor hospitalization with you, did
14 she complain of constipation?

15 A. There was a notation on a nurse's note that mother
16 reported that she was using suppositories quite often at
17 home, but our primary issues with her bowel movements were
18 related to her lack of eating or her binging and purging
19 at the hospital. There was nothing about -- I mean, those
20 things can cause constipation, but she was not reporting
21 it. She didn't ask for any suppositories or any
22 medication for constipation while she was there.

23 Q. While she was there?

24 A. Yes, ma'am.

25 Q. Thank you.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Re-Redirect Examination by Mr. Stoddard

411

1 RE-REDIRECT EXAMINATION

2 BY MR. STODDARD:

3 Q. In the letter that was -- I gave you the part of the
4 letter -- I gave you the last part of the letter. Minor
5 -- and I read the parts where Minor -- and I'll
6 characterize it as complaining about lack of communication
7 from the father, lack of attention from the father. Did
8 the letter from the counselor -- this is a summary though,
9 by the way, right?

10 A. Yes, sir.

11 Q. And this is the counselor's summary. We don't have
12 her notes?

13 A. No, sir.

14 Q. The rest of those -- when those -- when she does the
15 full disclosure, is it your understanding that that came
16 after the custody case was filed based on the ---

17 A. Based on the dates that I was given, yes, sir.

18 Q. That's all the questions I have.

19 MS. HERVEY: Just one.

20 RE-RECROSS EXAMINATION

21 BY MS. HERVEY:

22 Q. Are you aware of the actual date of disclosure?

23 A. No, ma'am, right now I'm not.

24 Q. So you don't know for certain that it came before or
25 after; you're just reading into ...

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Direct Examination by Mr. Stoddard

412

1 A. When I reviewed all the records that Mr. Stoddard had
2 several months ago and, you know, basically wrote a list,
3 a time line, of findings for him and gave that to him, I
4 haven't gone back to those notes.

5 Q. Okay.

6 A. Again, I wasn't -- this really caught me out of the
7 blue. Those notes are in storage now.

8 Q. That's fine.

9 (WHEREUPON, Defendant's Exhibit Number 3 was marked
10 for identification only.)

11 MR. STODDARD: I'm going to let you hold that
12 for a while. I may need to put this in through a
13 different witness.

14 I've got no further questions.

15 THE COURT: Very well. You may step down.

16 Thank you, ma'am.

17 THE WITNESS: Am I excused, sir?

18 THE COURT: Well, let's find out.

19 MS. HERVEY: She's excused.

20 MR. STODDARD: She's excused.

21 THE COURT: Subject to recall?

22 MR. STODDARD: Subject to recall.

23 THE COURT: You are excused unless you are
24 contacted.

25 THE WITNESS: Recall won't be today, will it?

1 THE COURT: No, ma'am. I can promise you that.

2 THE WITNESS: Thank you.

3 THE COURT: Yes, ma'am.

4 Mr. Foreman, ladies and gentlemen of the jury, the
5 reason I had to take a recess -- well, I don't know how to
6 explain it other than just saying my wife's had an
7 accident. She's all right, but I need to see about her.
8 So I'm going to have to ask us -- I hate to impose upon
9 you. But I have to let us adjourn today and start back
10 tomorrow. I live outside Walhalla, so it's about an hour
11 away. So I need to get on home if I could. I do
12 apologize and I appreciate your patience and your
13 consideration. But I've discussed it with the attorneys
14 and we'll be able to, I would think, complete the case
15 tomorrow?

16 MR. STODDARD: I would think so.

17 MS. HERVEY: I would think so, Your Honor.

18 THE COURT: That would be our intentions. But I
19 do want to thank you again for your patience with the
20 Court these three days but also at this time. Again, do
21 not undertake a discussion of the case among yourselves or
22 permit anybody to discuss it with you.

23 Is nine o'clock all right in the morning?

24 MS. HERVEY: Uh-huh (affirmative).

25 THE COURT: Nine thirty? Whichever.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Direct Examination by Mr. Stoddard

414

1 JUROR: Nine thirty, sir.

2 THE COURT: Nine thirty. Very good. Thank you,
3 sir. So I'll see you at that time. Very good. Thank you
4 very much.

5 (WHEREUPON, the jury exited the open court at
6 approximately 12:34 p.m.)

7 THE COURT: All right. Anything from the State?

8 MS. HERVEY: No, sir.

9 THE COURT: We'll start back at nine thirty in
10 the morning.

11 MS. HERVEY: Yes, sir.

12 THE COURT: Anything from the Defendant?

13 MR. STODDARD: Nothing from the Defendant.

14 THE COURT: All right. See you in the morning.
15 If you have anything to bring up, I think Ms. Cato is
16 going to be here for a while. So just ...

17 (WHEREUPON, court stops at recess for the day.)

18 **MARCH 8, 2007**

19 (WHEREUPON, court convened with all parties present
20 and the following proceedings were had.)

21 THE COURT: All right. Anything from the State
22 before we bring the jury in?

23 MS. HERVEY: Nothing from the State.

24 THE COURT: Anything from the Defendant?

25 MR. STODDARD: Nothing from the Defendant.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Cindy B. Stichnoth - Direct Examination by Mr. Stoddard

415

1 THE COURT: Very well. Ask the jury to join us,
2 please.

3 (WHEREUPON, the jury entered the open court at
4 approximately 9:32 a.m.)

5 THE COURT: Let the record reflect the jury and
6 alternates are in the jury box.

7 Mr. Foreman, ladies and gentlemen of the jury, I
8 again appreciate your consideration yesterday. Everything
9 is fine except we've got a new power pole in West Union.
10 Fortunately it was brittle. And she just looked down and
11 drifted off and hit it. It disintegrated and scared
12 everybody including her, but she's fine. No injuries or
13 anything like that. But I do -- it's not something -- I'm
14 sure you understand it's not something you want to hear
15 that far away from home.

16 But anyway we will now proceed with the Defense case.

17 MR. STODDARD: The Defendant calls Lorena Sipes.

18 THE COURT: There will be an interpreter?

19 MADAM CLERK: Yes, Your Honor.

20 (WHEREUPON, Gilberto Gonzalez was duly sworn to
21 interpret the following testimony.)

22 THE COURT: If you would, please, sir, give us
23 your name for the record.

24 MR. GONZALEZ: My name is Gilberto Gonzalez.

25 THE COURT: Very good. Thank you, sir.

1 LORENA SIPES,

2 Being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. STODDARD:

5 Q. Ms. Sipes, you and I discussed the need for an
6 interpreter before the trial?

7 A. (By interpreter) Yes.

8 Q. And we were kind of on the borderline, but you do
9 speak English; is that correct?

10 A. (By interpreter) Yes.

11 MR. STODDARD: If you could, when we -- if we
12 need you, Mr. Interpreter, I'll ask. But if you'd let me
13 do a few, just a little preliminary without
14 interpretation, I think it will go faster if it please the
15 Court.

16 THE COURT: Certainly.

17 Q. And you can understand what I'm saying?

18 A. (By witness) Right.

19 Q. And we've been able to communicate?

20 A. (By witness) Uh-huh (affirmative).

21 Q. But you have concern as things speed up with the
22 examination and cross examination, you were scared you
23 might misunderstand a question; is that correct?

24 A. (By witness) Right.

25 Q. You are Max Sipes' wife?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Lorena Sipes - Direct Examination by Mr. Stoddard

417

- 1 A. (By witness) Right.
- 2 Q. If at any time you feel like you need an interpreter,
3 stop me and let me know.
- 4 How long have you been living with Mr. Sipes?
- 5 A. (By witness) About three years and three months.
- 6 Q. Okay. And you have a child?
- 7 A. (By witness) Right.
- 8 Q. And a little girl?
- 9 A. (By witness) Uh-huh (affirmative), yes.
- 10 Q. How old is she?
- 11 A. (By witness) She's turn eight in April.
- 12 Q. And you -- obviously living with him three years,
13 you've gotten to know Max real well?
- 14 A. (By witness) Right.
- 15 Q. Do you have an opinion on his character for being --
16 for peacefulness or violence?
- 17 A. (By witness) Uh-huh (affirmative).
- 18 Q. And could you describe that character to the jury?
- 19 A. (By witness) The violence you say?
- 20 Q. We might need the interpreter. Do you have an
21 opinion as to his character for both peacefulness and
22 violence?
- 23 A. (By interpreter) Yes.
- 24 Q. And what is that opinion?
- 25 A. (By interpreter) He is a person of a great character.

1 You don't have to know him a lot to realize that he's a
2 great person.

3 Q. Do you have any problems with him regarding violence
4 or him -- especially toward your child?

5 A. (By witness) No.

6 Q. Answer any questions that the State has.

7 CROSS EXAMINATION

8 BY MS. HERVEY:

9 Q. We've never met, have we, Ms. Sipes?

10 A. (By interpreter) No.

11 Q. Did you understand that question, or did you really
12 need him to interpret?

13 A. (By interpreter) Not really.

14 Q. So could you answer the questions when you can
15 without the need of the interpreter?

16 A. (By interpreter) I feel more comfortable when the
17 interpreter interprets for me so everything will be
18 understood.

19 Q. But you had conversations numerous times about this
20 case, have you not?

21 A. (By interpreter) Not many.

22 Q. A few?

23 A. (By interpreter) Twice maybe.

24 Q. Did you have an interpreter then?

25 A. (By interpreter) No.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Lorena Sipes - Cross Examination by Ms. Hervey

419

- 1 Q. Do you work?
- 2 A. (By interpreter) Not now.
- 3 Q. Have you ever worked here?
- 4 A. (By interpreter) Yes.
- 5 Q. Where?
- 6 A. (By interpreter) I worked for Orion Rugs and
- 7 Milliken.
- 8 Q. Milliken? What was the first one? I didn't even
- 9 understand.
- 10 MR. GONZOLEZ: Orion. Orion Rugs.
- 11 MS. HERVEY: Orion Rugs?
- 12 MR. GONZOLEZ: Yes.
- 13 MS. HERVEY: Okay. I'm sorry.
- 14 A. (By interpreter) I also worked for Milliken and Mt.
- 15 Vernon Mills, Lumetal (phonic) Mills.
- 16 Q. How long have you lived here in South Carolina?
- 17 A. (By interpreter) Approximately about eleven years.
- 18 Q. So you go to the store and go to work and those kind
- 19 of things without an interpreter, correct?
- 20 A. (By interpreter) Of course.
- 21 Q. So you do understand a good bit of English. Would
- 22 that be correct?
- 23 A. (By interpreter) Yes.
- 24 Q. And you said that your daughter was eight?
- 25 A. (By interpreter) She will be eight in April.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Lorena Sipes - Cross Examination by Ms. Hervey

420

- 1 Q. Does she go to school?
- 2 A. (By interpreter) Yes. She's in second grade.
- 3 Q. And a public school here in the United States
- 4 somewhere?
- 5 A. (By interpreter) Yes. She goes to Marion.
- 6 Q. Does she speak good English?
- 7 A. (By interpreter) Perfect English.
- 8 Q. And she's actually been here for a lot of this trial,
- 9 has she not?
- 10 A. (By interpreter) Yes, part of it.
- 11 Q. Do you think that this is an appropriate subject
- 12 matter for your eight-year-old daughter?
- 13 A. (By interpreter) No.
- 14 Q. But she came here anyway?
- 15 A. (By interpreter) Yes. I had to bring her because my
- 16 sisters work second shift, and I have nobody to babysit
- 17 for me. That's why I brought her.
- 18 Q. You stated that you don't work now, correct?
- 19 A. (By interpreter) Yes.
- 20 Q. Does your husband work right now?
- 21 A. (By interpreter) No.
- 22 Q. What do the two of you do for money?
- 23 A. (By interpreter) My husband is going to college, and
- 24 the State is paying for it.
- 25 Q. Right. But how do you pay bills?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Lorena Sipes - Cross Examination by Ms. Hervey

421

- 1 A. (By interpreter) My husband receives a check.
- 2 Q. Is it unemployment?
- 3 A. (By interpreter) Yes.
- 4 Q. Do you receive unemployment?
- 5 A. (By interpreter) I was, but not anymore.
- 6 Q. Why not anymore?
- 7 A. (By interpreter) They stopped my check.
- 8 Q. And how long have you been unemployed then?
- 9 A. (By interpreter) November '05.
- 10 Q. You stated that you've been married to him for three
- 11 years three months, correct?
- 12 A. (By interpreter) Yes.
- 13 Q. Are you legally married or common law married?
- 14 A. (By interpreter) Legally.
- 15 Q. And how long did you date him before you married him?
- 16 A. (By interpreter) About six months.
- 17 Q. When did you meet him? Do you remember that date?
- 18 A. (By interpreter) Yes.
- 19 Q. Could you give me that date?
- 20 A. (By interpreter) It was November, Thanksgiving Day.
- 21 Q. Thanksgiving Day of what year?
- 22 A. (By interpreter) 2003.
- 23 Q. 2003? So at that time he had recently separated from
- 24 Tina Goodwin, correct?
- 25 A. (By interpreter) Yeah, that's what I know.

1 Q. And obviously he's not the father of your daughter?

2 A. (By interpreter) No.

3 Q. Does she have a relationship with her biological
4 father?

5 A. (By interpreter) Not now.

6 Q. How did you come to be aware of these charges?

7 A. (By interpreter) He told me.

8 Q. And did he tell you before he got arrested or when he
9 got arrested?

10 A. (By interpreter) Before.

11 Q. How long before?

12 A. (By interpreter) Well, I met him in November 25th.

13 And we dated ...

14 (By witness) We dated like two weeks. He tells me
15 about it like what's going on because he ...

16 (By interpreter) ... because he told me that he was
17 -- he misses his kids. He had asked for custody of -- I
18 knew that before he told me what had happened.

19 Q. During that time did he call them a lot?

20 A. (By interpreter) All the time and with tears in his
21 eyes.

22 Q. Which ones did he call? The one-year-old twins?

23 A. (By interpreter) No. The little girl.

24 Q. Which little girl?

25 A. (By witness) Taylor.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Lorena Sipes - Cross Examination by Ms. Hervey

423

1 Q. Taylor?

2 A. (By witness) Uh-huh (affirmative).

3 Q. Did you ever know him to have contact with Minor

4 A. (By interpreter) No.

5 Q. Have you ever seen him have visitation with his kids?

6 Have you ever been alone with him and Taylor?

7 A. (By interpreter) I never have seen him. I heard

8 about it. I heard that he was going to visit them to

9 Georgia. That's what I've heard.

10 Q. But just what you heard? They never came to your

11 house?

12 A. (By witness) No.

13 Q. No? Do you know whether or not he's ever been

14 required to have supervised visitation with his kids?

15 MR. STODDARD: I'm going to object to this

16 because this would have to be based on hearsay, for one

17 thing.

18 MS. HERVEY: She stated his reputation. That

19 goes to her knowledge. If she doesn't know about it, it

20 may affect her opinion.

21 THE COURT: Well, if he hasn't had supervised

22 visitation, then it wouldn't be a proper question.

23 MS. HERVEY: Well, I would -- you know, there is

24 a factual basis for my question. It's not just ---

25 THE COURT: But it's not in evidence.

1 MS. HERVEY: Right, but ---

2 THE COURT: I mean, again, let's be careful that
3 we don't -- what is it -- do more than is absolutely
4 necessary and appropriate.

5 Ladies and gentlemen of the jury, let me remind you
6 that questions are not evidence. The only purpose for a
7 question is to give meaning to the answer. So you have to
8 rely on the evidence that's been admitted in the court to
9 give effect to the answer.

10 Very good. You may proceed.

11 And that rule, of course, applies to both the State
12 and Defense.

13 Q. Did he ever talk to you about his visitation with
14 them when he was separate from Tina the first time?

15 A. (By interpreter) Yes, that's when we was dating. He
16 tell me that he went to visit his kids. He brought them
17 diapers and things that might needed. And he tell me that
18 he was very sad.

19 Q. Do you know whether or not he and Tina ever separated
20 for some period of time prior to him starting to date you?
21 Not that time, but before.

22 A. (By interpreter) What he tell me was that she left
23 from his house and he wanted to be with his kids. I
24 suggested to him to return and live with her because I saw
25 how he missed his kids. And he tell me I tried it and she

1 doesn't want it to work. That's why I requested custody
2 of the kids.

3 Q. And I'm confused. Did you say that you told him to
4 go back and try and work it out with her?

5 A. (By interpreter) Yes, because I saw he was sad.

6 Q. But you only met him in November of 2003?

7 A. (By interpreter) Yes.

8 Q. So you didn't know him when he was separated from her
9 in '01 or '02?

10 A. (By interpreter) No.

11 Q. Do you know anything about the circumstances of that
12 separation?

13 A. (By interpreter) No.

14 Q. He didn't tell you anything about the circumstances
15 of that?

16 A. (By interpreter) Not about '01, but he did tell me
17 when he left in September of '03.

18 Q. So did you believe that he had been with her for a
19 long time before that?

20 A. (By interpreter) No.

21 Q. How long do you think he was married to Tina?

22 A. (By interpreter) Based on what he told me, over ten
23 years.

24 Q. That he was married to her the whole time?

25 A. (By interpreter) No. He tell me they got separated

1 once.

2 Q. And what did he tell you about what the custody
3 arrangement was during that period of separation?

4 A. (By interpreter) In 2003?

5 Q. Whenever you know it to be.

6 A. (By interpreter) I don't understand. Based on what
7 he tell me, they were separated once. And they got
8 reunited and tried to make it work for the kids, and then
9 they got separated again.

10 Q. Do you know how long they were separated the first
11 time?

12 A. (By interpreter) Not really.

13 Q. Did he tell you who had custody of the kids during
14 that time?

15 A. (By interpreter) No, I could not answer.

16 Q. How many times do you know him to be married?

17 A. (By interpreter) Twice.

18 Q. Before you or including you?

19 A. (By interpreter) Before me.

20 Q. So you're his third wife?

21 A. (By interpreter) Yes.

22 Q. How many children do you know him to have?

23 A. (By interpreter) Only my child, and there's no kids
24 in our marriage.

25 Q. Okay. How many kids total does he have from all his

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Lorena Sipes - Cross Examination by Ms. Hervey

427

- 1 wives?
- 2 A. (By interpreter) As far as I know, five.
- 3 Q. Does that include yours?
- 4 A. (By interpreter) No.
- 5 Q. How often have you seen his son?
- 6 A. (By interpreter) Several times. He lived for a short
- 7 period of time with us.
- 8 Q. And then he went back to his mom's?
- 9 A. (By interpreter) Yes.
- 10 Q. During that time was Max working?
- 11 A. (By interpreter) Yes.
- 12 Q. How long has Max been out of work?
- 13 A. (By interpreter) Ever since 2005. From November
- 14 2005.
- 15 Q. You two lost your job at the same time?
- 16 A. (By interpreter) Almost.
- 17 Q. Were you working at the same place?
- 18 A. (By interpreter) No.
- 19 Q. It just happened to be around the same time?
- 20 A. (By interpreter) Yes.
- 21 Q. Where did you meet him at?
- 22 A. (By interpreter) At a Thanksgiving party.
- 23 Q. With his family, your family or friends?
- 24 A. (By interpreter) No. Through a friend that I had at
- 25 work.

- 1 Q. Have you ever been married before?
- 2 A. (By interpreter) Once.
- 3 Q. And how close was that in relation to Max?
- 4 A. (By interpreter) It was very different.
- 5 Q. How long in time was there a difference between your
- 6 first marriage and your second marriage?
- 7 A. (By interpreter) Four months.
- 8 Q. So you had only split from your first husband the
- 9 summer of '03?
- 10 A. (By interpreter) Yes..
- 11 Q. And Max had only been separated from Tina at that
- 12 point for three months -- four months?
- 13 A. (By interpreter) That's what I know.
- 14 Q. And did you live together before you were married?
- 15 A. (By interpreter) Yes, for a short time.
- 16 Q. And just to clarify, right now you have no source of
- 17 income, do you?
- 18 A. (By interpreter) No.
- 19 Q. So you're totally dependent upon him?
- 20 A. (By interpreter) For now.
- 21 Q. And does your daughter's father pay child support?
- 22 A. (By interpreter) Not now. He was doing it.
- 23 Q. In the past at some time?
- 24 A. (By interpreter) Yes.
- 25 Q. And you obviously love Max?

1 A. (By interpreter) Of course. That's why I married
2 him.

3 Q. And you don't want him to get into any trouble, do
4 you?

5 A. (By interpreter) I will never put my own child in
6 danger.

7 Q. But you're basing what you know of the situation from
8 what he's told you, correct?

9 A. (By interpreter) No.

10 Q. You've talked to the girls yourself?

11 A. (By interpreter) No.

12 Q. You've talked to the police?

13 A. (By interpreter) With respect to what?

14 Q. With respect to these charges.

15 A. (By interpreter) Yes.

16 Q. And did you talk to them and find out what they know
17 or what they felt?

18 A. (By interpreter) Yes.

19 Q. And did you talk to her doctors or anything like
20 that?

21 A. (By interpreter) No.

22 Q. So other than from Max, where have you learned about
23 these charges?

24 A. (By interpreter) From his family, from D.S.S. and by
25 the police.

1 Q. But you're pretty much totally dependent upon him at
2 this time?

3 A. (By interpreter) No.

4 Q. If Max was not able to bring in this money to pay
5 your bills, how would you make rent and provide for your
6 daughter?

7 A. (By interpreter) I've got relatives. I've got
8 brothers. I've got some other type of people that live
9 around here.

10 Q. But they're not giving you money right now?

11 A. (By interpreter) Not right now, but I got my daddy's
12 support.

13 Q. Nothing further.

14 MR. STODDARD: Nothing further.

15 THE COURT: All right. You may step down.
16 Thank you very much.

17 MR. STODDARD: Call Jeff Burney to the stand.

18 **JEFFREY CHARLES BURNEY,**

19 Being first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STODDARD:

22 Q. Mr. Burney, where do you reside?

23 A. I reside in Bowersville, Georgia. You'll have to
24 excuse me. I've got a cold.

25 Q. And are you employed?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jeffrey Charles Burney - Direct Examination by Mr. Stoddard

431

1 A. Yes, I am.

2 Q. And where do you work?

3 A. I work at Ed Murdock Chrysler Dodge Jeep Ford in
4 Lavonia, Georgia.

5 Q. Okay. And do you know Max Sipes?

6 A. Yes, I do.

7 Q. How do you know him?

8 A. Max was married -- my wife Donna, they share a child
9 together and were married for a few years.

10 Q. Okay. So you're married to his first wife?

11 A. Correct.

12 Q. And do you know Tina Sipes?

13 A. Yes, I do.

14 Q. How do you know her?

15 A. I know her through being married to Max here when me
16 and my wife started dating and was married almost twelve
17 years ago.

18 Q. Okay. Can you describe the level of contact you've
19 had with Tina Sipes?

20 A. Over the years through my wife having to meet Max at
21 a halfway point to exchange our son -- or their son Cory,
22 my stepson Cory -- I've had several times to meet with
23 Tina.

24 Q. Have you gotten to know -- have you ever -- have you
25 developed an opinion of her character for truthfulness?

1 A. Absolutely. Absolutely.

2 Q. And is this based on what Max tells you or your
3 personal ---

4 A. This was based on my own person opinions of me and my
5 wife of what has gone on through the years.

6 Q. And could you state your opinion?

7 A. I'm sorry?

8 Q. What is your opinion of Tina?

9 A. She's a pathological liar.

10 MS. HERVEY: Your Honor, I'm going to object as
11 to the term pathological as I think it presumes a
12 diagnosis that he's not familiar with. He can state that
13 she's a liar, but I think that goes beyond his area of
14 expertise.

15 Q. Could you ---

16 A. She's a liar in the strongest point. I don't know.

17 Q. I have no further questions.

18 CROSS EXAMINATION

19 BY MS. HERVEY:

20 Q. Do you work, Mr. Burney?

21 A. Yes, I do.

22 Q. But your wife does not work, correct?

23 A. No. My wife is disabled.

24 Q. And where do you work?

25 A. I work at Ed Murdock Chrysler Dodge Jeep in Lavonia,

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jeffrey Charles Burney - Cross Examination by Ms. Hervey

433

1 Georgia.

2 Q. That's the big one that advertises on T.V. all the
3 time?

4 A. Used to do a lot of advertising on T.V. Now mostly
5 newspaper.

6 Q. Do you have an opinion as to Max's truthfulness?

7 A. Max has always been straight up with me. You know,
8 he's always done, you know, what he said he was going to
9 do. He's always been straightforward, honest with me. No
10 problems whatsoever.

11 Q. Has he always provided for his son?

12 A. No, not always.

13 Q. As a matter of fact, right now he currently owes
14 child support?

15 A. He does. But Cory is taken care of by -- Cory is
16 just as much my son as he is Max and Donna's.

17 Q. Have you ever known him to be violent toward Cory in
18 any way?

19 A. Never have I ever seen, no.

20 Q. You've never seen that? Have you ever known him to
21 drink?

22 A. Have I ever known Max to drink?

23 Q. Uh-huh (affirmative).

24 A. I have never drank with Max before. Well, no. I
25 take that back. We did share a beer one day.

1 Q. Have you ever picked Cory up or those kind of things
2 and you've seen him to be in an inebriated state?

3 A. Max?

4 Q. Uh-huh (affirmative).

5 A. Absolutely not.

6 Q. And so he has a good relationship with his son Cory?

7 A. I think him and Cory has a good relationship. They
8 live so far away now. I know they talk on a regular
9 basis. I do know that Max has provided a cell phone for
10 Cory. And I do know they talk fairly regularly on a
11 pretty regular basis.

12 Q. And he's behind in child support right now. Has he
13 been behind in child support in the past, or is this a new
14 thing? Or does it come and go?

15 A. You would have to get with my wife probably on that.
16 Basically that's her business. I sort of stay out of it.
17 I provide for Cory and Donna and Amber and for my two
18 children. And I think Max is behind now, but I guess it's
19 because of his schooling and stuff like that. But Max
20 knows that I'll take care of Cory.

21 Q. So you don't know whether or not he's ever been
22 behind in the past or not?

23 A. Ma'am, I guess he's been behind some. Like I said, I
24 really -- that's really business between Donna and Max. I
25 know he's behind now. How long he's been behind, I don't

1 know.

2 Q. Well, isn't he supposed to pay about fifty dollars a
3 month?

4 A. I think it's more than that.

5 Q. Well, how much do you know it to be?

6 A. I think it's about fifteen dollars a week. I believe
7 that's right.

8 Q. So about two hundred dollars a month?

9 A. Correct.

10 Q. Would it be fair to say he's about four grand behind?

11 A. I think that's what my wife told you here the other
12 day, yes, ma'am.

13 Q. At two hundred dollars a month, doesn't that take a
14 little while to rise up to that level?

15 A. Well, I think there's some medical bills involved in
16 that, too, now. You know, you've got to take both into
17 consideration.

18 Q. So you may have paid those bills up-front, but you
19 expect to be paid back by Max for those? How does that
20 work?

21 A. My wife files the papers with him and he reimburses
22 us, yes.

23 Q. But he hasn't reimbursed you so far, correct?

24 A. He's making partial payments on it, I'm sure. I
25 think my wife said that she's got a money order from him

1 for so many dollars or something like that.

2 Q. Who carries insurance on him?

3 A. I do.

4 Q. So the medical bills would be out-of-pocket medical
5 bills?

6 A. Well, I had him on my family plan as I do my whole
7 family. And the co-pays we pay and the medical pharmacy,
8 I guess we pay that too.

9 Q. Is he a pretty healthy boy?

10 A. Yeah, he's real healthy.

11 Q. So he doesn't have four grand in medical bills
12 outstanding beyond what the insurance pays?

13 A. Well, now, I think he had some problems with his ears
14 here a few years back or a couple of years back or
15 something. No, he's pretty healthy.

16 Q. So he does owe some medical bills he owes from two
17 years ago?

18 A. Ma'am, like I said, I don't know. I just know that
19 he's in arrears right now, but I don't know how long or
20 what all it's for or anything like that.

21 Q. And for the most part he's lived with you all his
22 life, correct?

23 A. Yes, pretty much.

24 Q. And occasionally he may go see his father, correct?

25 A. He does.

1 Q. Why hasn't he ever gone to live with his father?

2 A. Well, he did go live with his father a few months.

3 It's been about a year or so ago. Two years ago. I don't
4 remember the exact time.

5 Q. But he came back?

6 A. Yes, ma'am.

7 Q. Why did he come back?

8 A. Well, he missed me and he missed his mama. Or missed
9 his mother and missed me.

10 Q. So it wasn't because he had any problems with Max or
11 anything like that?

12 A. No, ma'am.

13 Q. But he doesn't obviously miss him enough to go live
14 with him other than that one occasion that you know of?

15 A. Well, ma'am, we live on a pretty big farm. And we
16 have a lot of land. He has a four-wheel-drive truck that
17 he works on. He enjoys being on the farm.

18 Q. More than the need to be with his father?

19 A. Well, I'm not going to say that. I think he enjoys
20 the country way of life rather than living in a bigger
21 city or something, I guess is what I'm trying to say.

22 Q. The big city of Anderson?

23 A. Well, I think Max -- the big city of Anderson?

24 Q. Yeah.

25 A. Well, that's a big city, yes, ma'am.

1 Q. Compared to Lavonia, I guess?

2 A. Very big compared to Lavonia.

3 Q. I have nothing further, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. STODDARD:

6 Q. You were asked a number of questions about -- is it
7 Cory?

8 A. Cory.

9 Q. Has Tina ever done things to try to harm that
10 relationship?

11 A. Absolutely. Absolutely. And tried to harm the
12 relationship with me and my wife on numerous occasions.

13 Q. And what kind of things would she do?

14 A. Well, I don't know if we have enough time for all of
15 that or not, but I'll try to sum it up. I was married
16 before I married Donna. Donna has been married twice.
17 Tina, my wife's second husband, Ted, and my exwife Bonita
18 would all get in a phone conversation, a three-way phone
19 conversation, and try to wreak havoc on our families,
20 especially on me and my wife. It's a wonder me and my
21 wife are even still together, to be real honest with
22 y'all.

23 Q. Did she tell people things that weren't true to get
24 them to dislike the other person?

25 A. Constantly.

1 Q. I have no further questions.

2 RECROSS EXAMINATION

3 BY MS. HERVEY:

4 Q. Is that something you actually heard her say or
5 something they told you that she said?

6 A. I actually know. I actually know stuff that she's
7 done and tried to start between my family and stuff, yes.

8 Q. Listen to my question. Was it stuff you actually
9 heard her say or something people told you that she said?

10 A. Explain that a little bit.

11 Q. You said she's saying all these bad things about
12 everybody trying to stir this stuff up.

13 A. Right.

14 Q. Was this stuff that you were hearing her say or stuff
15 ---

16 A. It was stuff that was coming from my wife's exhusband
17 and my exwife and vice versa.

18 Q. So you didn't actually hear her say those things?

19 A. I know she has called up to the house before and try
20 to stir stuff up about -- try to stir stuff up with Cory
21 about his daddy and stir stuff up about ---

22 Q. Did you listen in on those conversations?

23 A. No, I did not.

24 Q. Nothing further.

25 RE-REDIRECT EXAMINATION

1 BY MR. STODDARD:

2 Q. Among those parties you mentioned that she would stir
3 things up. Do you know her reputation among all that
4 group for truthfulness?

5 MS. HERVEY: Your Honor, I'm going to object as
6 to who states other people's opinions. I think those
7 people need to come in here and say that kind of thing.

8 THE COURT: I think he has stated his opinion as
9 to her ---

10 MR. STODDARD: I'm asking for the ---

11 THE COURT: --- reputation.

12 MR. STODDARD: I've asked for his opinion. I
13 don't know if I've asked for his opinion. I don't know if
14 I've asked for her reputation.

15 THE COURT: I don't know if he can -- all right.
16 Well, ask him -- you know the way to ask a question, so
17 put it in the proper context.

18 Q. Do you know the reputation of Tina Sipes for truth
19 voracity in her community or among those people that know
20 her?

21 MS. HERVEY: Your Honor, I'm going to object as
22 to he has to establish knowledge. And who are these
23 people in this community? That's a pretty wide spectrum.
24 If he wants to know of the people that actually ---

25 THE COURT: That goes to the credibility, not to

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Jeffrey Charles Burney - Re-Redirect Examination by Mr. Stoddard

441

1 the admissibility. Overruled.

2 A. Explain it to me.

3 Q. She's asked you do you know this of your personal
4 knowledge.

5 A. I do know what she has done to my immediate family
6 and what she's tried to do to my immediate family.

7 Q. Do you know whether the other people like your exwife
8 or the people you mentioned, her reputation among them?

9 A. According to what my exwife told me, she was tired of
10 the whole ---

11 MS. HERVEY: Objection to what his wife told him
12 as being hearsay.

13 THE COURT: Overruled. State of mind.

14 A. According to what my exwife said, she wished she
15 would quit calling her and getting her involved in all
16 this stuff, that she didn't care. She was going on with
17 her life and she needed to quit trying to stir stuff up in
18 the family.

19 Q. No further questions.

20 THE COURT: Anything else?

21 MS. HERVEY: No.

22 THE COURT: All right. You may step down, sir.

23 MR. STODDARD: May the witness be excused?

24 MS. HERVEY: No objection.

25 THE COURT: Without objection, the witness may

1 be excused. Thank you, sir.

2 MR. STODDARD: Call Maxwell Sipes to the stand.

3 **MAXWELL EUGENE SIPES,**

4 Being first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STODDARD:

7 Q. Max, I want to start off by getting a little
8 employment history from you because that's kind of come up
9 here. What's the last job you held?

10 A. It was with Delta Mills in Pamplico, South Carolina.

11 Q. And how long did you work there?

12 A. I was there approximately nine months before they
13 closed the plant.

14 Q. And what was the approximate date that plant closed?

15 A. It closed in November, the second week of November of
16 '05.

17 Q. And prior to that, what was your job?

18 A. Prior to this plant?

19 Q. Yes.

20 A. I was at Blumenthal Mills in Marion, and I was laid
21 off there.

22 Q. And how long did you work there?

23 A. Approximately nine months.

24 Q. Now, was there a period of unemployment between those
25 two jobs?

1 A. Four months.

2 Q. And prior to that second -- I'm going backwards.

3 Prior to that second job we just talked about, what was
4 your -- where were you employed?

5 A. I was with LaFrance Industries in LaFrance.

6 Q. And how long did you work there?

7 A. Approximately nine months. I was laid off there.

8 Q. And was there a period of unemployment from that job
9 to the one in Marion?

10 A. Approximately two weeks.

11 Q. So you found a job real quick after that?

12 A. Job recruiters.

13 Q. The job in LaFrance, where did you work prior to
14 that?

15 A. I was with Central Textiles. I was the weave plant
16 manager.

17 Q. And how long did you work there?

18 A. That was a very short time. I worked with LaFrance
19 -- I mean -- I worked with Glen Raven Mills in Elberton,
20 Georgia.

21 Q. How long did you work there?

22 A. Almost five years.

23 Q. All right. And did you have a job prior to that?

24 A. Yes, with Gavian (phonic) Moore in Rome, Georgia.

25 Q. How long did you work there?

1 A. Five years.

2 Q. So after the one in Georgia, the jobs that you've had
3 since then -- and by the way, have you ever been fired
4 from any of those jobs?

5 A. No, sir.

6 Q. Were all of them reductions in force or layoffs?

7 A. Yes, sir.

8 Q. Now, after you lost the job in 2005, did you try to
9 find jobs after the one in 2005 for a period of time?

10 A. With Delta?

11 Q. The last job.

12 A. Yes, sir.

13 Q. And what all did you do to find work?

14 A. Well, I searched through at the unemployment office.
15 I searched through their computers. I also searched
16 through Head Hunters. And I just -- you know, everything
17 was aspirated. I couldn't -- a lot of it was out of
18 state.

19 Q. What -- by the way, can you leave the state during
20 this time?

21 A. No, sir.

22 Q. Did you -- what was your -- how would you describe
23 your vocation? What do you do at these plants?

24 A. I was a process engineer with Glen Raven Mills and a
25 department manager of inspection and quality control. And

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Maxwell Eugene Sipes - Direct Examination by Mr. Stoddard

445

1 I've been a weave plant manager and over quality and
2 inspection in different plants.

3 Q. So during the -- since approximately -- I'd go back
4 since you left Georgia. Has your standard of living kind
5 of dropped from 2003 to today?

6 A. Yes, sir.

7 Q. Because ---

8 A. No textiles.

9 Q. Well, I'm talking about your economics have been
10 tight, right?

11 A. Yes, sir.

12 Q. And ---

13 MS. HERVEY: Your Honor, I'm going to object as
14 to him leading. I think it was necessary to get through
15 the employment history, but it seems to be continuing
16 here.

17 THE COURT: Again, this is your witness, so
18 you're not to lead.

19 MR. STODDARD: Yes sir.

20 Q. And do you see any future, at least in South Carolina
21 right now, in your field for finding work prospects?

22 A. No, sir.

23 Q. So what are you doing now?

24 A. I'm currently enrolled in Horry Georgetown Technical
25 College. I have two more semesters left in construction

1 project management.

2 Q. Now, are you on some kind of special retraining
3 program?

4 A. Yes. T.R.A. It's through the federal government.

5 Q. And what is it -- can you explain that program?

6 A. It's for displaced textile workers to retrain.

7 Q. And do you consider yourself a displaced textile
8 worker?

9 A. Yes, sir.

10 Q. Now, do you pay child support to your first wife?

11 A. Yes, sir.

12 Q. What is your usual amount of child support?

13 A. Whatever I have I can send, I send.

14 Q. No. The ordered amount, the amount that's ordered.

15 A. Fifty dollars per week.

16 Q. And how much do you normally pay?

17 A. Forty-five, thirty, forty, whatever I have left over.

18 Q. And do you still pay child support to Tina?

19 A. Yes, I do.

20 Q. Now, what are you ordered to pay?

21 A. Since I was laid off, it was cut back to one hundred
22 dollars per week.

23 Q. Is there still an arrearage building because you've
24 never gone back to court to get it reduced?

25 A. Yes. You put in those papers for that.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Maxwell Eugene Sipes - Direct Examination by Mr. Stoddard

1 Q. Okay. I want to get into a little bit of histo

2 When did you marry Tina Sipes?

3 A. In ~~1992~~.

4 Q. And at some point you were divorced. When was that?

5 A. Yes, sir. In ~~1999~~.

6 Q. And y'all lived separate and apart at that time?

7 A. I moved into an apartment in Summerville and then
8 later moved to South Carolina.

9 Q. Summerville, Georgia?

10 A. Uh-huh (affirmative).

11 Q. And then later South Carolina. And when did you and
12 tina reconcile?

13 A. The end of January of '0 ...

14 Q. Do you have a copy -- you had some papers ---

15 A. '02. '02.

16 Q. You had some papers with you. Is there a paper that
17 helps you remember that date?

18 A. It was '02, and then we filed -- I mean, we did our
19 lease on our apartment on **Minor** birthday which is
20 .

21 Q. So you had already reconciled prior to doing that
22 lease?

23 A. At the end of January of '02.

24 Q. And then signed this lease in February of '02?

25 A. (Nodded head up and down in the affirmative.)

1 Q. And let's see. What's next.

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

3 Q. And you subsequently separated again; is that
4 correct?

5 A. Yes, sir.

6 Q. And when did you separate the last time?

7 A. September 25th of '03 which was my son's birthday.

8 Q. Now, during the first separation, did you visit the
9 children and they visit you?

10 A. Yes. I drove all the way to Summerville which is
11 about three hours' drive every other weekend and picked my
12 children up and brought them to my family's. I stayed
13 with my mother or my grandmother.

14 Q. Okay.

15 A. That's where I lived. And I visited with them there
16 and I drove all the way back on Sunday to have them
17 returned to their mother.

18 Q. How would you describe your relationship with Tina
19 and the family dynamic that you lived in with Tina? Oh,
20 let me stop for a minute. I know the question I meant to
21 ask earlier.

22 When you did separate the first time, where did Tina
23 go to live?

24 A. The first time?

25 Q. Yes.

1 A. She remained in the family home.

2 Q. With who?

3 A. With the children.

4 Q. Did anyone live with her?

5 A. She moved Tommy Shane Goodwin in there. She has the
6 last name Goodwin. She married him right after the
7 divorce.

8 Q. Had she had a relationship with him prior to y'all's
9 marriage, or do you know?

10 A. Well, the private detective that I had investigate

11 ---

12 Q. Well, don't get into what somebody told you.

13 A. Okay.

14 Q. But anyway, so she lived with somebody that she
15 married?

16 A. Yes, sir.

17 Q. And then y'all reconciled after that?

18 A. Yes, sir.

19 Q. Tell me the circumstances when y'all broke up this
20 last time. What was going on?

21 A. She always accused me of going with someone. It
22 wasn't just one specific person; it was just anybody. Any
23 lady she would see. And I worked long hours in the
24 textile plants which I did, you know, sunup to sundown
25 most of the time. And if I wasn't at work, I was at home

1 or with my grandmother or my mother or my children. I was
2 always there and nowhere else.

3 Q. What kind of -- when you say you worked long hours,
4 could you describe your average hours?

5 A. When I was at Central -- because she was there when I
6 was working for Central Textiles -- I had two hundred and
7 fifty employees and four supervisors with a twelve-hour
8 operation which ran seven days a week. I had to work
9 seven days a week because I had to schedule the whole
10 process of the plant, of my side of the plant, each day
11 including Saturdays and Sundays. And especially during
12 the week I would have to go in sometimes like six in the
13 morning and wouldn't get off till about six, six thirty or
14 seven in the evening. And I was home with them the rest
15 of the day unless I had to go back at night for something
16 which is just a mile from the house. And then when I went
17 to my other job, when I took the other job, the other
18 company, it was more or less from six in the morning to
19 about five in the evening time. You know, some weekends I
20 had to work.

21 Q. What kind of events would cause Tina to accuse you of
22 having an affair? What would go on?

23 A. Really it wasn't anything. Just because I wasn't
24 there, I guess. I don't know, you know ---

25 Q. Well, how long ---

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Maxwell Eugene Sipes - Direct Examination by Mr. Stoddard

451

1 A. --- anything specific.

2 Q. How long would you be gone? I mean, would it be like
3 all night or all -- until after ---

4 A. Well, sometimes I would get a call in the middle of
5 the night to come back to the plant, you know, for some
6 problem, you know, the supervisor or shift or something.

7 Q. Let me go back to when you lived -- the marriage to
8 her the first time before the first separation. Where
9 were y'all living then?

10 A. Before our first divorce? I mean, we only had one
11 divorce. But before the divorce?

12 Q. Yeah, before the divorce.

13 A. We was living on Raymond Street in Summerville,
14 Georgia.

15 Q. And what were your hours then?

16 A. I was working with Galian Lloyd (phonic). It varied.
17 I worked rotating shifts twelve hours a day which when I
18 worked, I spent fourteen or fifteen hours a day working,
19 driving and you know ...

20 Q. Now, did Tina do anything for income back then?

21 A. Yes. She babysitted (phonic) children on three
22 shifts.

23 Q. How many days a week?

24 A. Mostly seven days a week.

25 Q. So you had children in the home twenty-four hours

1 around the clock?

2 A. Yes, sir.

3 Q. Seven days a week?

4 A. Yes, sir.

5 Q. What would Tina do for sleep, or how would she take
6 care of the children when she was asleep?

7 A. At night -- she had some parents that worked on the
8 third shift at the plant over there at Mt. Vernon, and she
9 would have a place for them to sleep somewhere, then she
10 got to sleep.

11 Q. So the children -- she would sleep when the children
12 slept?

13 A. Yes.

14 Q. At the place where you were residing when the events
15 that you're accused of, where was that?

16 A. 109 Paul Revere Trail, Anderson.

17 Q. And can you describe that apartment? Was that an
18 apartment or what is it?

19 A. It's a townhouse. And it's two bedrooms, one and a
20 half bath. Has half a bath downstairs, a kitchen and a
21 living room, and upstairs has two bedrooms and one full
22 bath.

23 Q. And how far -- can you describe the configuration of
24 just -- are there any bedrooms downstairs?

25 A. No.

1 Q. What's the configuration of the bedrooms upstairs?

2 A. Had one front bedroom at the front of the house, and
3 then you have like in the middle like are steps and then
4 the bathroom between that, and on the other side, the back
5 of the house, had a bedroom.

6 Q. Okay. About how far are the two bedrooms apart?

7 A. Probably from here not even as far as that wall
8 there. The door.

9 Q. Can you see -- from one bedroom to the other when the
10 doors are open, can you see in?

11 A. Yes, you can.

12 Q. And that one bedroom was yours and Tina's?

13 A. Yes, sir.

14 Q. And one was Taylor's and Minor

15 A. Yes, sir.

16 Q. And when your wife was pregnant, there's been some
17 testimony that she slept downstairs. Is that how things
18 happened?

19 A. The last few -- the last week toward the end of the
20 pregnancy, she slept down there on the couch.

21 Q. How long did she do that?

22 A. Not even a week probably.

23 Q. All right. Prior to that what did she do when she
24 was pregnant?

25 A. She slept upstairs in our bed.

1 Q. Did there come a time that you didn't sleep in the
2 bed with her?

3 A. Yes, until she got so big. I toss and turn, so I
4 would make a pallet in the floor. That's where I slept.

5 Q. And **Minor** and Taylor slept in their room?

6 A. Yes.

7 Q. Now, when Taylor began having her problem -- I mean
8 **Minor** starting having her problems, did you do things to
9 try to get her help?

10 A. Yes, I did.

11 Q. Can you describe some of the things you did?

12 A. The first thing I did when we was living in the
13 apartment before we moved to Central -- I have a friend
14 that I grew up with which is Tim Busha. And at that time,
15 he was working with the criminal justice department at
16 Tri-County Tech. And I had found out that he had done
17 something with the courts to help children and adolescents
18 that have problems. And I called him and asked him, you
19 know, the problems that we were having with her. It was
20 stealing and getting into trouble. What can I do, you
21 know? And he said, well, there's some homes that you
22 could probably get her in like John de la Howe or
23 something that's down in McCormick. That's one of them.
24 There's a couple of places like that. And that was part
25 of our conversation.

1 And also, my insurance at Glen Raven Mills helped
2 with getting a psychologist for her which was Dr. Ernest
3 Martin here in Anderson. And he treated her for some
4 stuff and tried to give her some help and tried to get her
5 stabilized on some medicine.

6 Q. A psychiatrist?

7 A. A forensic psychologist -- psychiatrist.

8 Q. He prescribed some medicine?

9 A. Yes, sir.

10 Q. And did you do anything else to try to get her help?

11 Did you do anything else to try to get her some help?

12 A. Yes. When we were in Central, after D.S.S. had got
13 involved with this about her endangering our minor
14 children, we couldn't hardly find a place to get her in.
15 And my uncle A.Y. Brown, which is a retired SLED agent, he
16 pulled some strings and got her in the Carolina Behavioral
17 Health in Greer.

18 Q. So you helped get her into The Carolina Center?

19 A. Yes, I did.

20 Q. There was some testimony way back somewhere in this
21 trial about **Minor** having a lower G.I. test. Are you
22 familiar with that?

23 A. (Nodded head up and down in the affirmative.)

24 Q. Was that sometime while you were living with Tina or
25 while y'all were separated?

1 A. We were separated. Well, we were divorced.

2 Q. Divorced. I keep calling that separation.

3 A. That was in January of '02.

4 Q. Okay.

5 A. The early part or maybe the second week, somewhere in
6 there. I don't know the exact date. And I took a day off
7 and went out there to be with her and her mother and
8 Taylor when they did that.

9 Q. Was that about when y'all reconciled after that?

10 A. Yeah, not long.

11 Q. All right. So she had a lower G.I. Do you know
12 anything about why she was having it or what was going on?

13 A. She was having problems from her rectum or something.
14 I don't remember. I mean, I know it was some kind of a
15 problem that she was having down there is all I know.

16 Q. I want to talk about -- there's been some testimony
17 about a couple of hearings in family court or some kind of
18 court in Georgia in family court here in -- well, actually
19 in Pickens. The court down in Georgia, that's some sort
20 of child support hearing?

21 A. Yes. She was trying to get me on abandonment charges
22 and said that I owed her five thousand dollars in child
23 support which I was already paying her child support in
24 Pickens County. So we had already been to a hearing
25 December 2nd.

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Maxwell Eugene Sipes - Direct Examination by Mr. Stoddard

457

1 Q. Approximately when was that hearing?

2 A. That hearing was January of '03, and my child custody
3 hearing was December 2nd of '02.

4 Q. And ---

5 A. '03 and January of '04. I'm sorry.

6 Q. She presented some sort of check to the Court and
7 said that it bounced?

8 A. Yes, and it wasn't even in my handwriting.

9 Q. So you got to see that check?

10 A. I saw it, and the writing didn't match.

11 Q. While you were together the second time -- not
12 married, together -- were you -- when she was living with
13 you, did you pay her child support?

14 A. No, I didn't.

15 Q. Do you know anything about her needing checks from
16 you to keep the children on Medicaid?

17 A. Not to my knowledge.

18 Q. Do you know if she had the children on Medicaid?

19 A. I know she was talking about putting the twins on it
20 because I had the other -- **Minor** and my son and Taylor
21 and myself on insurance through my company.

22 Q. She mentioned something a while ago about she still
23 kept a residence in Georgia. Do you know anything about
24 that?

25 A. She did not. She give that up at the end of January

1 when I moved her -- well, I moved her actually the first
2 of February. Between January and February she was moved
3 -- I moved her in because we signed the lease on the
4 apartment.

5 Q. And the hearing, when you filed for custody -- oh,
6 too many things.

7 I'm handing you what's been marked Defendant's
8 Exhibit 3.

9 (Off record discussion between Mr. Stoddard and Ms.
10 Hervey.)

11 Q. I show you this. Does this show you when you served
12 the custody case on Tina?

13 A. October 26, 2003.

14 Q. And that was filed in Pickens County?

15 A. Yes, sir.

16 Q. Because that's where y'all had lived prior to her
17 leaving or your separation?

18 A. Yes, sir.

19 Q. Now, did you leave her or did she leave you, did
20 y'all leave each other?

21 A. She left me.

22 Q. You did leave for one night, didn't you?

23 A. Yes, I did.

24 Q. Tell the jury about that.

25 A. She was accusing me of going with other women. This

1 wasn't just one night. It was just a built-up thing over
2 a period of time. And I got tired of it and I told her --
3 I says, you can stay here in this house with these
4 children. I'll help you take care of them. And I said,
5 I'm going to go live with my grandmother. But I'll stay
6 here and help you with these children. And then I went to
7 work the next day and I come back by the house and the
8 house was cleaned out and gone -- everything gone.

9 Q. And how about your checking account?

10 A. And my checking account was cleaned out.

11 Q. Did it actually have some overdraft charges as a
12 result?

13 A. I don't remember. It might have been a little bit.
14 Not much. But she also took money to rent a U-Haul too.
15 I got copies of all that.

16 Q. Have you ever seen Tina physically abuse **Minor**?

17 A. Yes, I have.

18 Q. Can you describe some instances?

19 A. One incident when we lived in Summerville in our
20 home. Her grandmother Nora was there, and we was in the
21 living room. And I don't know what **Minor** did, but
22 something Tina didn't like. She was in the kitchen.
23 **Minor** was in the kitchen. And I was sitting on one
24 recliner, and Tina was sitting on the other recliner, and
25 Nora was sitting on the couch. And -- what about the bad

- 1 words? Do you want me to say the bad words?
- 2 Q. Just tell us what happened.
- 3 A. Well, **Minor** done something in the kitchen that Tina
- 4 didn't like. And she had **Minor** come in there and she
- 5 jumped up and called here a f-ing little B-I-T-C-H and
- 6 slapped her in the face. And I went over and put my
- 7 finger in her face and I said, you will never do that
- 8 again.
- 9 Q. And was that before y'all got divorced?
- 10 A. It was approximately three or four months.
- 11 Q. Have you seen any other instances?
- 12 A. Yes, I have.
- 13 Q. Can you describe some?
- 14 A. When we was living in the apartment at Paul Revere
- 15 Trail.
- 16 Q. What happened?
- 17 A. They had gotten into it, and she put her fist in her
- 18 back and hit her with her fist several times and slapping
- 19 her.
- 20 Q. And what -- were you there?
- 21 A. I broke it up.
- 22 Q. Were there any others?
- 23 A. Well, they used to have numerous altercations, you
- 24 know, fussing and saying bad words. You know, I felt like
- 25 a referee most of the time.

1 Q. Now, during the second -- when you lived together the
2 second time, were you working a lot of the time out of the
3 house?

4 A. You're talking about at 109 Paul ---

5 Q. Yeah.

6 A. Oh, yes. I worked for Glen Raven and I had to drive
7 to Elberton each day and back which is about an hour. And
8 so I spent many, you know -- I had to be there from eight
9 o'clock to five o'clock each day. And so that's about
10 eleven hours a day, you know, each day.

11 Q. And were you -- was Tina working during this time?

12 A. She worked once for a very short time. And right
13 after she found out she was pregnant, she stopped working.

14 Q. The things that **Minor** has accused you of, did you do
15 these things?

16 A. No, I didn't. No.

17 Q. I've got no further questions.

18 MS. HERVEY: May we approach?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 THE COURT: Mr. Foreman, ladies and gentlemen of
23 the jury, y'all have been in the jury box for a while now.
24 I'm going to suggest that we take a short break at this
25 time. When you're ready to come back, just knock on the

1 door and we'll continue. Again, please do not undertake a
2 discussion of the case among yourselves in any way.

3 (WHEREUPON, the jury exited the open court at
4 approximately 10:36 a.m.)

5 THE COURT: Anything from the State before we
6 take a recess?

7 MS. HERVEY: Nothing from the state.

8 THE COURT: From the Defense?

9 MR. STODDARD: Nothing from the Defense.

10 THE COURT: Mr. Sipes, you can step down, but do
11 you understand you're still under oath and cannot discuss
12 your testimony with anyone including your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Very good. Thank you.

15 (WHEREUPON, court stood at recess for a short break.)

16 THE COURT: All right. Anything from the State
17 before we bring the jury back?

18 MS. HERVEY: Yes, Your Honor. I actually went
19 out to go to the bathroom, but a member of my office
20 stayed in here. She believes she overheard a conversation
21 between Mr. Stoddard's client regarding his testimony.
22 She told him she didn't think that was appropriate. Mr.
23 Stoddard, I believe, responded to her that he thought
24 because he was a lawyer he could talk to his client.

25 THE COURT: No. In fact, I instructed the

1 witness that he couldn't -- since he was under oath,
2 couldn't discuss his testimony with anybody including his
3 lawyer.

4 MR. STODDARD: I misunderstood because I thought
5 I heard -- I always understood that was the case. I
6 thought I heard you say with anybody except your lawyer.

7 THE COURT: No, sir, I never said except the
8 lawyer.

9 MR. STODDARD: Okay. And he said except the
10 lawyer. Now, we talked -- we did talk to each other
11 outside the courtroom, not about the case at all. In
12 fact, if he went into the case I stopped him. I can't
13 even remember what we talked about. When we came in, we
14 began to discuss his testimony. I started -- I'll tell
15 you what was said. He said, how am I doing? And all I
16 did was shook my head and did this. He started -- he
17 asked me a question about his testimony, and that's when I
18 was interrupted. And I don't believe I ever responded.
19 And I said, I'm not going to talk to you anymore.

20 THE COURT: No. The thing is whatever was done
21 is done. The fact is we took a break for the convenience
22 of everybody to include the witness. And we didn't have
23 to or if we had -- technically we could have continued on.
24 I usually do. I don't like to break testimony. And no
25 more could you walk up -- this is for both attorneys.

1 That's why I never say you can talk to your lawyer. You
2 couldn't any more talk to your witness on the stand while
3 he's sitting on the stand as you could if he was sitting
4 out in the audience or sitting at your table during a
5 break. So no, don't ever be confused to think that I
6 permit coaching or anything else during testimony.

7 All right. But as I say -- anything else? I can
8 only admonish that the Court is not pleased.

9 MR. STODDARD: And I apologize anyway. I'm
10 being truthful in what we discussed.

11 THE COURT: Anything from the State?

12 MS. HERVEY: I'd like to know the question that
13 he asked Mr. Stoddard before he did or didn't answer.

14 MR. STODDARD: He asked -- let's see if I can
15 get it -- if she asks was I living with someone, what
16 should I say? And I didn't respond, and that's when we
17 were interrupted. And I don't -- that was it.

18 THE COURT: All right. Anything else?

19 MS. HERVEY: Nothing further, Your Honor.

20 THE COURT: Anything from the Defense?

21 MR. STODDARD: Nothing from the Defense.

22 THE COURT: All right. You may take the witness
23 stand, Mr. Sipes. You do understand you're still under
24 oath?

25 THE DEFENDANT: Yes, sir.

1 (WHEREUPON, the witness resumed the witness stand.)

2 THE COURT: Very well. Ask the jury to join us,
3 please.

4 (WHEREUPON, the jury entered the open court at
5 approximately 10:53 a.m.)

6 THE COURT: All right. Let the record reflect
7 the jury and alternates are in the jury box.

8 You may proceed.

9 MS. HERVEY: May it please the Court, Your
10 Honor.

11 CROSS EXAMINATION

12 BY MS. HERVEY:

13 Q. Mr. Stoddard asked you a lot of questions about your
14 employment history. And I just have a couple of things
15 because you listed a lot of jobs, and I really didn't get
16 all the dates. And I apologize for that.

17 You stated that you kind of worked off and on at
18 mills in the upstate for the past few years; is that
19 correct?

20 A. I've worked in the textile business for almost twenty
21 years. I was a manager for seventeen years.

22 Q. When was that?

23 A. What, a manager?

24 Q. Uh-huh (affirmative).

25 A. I was a manager for Mt. Vernon Mills in Tryon,

1 Georgia. I was a manager with Galian Lloyd in Rome,

2 Georgia.

3 Q. When was the longest job you've ever held?

4 A. The longest I've had one job is five years in the
5 textile industry.

6 Q. And when was that?

7 A. It was with Galian Lloyd.

8 Q. When was that?

9 A. When was it? That was in -- from 1994 until 1999.

10 Q. So since 1999, what's the longest job you've ever
11 held?

12 A. With Glen Raven Mills.

13 Q. For how long?

14 A. It was almost five years.

15 Q. I just asked you what's the longest job you've ever
16 had, and you said five years. And you said that was back
17 from '94 to '99. Since 1999 what's the longest job you've
18 ever held?

19 A. Glen Raven Mills.

20 Q. And that was for five years. What years was that?

21 A. That was from 1999 until 2003.

22 Q. And then you lost that job. Is that when you went to
23 Central?

24 A. I didn't lose that job.

25 Q. Well, that's -- you got laid off. You stopped

1 working there.

2 A. No. I took the job at Central Textiles because my
3 grandfather was getting sick again with cancer. And I
4 wanted to work closer to home because I was driving one
5 hour to work each day. And time I got home, I didn't have
6 a lot of time left in the evening.

7 Q. Okay. But the job at Central lasted how long? A few
8 months?

9 A. Approximately two or three months, yes.

10 Q. And then you got laid off or they shut down or
11 whatever happened?

12 A. No. I took a job as a process engineer with LaFrance
13 Industries in LaFrance, South Carolina. And because it
14 was less time, I had too much time -- I had more time
15 involved in my previous job at Central with all those
16 hours. And my grandfather was sick and my grandmother
17 needed help.

18 Q. All right. And your grandfather has actually since
19 passed away, has he not?

20 A. He has.

21 Q. And now you're going to Horry County? That's near
22 Myrtle Beach, isn't it?

23 A. Yes.

24 Q. And do you actually go down there, or do they have
25 some satellite program up here in the upstate?

1 A. What are you talking about?

2 Q. Well, do you go to the beach to go to school, or do
3 you work up here in some program? Go to school up here?

4 A. No. I live in Marion, South Carolina which is
5 thirty-eight miles from Myrtle Beach.

6 Q. So you moved down there to go to this school, or did
7 you move down there for other reasons?

8 A. No. When I got laid off at LaFrance Industries, I
9 took a job with Blumenthal Mills through a recruiter. I
10 was out of work for approximately two weeks and went to
11 work with Blumenthal Mills.

12 Q. And is that down there?

13 A. Yes, it is.

14 Q. And then you started going to school at Horry County?

15 A. No. I was out of work for four months on layoff. I
16 went to work with Delta Mills in Pamplico which is twenty-
17 six miles from my house. I didn't have to move where I
18 could get employment. And then the plant shut down. I
19 had no option. The employment ceased.

20 Q. And then you went to Horry County?

21 A. I went to school in Horry County, but I live in
22 Marion County. I drive back and forth each day.

23 Q. And are we talking like college courses? Is it Voc.
24 Rehab? Is it tech school, trade school? What are we
25 talking?

- 1 A. College.
- 2 Q. College courses?
- 3 A. Yes, it is.
- 4 Q. And did you graduated from high school or did you get
- 5 a G.E.D. to get into this program?
- 6 A. No. I already have an Associate Degree in textile
- 7 management. And textiles is gone. I can't get a job in
- 8 anything else besides textiles. And the jobs are
- 9 aspirated. And also, this job, once I graduate, will be
- 10 in construction project management.
- 11 Q. What does aspirated mean? You keep saying that word.
- 12 A. The jobs are gone, gone to China.
- 13 Q. So that's what you mean by aspirated?
- 14 A. Yes. It may be a textile term that maybe you don't
- 15 understand.
- 16 Q. That's why I asked you to clarify. You're going to
- 17 ---
- 18 THE COURT: Let's go forward, please.
- 19 Q. You're going to college courses?
- 20 A. Yes, I am.
- 21 Q. How many courses are you taking?
- 22 A. I take five classes each week.
- 23 Q. And so how many semester hours? Typical fifteen
- 24 semester hours?
- 25 A. I've got eighteen semester hours this semester.

1 Q. And what are you taking classes in?

2 A. I have one class in Spanish which is required. I
3 have algebra and trigonometry which is required. I have
4 business systems which is building buildings. That's one
5 class. Print reading and -- is that all of them, or do I
6 have one more? AutoCAD.

7 Q. So that's eighteen hours a week?

8 A. Yes.

9 Q. And you don't have any part-time job to go along with
10 that?

11 A. That is five days a week from usually about eight in
12 the morning till about four. I get home at four in the
13 afternoon.

14 Q. But you're only in class for eighteen hours, correct?

15 A. That's eighteen hours per week, but you take those
16 classes more than one time a week. That one class I have,
17 Spanish class, it goes three times a week. Math ---

18 Q. For an hour?

19 A. Huh?

20 Q. For an hour?

21 A. Some of them. Some of them's two hours. Some of
22 them's two and a half hour classes.

23 Q. But total how many hours a week are you in class,
24 eighteen?

25 A. It's eighteen credit hours. I don't know what you're

1 trying to say. I mean, I get -- I go in there at eight
2 o'clock in the morning when one of my classes starts. And
3 I have breaks in-between there, but I don't go -- you
4 know, I don't get home till about four in the evening.

5 Q. Do you work on weekends?

6 A. I don't have a job.

7 Q. Have you looked for a job?

8 A. I have.

9 Q. And there's just not any jobs at McDonald's or
10 anything like that down there?

11 A. Well, I could. But what the State pays me on my
12 unemployment, I come out better this way. Plus I'm
13 getting another education.

14 Q. So you just make more money on unemployment than to
15 go get some other job, correct?

16 A. Time you take taxes out and expenses in driving and
17 all that.

18 Q. So what kind of jobs have you looked for?

19 A. Well, I had looked for textile jobs and other types
20 of management-type jobs.

21 Q. Where at?

22 A. All over.

23 Q. While you're going to school or in lieu of school?

24 A. When I first got laid off, we had a period of time
25 before I started school that I had to search for jobs

1 until I entered into this program. Once you enter into
2 this program, you don't have to do that any longer.

3 Q. Because you can still draw unemployment?

4 A. Well, it's not actually unemployment. It comes from
5 the T.R.A., Federal Trades.

6 Q. But that doesn't meet your child support obligation,
7 does it?

8 A. (No verbal response.)

9 Q. That does not meet your child support obligations,
10 does it?

11 A. No, it doesn't. But I was making a lot more money
12 than that when I was working in the textile business.

13 Q. So you're behind in your child support with your son,
14 correct?

15 A. Yes.

16 Q. And you've been behind for a while, have you not?

17 A. Well, me and my exwife has made that agreement.

18 Q. Right. But pursuant to what you're supposed to be
19 paying, you have been behind for some time, have you not?

20 A. Since I lost my job.

21 Q. Which job?

22 A. From Delta Mills.

23 Q. And when was that?

24 A. That was the second week of November of '05.

25 Q. So in those two years, that's when you've built up

1 this four grand in arrears to her?

2 A. Prior to that when I lost my job at Blumenthal, I was
3 away from the job for four months until I went to work
4 with Delta. And I had some arrearances (phonic) from
5 there, but I paid one thousand dollars when I got my job
6 -- when I took the job at Delta, I paid her -- I paid one
7 thousand dollars of that arrearance (phonic) out.

8 Q. How much are you in arrears to Tina Goodwin?

9 A. I don't exactly know, but it's in process of getting
10 reduced.

11 Q. Well, what's it getting reduced from?

12 A. (No verbal response.)

13 Q. You're asking for it to be reduced. What is it now
14 that you want it reduced ---

15 A. Down to my unemployment level.

16 Q. Pardon me?

17 A. Down to my unemployment level.

18 Q. How much money do you owe her?

19 A. Approximately five thousand. Something like that. I
20 don't know -- I mean, I don't know the exact number. I
21 know that I'm doing what the judge asked me to pay the
22 last time I went in front of the judge.

23 Q. And you have a child in your home now, correct?

24 A. Uh-huh (affirmative).

25 Q. And you support her?

- 1 A. Uh-huh (affirmative).
- 2 Q. And she gets all the money she needs, right?
- 3 A. (No verbal response.)
- 4 Q. Is she going without?
- 5 A. No, she's not going without.
- 6 Q. And do you know if your other kids are?
- 7 A. I pay one hundred dollars per week to the court for
- 8 my children. That's what I was reduced to when I lost my
- 9 job.
- 10 Q. One hundred dollars a week for how many kids?
- 11 A. That's for four. I've been paying on one that's over
- 12 -- that's twenty years old, and I haven't gotten her taken
- 13 off yet. The court hasn't taken her off, and she's got a
- 14 baby.
- 15 Q. Which one is that? How many kids do you have?
- 16 A. That's **Minor**.
- 17 Q. Oh, **Minor**?
- 18 A. Yes. I'm still paying for her the whole time.
- 19 Q. So a hundred dollars a month?
- 20 A. That's part of it.
- 21 Q. Is that for -- does that include Cory or is that in
- 22 addition to Cory?
- 23 A. Cory's is a separate issue.
- 24 Q. So you have -- and how many kids do you have by Tina?
- 25 A. I have the two twins and Taylor, and I adopted

1 Minor .

2 Q. So a hundred dollars a month for four kids?

3 A. Yes.

4 Q. And two babies? The twins are pretty young, aren't
5 they?

6 MR. STODDARD: Objection. I think his testimony
7 was a hundred dollars a week. She misstated the
8 testimony.

9 THE WITNESS: That's what I'm paying. I'm doing
10 what the judge asked me to do.

11 MS. HERVEY: Well, he can clarify, but ---

12 THE COURT: Well, let's just stay in the record.
13 Let's don't add something that's not in the record or
14 incorrect.

15 MS. HERVEY: And I didn't mean to, Your Honor.

16 THE COURT: Well, then let's don't. Thank Mr.
17 Stoddard for correcting you.

18 MS. HERVEY: Well, thank you for ---

19 MR. STODDARD: And I didn't ---

20 THE COURT: Gentleman, lady, let's ask questions
21 that are relevant to the issues in this case, and let's
22 not worry about anything else.

23 Q. What kind of child support were you paying the first
24 time that you separated from Tina?

25 A. The first time?

1 Q. Yes.

2 A. The first time we divorced, is that what you're
3 talking about, in '99?

4 Q. Sure.

5 A. Five hundred dollars per week. I mean -- I'm sorry.
6 Five hundred dollars per month.

7 Q. Any arrearage?

8 A. No.

9 Q. Have you paid any medical bills?

10 A. I was obligated to pay half.

11 Q. Did you have an arrears for that?

12 A. Actually what I was doing I was paying the full
13 amount, and come to find out I was supposed to just pay
14 half. But I've been paying the full amount after what the
15 insurance didn't cover.

16 Q. Have you ever paid seven hundred and fifty dollars?

17 A. Yes, I have.

18 Q. Why have you paid that much money to Tina?

19 A. Because she got it adjusted to my unemployment -- I
20 mean my employment level. She took me back.

21 Q. So at some point it was seven hundred and fifty
22 dollars?

23 A. It went -- no. It went from five hundred to seven
24 hundred with an increase on my salary.

25 Q. Right. I believe that was my question. At some

1 point it increased from five hundred to seven hundred and

2 fifty dollars, correct?

3 A. Yes, it did.

4 Q. All right. And who had custody of the children

5 during the first divorce?

6 A. Tina Goodwin.

7 Q. And why didn't you have the children -- excuse me --

8 custody?

9 A. Excuse me?

10 Q. Why didn't you have custody?

11 A. Because they, in that county, it was very slim that

12 they ever give a man custody of their children.

13 Q. Did you seek custody?

14 A. Did I seek?

15 Q. Yeah.

16 A. I didn't have enough time because the way she had

17 filed those papers. And in Georgia you get a divorce in

18 thirty days. And I couldn't get enough proof to take her

19 to get custody because I have a private detective

20 following her.

21 Q. Did you have visitation with your children?

22 A. Yes, I did.

23 Q. Was it supervised?

24 A. It wasn't at that time, no.

25 Q. So at some point during the divorce, you had

1 supervised visitation with Taylor?

2 A. November of -- let me think.

3 MR. STODDARD: I'm going to object to the
4 question and ask what the relevance is.

5 MS. HERVEY: Your Honor, their whole defense is
6 this was a custody dispute and that he had made several
7 disparaging comments about the mother of these children.
8 I think it's probative that he had supervised visitation
9 of them. It goes to his character which Mr. Stoddard has
10 put in issue.

11 THE COURT: Well, again, apparently supervised
12 visitation was put in by the Court. We're not here to try
13 whatever was tried in a court in Georgia.

14 MS. HERVEY: No, but I think it's relevant as to
15 the ongoing custody dispute between these two people and
16 the parenting styles of these two people which the Defense
17 has put in issue.

18 MR. STODDARD: I've got no objection.

19 THE COURT: All right. Go ahead. As I say --
20 again though, let's try to keep the case -- and that goes
21 both for the Defense as well as the State -- on the issues
22 in this case. We don't need to try every other case in
23 the world. All right.

24 Q. You had supervised visitation at that time?

25 THE COURT: Is that all right with you, ma'am?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Maxwell Eugene Sipes - Cross Examination by Ms. Hervey

479

1 MS. HERVEY: Yes, Your Honor.

2 THE COURT: Is that all right with you, Mr.
3 Stoddard?

4 MR. STODDARD: Yes, sir.

5 THE COURT: All right. Very good.

6 A. Yes, ma'am.

7 Q. Of Taylor?

8 A. Yes, ma'am.

9 Q. And that visitation had to be supervised by your
10 mother or your grandmother?

11 A. As long as I stayed in their house with them, you
12 know. And I was already living there anyway. So ...

13 Q. With your grandmother and your mother?

14 A. Yes, I did.

15 Q. How many times have you been married?

16 A. Been married three times.

17 Q. Have you ever been common-law married to anyone?

18 A. Common-law?

19 Q. Uh-huh (affirmative).

20 A. Define common-law in South Carolina.

21 Q. Have you ever held or represented yourself out to be
22 husband and wife with any woman you didn't actually go
23 through the legal process of marrying?

24 A. Well, I would have done it -- I would have did that
25 with Tina, but she didn't get a divorce from her ex-

1 husband. To my knowledge she still hasn't divorced him.

2 Q. So you want to be common-law married to Tina Goodwin
3 right now?

4 A. No. I'm talking about when we were together. I
5 wanted to marry her, but she didn't get a divorce.

6 Q. Okay. Any other women?

7 A. Not to my knowledge.

8 Q. How many women have you lived with?

9 A. I lived with Tina Goodwin, and I lived with my wife
10 right there.

11 Q. What about Donna Burney?

12 A. Donna Burney?

13 Q. Uh-huh (affirmative).

14 A. We were married.

15 Q. So you lived with her, or did you marry her and not
16 live with her?

17 A. We were married. We married each other and lived
18 together as husband and wife.

19 Q. Have you ever lived with any women you didn't marry?

20 A. No.

21 Q. Between Tina Goodwin and Lorena, did you date any
22 other women?

23 A. No.

24 Q. While you were separated from Tina, did you live with
25 or marry any other women?

1 A. When you say separation, is that -- does that mean my
2 divorce?

3 Q. Yeah, the divorce. Those two years.

4 A. We wasn't separated; we were divorced.

5 Q. Those two years you were divorced, you weren't living
6 together. Were you living with any other women?

7 A. No, I didn't.

8 Q. You lived with your grandmother the entire time?

9 A. I lived with my mother part of the time and my
10 grandmother.

11 Q. Okay. You don't really think Tina Goodwin is a good
12 mother, do you?

13 A. No, I don't.

14 Q. You didn't think she was a good mother that first
15 time you were married to her, did you?

16 A. When we were first married?

17 Q. Uh-huh (affirmative).

18 A. Well, at times I did.

19 Q. But you said you had to get in her face and take
20 **Minor** because she was being all abusive?

21 A. That was toward the end of our marriage.

22 Q. Is that the only incident you saw or were there
23 others?

24 A. When we were married?

25 Q. Yes. While you were married the first time to Tina,

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Maxwell Eugene Sipes - Cross Examination by Ms. Hervey

482

- 1 was that the only instance you saw or were there others?
- 2 A. There was a lot of verbal abuse.
- 3 Q. Did you ever verbally abuse the children?
- 4 A. Did I?
- 5 Q. Yes.
- 6 A. No, I didn't.
- 7 Q. Did you ever physically abuse the children?
- 8 A. No, I didn't.
- 9 Q. Did you ever spank them or discipline them in any
- 10 way?
- 11 A. They're children, right? As long as you do it in a
- 12 way you're not abusing them.
- 13 Q. Is that a yes or a no? Did you ever spank them or
- 14 discipline them physically in any way?
- 15 A. Spank them, yes, I spanked them. Yes. But I've
- 16 never abused them, no.
- 17 Q. Okay. But Tina did, right?
- 18 A. Yes.
- 19 Q. Hitting on them?
- 20 A. Yes.
- 21 Q. Beating on them?
- 22 A. Yes.
- 23 Q. I mean, she's an evil-doer of a mother in your
- 24 opinion, isn't she?
- 25 A. She hasn't always been that way.

1 Q. Well, when wasn't she that way?

2 A. When we first got married.

3 Q. When did it change?

4 A. Toward the end of our marriage.

5 Q. And was it a pretty good length of time, or did you
6 just see that one incident?

7 A. The one incident when she slapped her. And I put my
8 finger in her face. And her mother was there. That was
9 the worst episode. And then after that, we divorced not
10 long after that. So I don't know what happened in the
11 house when I wasn't there.

12 Q. Okay. But when you left, did you think she was a
13 good mother or a bad mother?

14 A. When I left there?

15 Q. Uh-huh (affirmative).

16 A. I thought she was a bad mother.

17 Q. Well, why did you get back together with her?

18 A. Why did I get back together with her?

19 Q. Yeah.

20 A. Because she come to me and told me she -- when we met
21 that day and when **Minor** had her lower G.I., we had
22 started talking a little bit after that. And she said she
23 had changed and said she was sorry for the things she had
24 said to me and the things she's done around the children.
25 And I thought she had actually changed. And I wanted to

1 be with my daughters. You know, I wanted to be with them,
2 to be a father. I wanted to be a family. That's what I
3 wanted to be.

4 Q. Well, why did you want to be a family with her? Do
5 you really believe she had changed?

6 A. Well, people do change sometimes. I mean ...

7 Q. How long did you go out with her before you moved
8 back in with her?

9 A. Tina?

10 Q. Uh-huh (affirmative). Well, what other woman that
11 you ...

12 A. Approximately around a month or less.

13 Q. And was she living up here?

14 A. She moved here at the end of January, beginning of
15 February.

16 Q. Is that when she moved in with you?

17 A. Yes.

18 Q. How many times did you go out before you two started
19 living together?

20 A. Go out?

21 Q. Did you go out, or did you just start sleeping
22 together again?

23 A. No. We went out probably once or twice.

24 Q. Do you really think you can tell in that amount of
25 time whether or not she had changed from the evil mother

1 you had seen her to be?

2 A. Well, she acted like she had changed. I mean, she
3 acted -- her appearance was better, you know.

4 Q. Did you think you might want to give it a little bit
5 more time before you had any more kids with her?

6 A. When she moved into the apartment, it was less than a
7 month she was pregnant.

8 Q. Right. Did you think you might want to spend a
9 little bit more time with her before you had kids with her
10 again?

11 A. Once I found out she was pregnant, I had to stay with
12 her. You know, I had no other choice.

13 Q. Well you agree you consensually had this sex with
14 her, right?

15 A. Yes.

16 Q. And you know that causes babies?

17 A. Huh?

18 Q. You know that causes babies?

19 A. Yes.

20 Q. So you knew you were running the risk of having more
21 children with her?

22 A. Yes.

23 Q. So you thought that you could take that risk after a
24 month of being back together with her?

25 A. Well, she was the mother of my children. I wanted to

1 stay there and be a father to them.

2 Q. You talked about how you tried to get Minor all this
3 help. Did you ever get Tina any help?

4 A. Well, Tina always blamed it on Minor. She said it
5 was always Minor fault, everything.

6 Q. I didn't ask you what Tina said. I said, you tried
7 to get Minor all this help. Did you ever try to get Tina
8 any help?

9 A. Tina said she had help after she tried -- said she
10 cut on herself and tried to kill herself while we were
11 divorced.

12 Q. Sir, answer my question. Did you ever try to get
13 Tina help?

14 THE COURT: Mr. Sipes, answer the question, then
15 you can explain your answer.

16 THE WITNESS: Okay.

17 A. No.

18 THE COURT: Now you can explain.

19 A. I thought she had already had all the help she needed
20 because she tried -- she went into some kind of treatment
21 center in Georgia when she wasn't around me. She was
22 married to her other husband. And she cut on herself and
23 tried to kill herself. It had nothing to do with me.

24 Q. In your opinion?

25 A. (No verbal response.)

1 Q. In your opinion it had nothing to do with you?

2 A. That's the way I feel.

3 Q. So you get back together and she becomes -- you say
4 she becomes physically and verbally abusive again?

5 A. It progressed.

6 Q. All right. How long ---

7 A. And it was more worse when **Minor** was in the home and
8 not in a hospital somewhere.

9 Q. How many times was she in a hospital?

10 A. Huh?

11 Q. How many times was she in a hospital?

12 A. **Minor**

13 Q. Uh-huh (affirmative).

14 A. She was at Anderson Area Medical Center on the eighth
15 floor two different times. Dr. Martin placed her there
16 under his treatment.

17 Q. And then the time she went to Carolina Behavioral
18 Health, right?

19 A. Well, she went to -- she went from there -- when we
20 moved to Central, she went to D.J.J. which was fifty-five
21 or sixty-something days. And she was -- and she come back
22 for approximately a week, and we got her into the Carolina
23 Behavioral Health in Greer. And then from Greer, the same
24 day, we took her out of Greer -- we -- me and Tina and
25 Taylor drove her to the Carolina Children's Home in

1 Columbia.

2 Q. Did you ever ---

3 A. That's where she remained until -- she remained there
4 until Tina got her out after she left from Central from
5 me.

6 Q. Did you ever visit her at Carolina Behavioral Health?

7 A. Yes, I did.

8 Q. For the family sessions or on weekends?

9 A. I went on one -- I remember going on one session and
10 me and Tina talking with the counselor. And I went over
11 there other times and stayed in the lobby with Taylor and
12 she went in there.

13 Q. Taylor went in to visit?

14 A. No. Me and Taylor was in the lobby. I stayed out in
15 the lobby with Taylor.

16 Q. So other than the sessions, you didn't spend any
17 other just visitation time with Minor

18 A. I visited with her several times. I remember seeing
19 her over there. I mean, I didn't note how many times I
20 went there. You know, I actually don't know. I know I
21 went there and visited.

22 Q. Okay. Do you know whether or not Minor had requested
23 not to have any visitation with you?

24 A. Excuse me?

25 Q. Do you know whether or not Minor had requested not to

1 have any visitation with you?

2 A. No, I'm not aware of it.

3 Q. Do you know whether or not **Minor** had requested that
4 they not discuss her case with you?

5 A. I'm not aware of it.

6 Q. How would you describe your relationship with **Minor**

7 A. When I adopted her, I adopted her when she was five
8 years old. And we had a relationship, and I loved the
9 child and will always love her till today. And I forgive
10 her for what she's done here in this case trying to bring
11 these charges against me. I forgive her.

12 Q. How would you describe your relationship with your
13 daughter? Not when you adopted her, not if you forgive
14 her. How would you describe your relationship with your
15 daughter?

16 A. I think my relationship was closer to her than she
17 was with her mother because her and her mother had a
18 love/hate relationship. She could tell me things when she
19 couldn't tell her own mother.

20 Q. So you had a very good relationship with her in your
21 own opinion?

22 A. Well, at times, you know, she was so unstable a lot
23 of times on her medications, you know, that the doctors
24 were giving her. And I mean, she wasn't -- she didn't
25 want to have a relationship with anyone.

1 Q. And that medication and all that, that was in
2 2002/2003 when you were all living together, correct?

3 A. Yes.

4 Q. Did you ever know her to be hospitalized for
5 psychiatric issues prior to the two of you reuniting?

6 A. Not to my knowledge. I know she was taking some
7 A.D.D. type medicine before she ever come to live with me.

8 Q. But she had never been hospitalized prior to the two
9 of you all reuniting?

10 A. Not to my knowledge.

11 Q. And how often did you visit with **Minor** while you and
12 Tina were divorced?

13 A. While we were divorced?

14 Q. Uh-huh (affirmative).

15 A. You're talking about when she went back to Georgia or
16 when she was -- in '99?

17 Q. In '99 you two divorced, correct?

18 A. I didn't go visit them. I brought them to South
19 Carolina.

20 Q. Did **Minor** come with you?

21 A. Yes, she did.

22 Q. Every time?

23 A. Not every time.

24 Q. Did Taylor come with you?

25 A. Almost every time.

1 Q. And Taylor is the one that you, at some point, had
2 supervised visitation over?

3 A. Yes.

4 Q. Well, I just don't really understand. If you've got
5 this great relationship with your daughter and she's in a
6 love/hate relationship with her mom, right, why doesn't
7 she take every opportunity to get away from her mama to go
8 stay with you?

9 A. Say that again.

10 Q. Why -- you said that **Minor** wouldn't always come,
11 right?

12 A. Uh-huh (affirmative).

13 Q. Why isn't she trying to escape her evil mother and go
14 spend time with her loving father Maxwell Sipes?

15 A. You know how teenagers go and spend time with their
16 friends and spend the night? I didn't push -- you know,
17 if she wanted to go spend some time with her friends, I
18 didn't push her and make her come. My son does that too.
19 You know, he -- before he started driving and getting
20 teenage friends. You know, I don't get in the middle of
21 that. They have to have their friends.

22 Q. And why did she not want Carolina Behavioral Health
23 to discuss her case with you? Why did she only want them
24 to discuss it with her mother?

25 MR. STODDARD: Objection. He wouldn't have

1 knowledge of that.

2 MS. HERVEY: I'll move on, Your Honor.

3 THE COURT: Thank you.

4 Q. You stated that in your opinion **Minor** had to have
5 this upper or lower G.I. thing because of her colon?

6 A. It had to do something with that. I'm not a doctor.
7 I know that she had a lower G.I. because she was having
8 problems there. And if I remember, her mother said she
9 was -- something like she was bleeding or something at
10 that time.

11 Q. What doctor was it?

12 A. The doctor that she had out there?

13 Q. Uh-huh (affirmative).

14 A. I don't know his name.

15 Q. You went there, didn't you?

16 A. Yes, I did.

17 Q. You're her father, aren't you?

18 A. Yes.

19 Q. Legally you're still her adoptive father?

20 A. Yes.

21 Q. And you don't remember the doctor?

22 A. I don't remember the doctor's name.

23 Q. Do you remember the pediatrician's name?

24 A. Yes, sir -- yes, ma'am.

25 Q. In Georgia?

State of South Carolina v. Maxwell Eugene Sipes 2005-GS-04-0381
Maxwell Eugene Sipes - Cross Examination by Ms. Hervey

493

- 1 A. Uh-huh (affirmative).
- 2 Q. Before that?
- 3 A. Uh-huh (affirmative).
- 4 Q. What's his name?
- 5 A. Dr. Rogers.
- 6 Q. Do you know if he ever treated her for these issues?
- 7 A. Not to my knowledge.
- 8 Q. Do you know if she was having acid reflux issues?
- 9 A. I don't know.
- 10 Q. Who put her on the A.D.D. medicine?
- 11 A. Dr. Rogers.
- 12 Q. And do you know how much that was?
- 13 A. No, I don't.
- 14 Q. Do you know how often she had it?
- 15 A. I don't know how often she had to take it.
- 16 Q. Other than this G.I. thing that she had that you say
- 17 was because of her colon, what other serious medical
- 18 problems did **Minor** have as a child?
- 19 A. You said medical problems that she had?
- 20 Q. Yeah. What were some other big things she might have
- 21 gone to the doctor for? Do you know?
- 22 A. Just being sick. I mean, kids get sick and they have
- 23 to go to the doctor.
- 24 Q. Do you know anything about them?
- 25 A. No. I mean, I don't know.

1 Q. You don't know?

2 A. I mean, kids get sick for different reasons. I mean,
3 I carried Taylor to the doctor also.

4 Q. But just for normal childhood sickness?

5 A. Yeah, just being sick.

6 Q. Did you ever take **Minor** to the doctor for being
7 constipated?

8 A. I don't remember.

9 Q. How often did you take her to the doctor?

10 A. Most of the time I worked and her mother carried her.

11 Q. How many times have you ever taken **Minor** to the
12 doctor?

13 A. I don't know.

14 Q. Have you ever?

15 A. I don't remember if I did or not. I know I remember
16 carrying Taylor.

17 Q. When did you carry Taylor?

18 A. I know I went with her mother to visit to the doctor
19 with **Minor**

20 Q. Which doctor?

21 A. Dr. Rogers.

22 Q. Her pediatrician?

23 A. Uh-huh (affirmative).

24 Q. But you don't remember what that was for?

25 A. I don't. It's been so long ago.

1 Q. Do you deny that Tina took care of the doctors' --
2 daughters -- she took them to the doctor when they needed
3 to go?

4 A. She does that.

5 Q. So she at least provides for them for their health,
6 correct?

7 A. If they're sick.

8 Q. She'll take them to the doctor?

9 A. That's what any normal parent would do, wouldn't
10 they?

11 Q. Well, but Tina is not a normal parent. According to
12 you, she's the evil mother of the year. I mean, she's
13 verbally abusive and physically abusive.

14 A. That doesn't just mean -- that she takes them to the
15 doctor doesn't mean that she can still verbally abuse
16 them.

17 Q. But she does do some things good as a mother,
18 correct?

19 A. Yes.

20 Q. And she ---

21 A. Take them to the doctor.

22 Q. Did she ever work at Am-Star Stadium?

23 A. Am-Star what?

24 Q. The movie theater here in Anderson.

25 A. Yes.

1 Q. Did she ever take the kids up there and let them go
2 to the movies?

3 A. Yes.

4 Q. Did she ever bring them popcorn and other stuff home?

5 A. Yes.

6 Q. The child support that you give her, every time you
7 see your kids, when you do see them, do they have clothes
8 on their back? Do they look healthy to you?

9 A. What are you talking -- go back and reference of what
10 you're talking about. When did I see them and where did I
11 see them? Clarify that.

12 Q. Have you ever seen your kids that they didn't have
13 the proper clothing on?

14 A. When me and their mother was divorced ...

15 Q. Uh-huh (affirmative).

16 A. ... in '99 ...

17 Q. Uh-huh (affirmative).

18 A. ... I had to buy Taylor a lot of clothes and keep
19 them at my house because she'd send her there in rags.

20 And also, she would come there with lice in her hair, and
21 I'd have to take her and get her treated for lice.

22 Q. But you never got custody of Taylor?

23 A. Every time I talked about something, she would come
24 up with something different to try to get me in court for
25 more child support or whatever.