

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSE REYES REYES,

APPELLANT

APPELLATE CASE NO 2016-002544

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

V. HENRY GUNTER, JR.
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

WILLIAM W. WILKINS, III.
Solicitor, Thirteenth Judicial Circuit
305 East North Street, Suite 325
Greenville, SC 29607
(864) 467-8282

ATTORNEYS FOR RESPONDENT

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SC Court of Appeals

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COUNTY OF PICKENS	)	Case No(s) : 2013GS3903217
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Jose Reyes Reyes,	)	Day 1
	)	
Defendant.	)	
	)	

December 12, 2016
Pickens, South Carolina

B E F O R E:

HONORABLE PERRY H. GRAVELY, Judge.

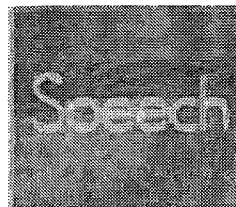
A P P E A R A N C E S:

BRANDI HINTON, Esquire
Attorney for the Plaintiff

RICHARD WARDER, Esquire
Attorney for the Defendant

Teresa B. Johnson, CVR-M, CM
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

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(No exhibits offered.)

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(No exhibits offered.)

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(No exhibits offered.)

1 first witness will be our child. I would ask
2 for permission to bring her down the back
3 hallway.

4 **THE COURT:** Okay. And how old -- how old
5 is she at this time?

6 **MS. HINTON:** She's 10 now, Your Honor.

7 **UNIDENTIFIED SPEAKER:** 9.

8 **THE COURT:** 9. Do we need to go over
9 anything with her before we -- outside the
10 presence of the jury?

11 **MS. HINTON:** Your Honor, I'll leave that
12 in your discretion. I'm happy to go through
13 kind of a series of the difference between the
14 truth and a lie, but if you would like to do it
15 prior to --

16 **THE COURT:** Is she avail -- let's -- let
17 me -- I think -- let's do it when the jury's
18 here.

19 **MS. HINTON:** Okay.

20 **THE COURT:** Okay. Anything else from the
21 defendant before we bring the jury in?

22 **MR. WARDER:** No. Are you going to -- are
23 you going to try and go through the
24 qualification of whether she's able to testify
25 in the presence of the jury?

1 **THE COURT:** That's what my intent was. Do
2 you --

3 **MR. WARDER:** I object. That's just
4 bolstering just like a forensic interview.

5 **THE COURT:** Well, I mean, it's a little
6 bit different because it's the difference in
7 the truth and a lie on the stand. I mean, I
8 note your objection. I mean --

9 **MR. WARDER:** Yes, sir.

10 **THE COURT:** All right. We'll bring the
11 jury in.

12 (WHEREUPON, the jury enters at approximately
13 1:24 p.m.)

14 **THE COURT:** All right. I hope everybody
15 had a good lunch. We are -- as I indicated, we
16 are getting ready to start the trial of this
17 case.

18 At this time, I'm going to ask the Clerk of
19 Court, Mr. Welborn, if he would administer the
20 oath as it relates to this case.

21 **THE CLERK:** If you would, please stand.
22 Again, after the oath is administered, answer
23 by saying, "I will." Raise your right hand.

24 You shall well and truly try the issue
25 joined in this case of the State versus Jose

1 always say, that person does not get paid any
2 more than the rest of you, but that's something
3 y'all can select on your first break.

4 Anything else from the State?

5 **MS. HINTON:** No, Your Honor.

6 **THE COURT:** Defendant?

7 **MR. WARDER:** No.

8 **THE COURT:** All right. All right. At this
9 time, we'll hear opening statements.

10 **MS. HINTON:** Thank you, Your Honor. May it
11 please the Court?

12 **THE COURT:** Yes.

13 **MS. HINTON:** Mr. Warder.

14 Ladies and Gentlemen of the jury, good
15 afternoon. As I told you before, my name is
16 Brandi Hinton. I'm an assistant solicitor here
17 in Pickens County. My job is to prosecute cases
18 that come before you and that occur in Pickens
19 County.

20 As the judge told you before, we're here on
21 a Criminal Sexual Conduct with a Minor case.
22 The allegations in this case are that six-year-
23 old Minor was sexually assaulted
24 by Jose Reyes. Minor is nine. You will meet her
25 today. She was identified by her initials for a

1 long time, but today, Minor gets to have her
2 own identity and she will sit up there on that
3 witness stand and she will tell you her story.

4 These are not the type of cases that you
5 talk about at Christmas parties. These are
6 cases that occurred in secret, in the dark of
7 night. They are not fun. You probably have gone
8 your entire life without hearing what you're
9 going to hear in this courtroom this week. But
10 it's the reality of what we have to present to
11 you as evidence in this case.

12 We are charged, as the State, with having
13 the burden of proving this case, and that's
14 beyond a reasonable doubt. And that is a burden
15 that we, as the State, gladly accept. It's the
16 same burden that is in this courtroom every day
17 when we try criminal cases and it's the same
18 burden in every courtroom of criminal court
19 across the country.

20 There are very few things in life that we
21 know with 100 percent certainty. We're not
22 required to prove this case with 100 percent
23 certainty. What we are required is to leave you
24 firmly convinced that Jose Reyes caused a
25 sexual battery on Minor who was under the

1 age of 11 at the time. The judge will charge
2 you fully on the law and when I get back up and
3 do my closing argument, we'll talk in more
4 detail about it.

5 I do want you to keep in mind throughout
6 this case of one very important thing, is that
7 people lie for two reasons. They lie to get
8 what want they want and they lie to get out of
9 trouble. So I ask you, as the witnesses take
10 the stand, and we will have several, keep in
11 mind what motive do these people have to lie,
12 what do they have to gain, what do they have to
13 lose.

14 I'd also ask you to keep in mind that this
15 is a really embarrassing-type case. You may get
16 embarrassed. The witnesses may get embarrassed
17 because -- I'm a married woman. I've been
18 married for four years and it would be
19 embarrassing for me to get up and tell you
20 about a normal sexual experience that I've had
21 with my husband. So I want you to keep that in
22 mind as this case progresses. These are
23 difficult matters for all of us.

24 At the end of the case, I will be back in
25 front of you and I'm going to ask that you find

1 Mr. Reyes guilty beyond a reasonable doubt of
2 Criminal Sexual Conduct with a Minor. Thank
3 you.

4 **THE COURT:** Mr. Warder?

5 **MR. WARDER:** Thank you, Your Honor.

6 We are about to begin a case of false
7 allegation of criminal sexual conduct. This is
8 a case where my client is accused of about as
9 bad of a thing as anybody could be accused of.
10 My client is accused by a young child of
11 committing criminal sexual conduct.

12 I take it that the State feels the need to
13 minimize their burden of proof when she says I
14 can't prove it to 100 percent. His Honor will
15 tell you about reasonable doubt, that
16 reasonable doubt is the highest doubt. It's got
17 to be proven beyond all reasonable doubt, all
18 reasonable doubt. That will come at the end of
19 the case. Like many things in life,
20 (Indiscernible.) The judge is going to give you
21 the law.

22 The facts that are going to develop in this
23 case to show that the Minor was living or
24 staying part-time with my client and his
25 girlfriend; the Minor 's mother was the sister

1 of my client's girlfriend; the young girl's
2 father had been deported and my client provided
3 part of the financial assistance for the
4 family; that he stopped that and then these
5 allegations arose.

6 The Solicitor's told you that CSC is one of
7 those things that happens not in the light,
8 that it happens in secret and in private.
9 That's the same thing when lies are made up and
10 plans to lie are done in secret, like they were
11 done in this case. The State is always required
12 to prove their case beyond all reasonable
13 doubt. The defendant is never required to
14 prove.

15 Oftentimes, you have a suspicion of what
16 reason might motivate someone to do something.
17 Sometimes, you don't have one. Sometimes, you
18 never know why people do some things.

19 (Indiscernible.) This is a case where my client
20 is accused of an act occurring during a six-
21 month period. We were given no date or time. So
22 it makes it impossible to prove where you were
23 on a particular day when you don't know what it
24 is, when you don't know exactly if you were
25 there or not. The only thing my client can tell

1 you with absolute certainty is that he did not
2 commit this crime. You will hear him testify
3 about that.

4 I ask you to keep an open mind, cause this
5 proceeding has started out with opening
6 statement by the State. We can not present
7 evidence until the State is finished. There are
8 jury studies that have been done that show that
9 jurors have a natural tendency, like most
10 people, to make up their minds rather quickly.
11 You hear testimony and you have made up your
12 mind. You start to feel that one side is right.
13 If you do that in this case, you would have
14 done that only when the State has presented
15 evidence.

16 The second half of those studies is even
17 more disturbing. It shows that once people make
18 up their minds, they seldom, if ever, change
19 them. I ask you, in this case, to consciously
20 force yourself to keep an open mind until
21 you've heard both sides.

22 There used to be a guy on the radio who
23 would tell you about an event. Then he would
24 take a break for the advertising. Then they
25 would come back for the rest of the story. They

1 always change or explain it. Well, I'm not
2 sure that I'm as good of a storyteller or as
3 good a reporter as that fellow was. When you
4 hear the whole story, it is different. So I ask
5 you to keep an open mind until you've heard the
6 whole story and until you see all of the
7 evidence, so you can clearly make up your mind
8 based upon that evidence.

9 Your job in this case will be to weigh the
10 evidence. And when the trial is over, then
11 you'll have the law. And you will see that this
12 evidence does not fit in this case

13 (Indiscernible.) I will be asking you at the
14 end of this case to return a fair, just and
15 proper verdict, a verdict of not guilty. Thank
16 you very much.

17 **THE COURT:** Thank you.

18 All right. The State may call its first
19 witness.

20 **MS. HINTON:** Thank you, Your Honor. The
21 State will call Minor

22 **THE CLERK:** Raise your hand first. Raise
23 your right hand. Okay.

24 Minor

25 having first been duly sworn, testifies as follows:

1 **THE CLERK:** You're going to have to speak
2 up. If you would, tell us what your name is.

3 **THE WITNESS:** Minor

4 **THE CLERK:** Okay. Very good.

5 **DIRECT EXAMINATION**

6 **BY MS. HINTON:**

7 **Q** Let's slide up just a little bit. Okay. So
8 we can make sure that everyone can hear. Speak
9 straight into that microphone. All right. Minor can
10 you tell me what your full name is?

11 **A** [REDACTED] Minor

12 **Q** Okay. And how old are you, Minor ?

13 **A** Nine.

14 **Q** Okay. Do you know why you're here today?

15 **A** Yeah.

16 **Q** Okay. Do you know that while you're here,
17 we only talk about things that are the truth?

18 **A** Yeah.

19 **MR. WARDER:** Your Honor, just for the
20 record, I want to preserve my objection.

21 **THE COURT:** All right. As to the
22 bolstering. Yeah, I think that the person can
23 testify on their own behalf, just not another
24 party.

25 **BY MS. HINTON:**

1 Q Minor , do you know the difference between
2 the truth and a lie?

3 A (Nods head.)

4 Q Do you know what a lie is?

5 A Yeah.

6 Q What'd you say?

7 A Yes.

8 Q Okay. What happens when you tell a lie?

9 A That he can't -- he won't -- he will not go
10 to jail.

11 Q What happens if you tell a lie?

12 A (No audible response.)

13 Q If you go to school and you tell a lie,
14 what happens?

15 A (No audible response.)

16 Q Let me ask you another --

17 MR. WARDER: Objection. Let the witness
18 answer.

19 THE COURT: All right.

20 MS. HINTON: Can I rephrase, Judge?

21 THE COURT: Yeah, you may rephrase.

22 BY MS. HINTON:

23 Q Minor , is it a good thing or a bad thing to
24 tell a lie?

25 A Bad thing.

1 Q Okay. And if you get -- if you tell a lie,
2 do you get in trouble for that lie?

3 A Yes.

4 Q Okay. And is telling the truth a good thing
5 or a bad thing?

6 A Good thing.

7 Q Okay. Do you know what it means to tell the
8 truth?

9 A No.

10 Q Do you know what the word truth means?

11 A (No audible response.)

12 Q Do you know what it means to be honest
13 about something?

14 A (Nods head.)

15 Q Is that a yes?

16 A Yes.

17 Q Is it good to be honest about things?

18 A Yes.

19 MR. WARDER: Your Honor, this is too
20 lenient. This is --

21 MS. HINTON: Judge, she's a child witness.
22 I get a little bit of leeway.

23 THE COURT: I'm going to give -- I'm going
24 to give her some latitude.

25 BY MS. HINTON:

1 Q Minor , let me ask you this, if I told you
2 that my shirt was red, would that be the truth or a
3 lie?

4 A Lie.

5 Q Okay. And if I told you that your shirt had
6 pink in it, would that be the truth or a lie?

7 A Truth.

8 Q Okay. And if I told you that I was a boy,
9 would that be the truth or a lie?

10 A Lie.

11 Q Okay. So you understand that when we're in
12 here, we're going to talk about the truth. Do you
13 understand that?

14 A (Nods head.)

15 Q Is that a yes?

16 A Yes.

17 **MS. HINTON:** Okay. Judge, at this time, I
18 would move her as qualified to testify.

19 **THE COURT:** Any -- any comments on -- I
20 think, under Rule 601, she is competent unless
21 otherwise disqualified.

22 **MR. WARDER:** No objection.

23 **THE COURT:** All right.

24 **MS. HINTON:** Thank you.

25 **BY MS. HINTON:**

- 1 Q All right. Minor , how old are you?
- 2 A Nine.
- 3 Q Okay. And where do you go to school?
- 4 A Ambler.
- 5 Q All right. What grade are you in?
- 6 A Third.
- 7 Q What do you like about school?
- 8 A Math.
- 9 Q Okay. Are you good at math?
- 10 A Yeah.
- 11 Q Is that a yes?
- 12 A Yes.
- 13 Q Make sure you speak up for me. Okay. Who do
- 14 you live with, Minor ?
- 15 A My mom and my dad.
- 16 Q What's your mom's name?
- 17 A Diane.
- 18 Q And what's your dad's name?
- 19 A (Indiscernible.)
- 20 Q Okay. And do you have any brothers or
- 21 sisters?
- 22 A I have a brother.
- 23 Q What's your brother's name?
- 24 A Christian.
- 25 Q Is he older or younger than you?

1 **A** Older.

2 **Q** Okay. Do you know Megan?

3 **A** Yes.

4 **Q** How do you know Megan?

5 **A** Because she's related to me.

6 **Q** She's related to you. Okay. Did you ever go
7 over to Megan's house?

8 **A** Yes.

9 **Q** Would you go over there one time or did you
10 go over there a lot of times?

11 **A** Lots.

12 **Q** Okay. And when you would go over there,
13 what would you do?

14 **A** Play with her kids.

15 **Q** Okay. How many kids does she have?

16 **A** Two.

17 **Q** All right. Boys or girls?

18 **A** Girls.

19 **Q** And did you like going over there?

20 **A** Yes.

21 **Q** Did anybody else live with Megan other than
22 her two girls?

23 **A** No.

24 **Q** Okay. Do you know somebody named Fernando?

25 **A** Yes.

1 Q Did Fernando ever live at Megan's house?

2 A Yes.

3 Q Okay. When you would go to Megan's house,

4 would you ever spend the night?

5 A Yes.

6 Q Would you spend the night one time or a lot

7 of times?

8 A Lot.

9 Q Okay. And when you would spend the night,

10 where would you sleep?

11 A On the couch.

12 Q And where's the couch? What room?

13 A Living room.

14 Q Okay. And when you would be at Megan's

15 house, would Fernando be there?

16 A Yes.

17 Q Has anybody ever touched you in a way that

18 you did not like?

19 A Yeah.

20 Q Who's done that to you?

21 A Fernando.

22 Q Okay. Can you tell me about what Fernando

23 did to you?

24 A He touched my private.

25 Q Okay. And where is your private?

1 A (No audible response.)

2 Q Can you point to it?

3 A Right here. (Indicating.)

4 Q And how many times did that happen? One
5 time or more than one time?

6 A More.

7 Q Okay. How often would that happen to you?

8 A Every day I could go.

9 Q Every day what?

10 A Every day when I'd go.

11 Q When you go where?

12 A To Megan's house.

13 Q And would it happen during the daytime or
14 at nighttime?

15 A Night.

16 Q And where would you be when it would
17 happen?

18 A On the couch.

19 Q And when you say, touched your private,
20 what did he touch your private with?

21 A His hand.

22 Q Okay. And was it on top of your clothes or
23 under your clothes?

24 A Under.

25 Q Okay. And was it on the outside or on the

1 inside of your private?

2 A In.

3 Q Okay. Did he ever touch you with anything
4 other than his hand?

5 A No.

6 Q Okay. Did he ever touch you with his mouth?

7

8 A No.

9 Q He never did anything to you with his
10 mouth?

11 A Yes.

12 Q Okay. What did he do to you with his mouth?

13 A He kissed me.

14 Q Okay. Where would he kiss you?

15 A My lips.

16 Q Okay. Did anything go into your mouth when
17 he would kiss you?

18 A No.

19 Q Okay. When he put his hand in your private,
20 was that one time or more than one time?

21 A More.

22 Q What'd you say?

23 A More.

24 Q More. Okay. And how old were you when this
25 would happen to you?

1 **A** Two.

2 **Q** You were two?

3 **A** No, about six.

4 **Q** You were six? Okay. Did he ever touch you
5 with any other part of his body?

6 **A** Yes.

7 **Q** What else would he touch you with?

8 **A** His private.

9 **Q** His private. Okay. Did he touch you on top
10 of your clothes or under your clothes with his
11 private?

12 **A** Under.

13 **Q** Okay. And did he touch you -- where did he
14 touch you with his private?

15 **A** On my private.

16 **Q** On your private? Okay. Did his private ever
17 go in your private?

18 **A** (Shakes head.)

19 **Q** No? Okay. He just touched you on top with
20 your private -- with his private?

21 **A** (Nods head.)

22 **Q** Did that happen time one time or more than
23 one time?

24 **A** More.

25 **Q** Okay. Did you ever tell anybody what

1 happened to you?

2 A Yes.

3 Q Who did you tell first what happened to
4 you?

5 A Beth.

6 Q Who is Beth?

7 A My aunt.

8 Q Okay. Did you ever tell your mom what
9 happened?

10 A Yes.

11 Q Okay. Do you know if -- well, when -- when
12 Fernando would do this to you, would you be awake or
13 sleep? Tell me how that would happen.

14 A I would be asleep.

15 Q Okay. And what would be the first thing
16 that he would do? Where would he be when this would
17 happen?

18 A On top of me.

19 Q Okay. And would his -- would he say
20 anything to you?

21 A Yes.

22 Q What would he say to you?

23 A Do you like it?

24 Q And what would you say?

25 A No.

1 Q Okay. Minor , do you know if Fernando has
2 any other names? Does he go by any other names?

3 A (Shakes head.)

4 Q You don't know?

5 A (Shakes head.)

6 Q Is Fernando here?

7 A Yes.

8 Q Okay. Can you point to where he is?

9 A (Indicating.)

10 Q Okay. Minor , those are all the questions I
11 have. Okay? But answer anything that Mr. Warder asks
12 you. Okay?

13 **CROSS-EXAMINATION**

14 **BY MR. WARDER:**

15 Q Minor , how long have you known Fernando?

16 A A lot.

17 Q How many times have you spent the night at
18 his house? Do you have any idea?

19 A Huh-uh.

20 Q Now, you said that Fernando touched your
21 private?

22 A Yes.

23 Q How many times?

24 A A lot of times.

25 Q You don't know how many?

1 A About five or something.

2 Q Pardon?

3 A About five times.

4 Q Five times? Do you know when that occurred?

5 What month? What year?

6 A About -- around --

7 Q What grade in school are you in?

8 A Third, and I go to Ambler.

9 Q And you said he kissed you on the mouth?

10 A Yes.

11 Q And you said you felt his tongue?

12 A Yes.

13 Q How many times was that?

14 A Six times.

15 Q Six times? Is this the first time that you
16 went over these questions with the Solicitor?

17 A Huh-uh.

18 Q How many times have you gone over these
19 same questions?

20 A Two times.

21 Q Was your mother present when you went over
22 them with her?

23 A No.

24 Q Was your mother there when you practiced
25 the questions?

1 **A** Yeah.

2 **Q** Your father is back in Mexico?

3 **A** Yes.

4 **Q** You know whether Jose helped provide
5 support to your family after your father went back to
6 Mexico?

7 **A** Huh-uh.

8 **Q** You don't know?

9 **A** (Shakes head.)

10 **Q** Thank you.

11 **THE COURT:** Anything?

12 **MS. HINTON:** Nothing further, Your Honor.
13 May she be excused?

14 **THE COURT:** All right. Yes, she may
15 Thank you very much.

16 **MS. HINTON:** Your Honor, I do have a
17 matter that I would like to take up outside the
18 jury's presence.

19 **THE COURT:** Okay.

20 All right. Again, as I said, a couple of
21 times, we'd have to break outside of your
22 presence to go over some matters. But this will
23 be the chance for y'all to select your
24 foreperson. You can decide between the initial
25 12. When you've made that decision, just write

1 it down and give that to the bailiff and we'll
2 be -- we'll be ready for you to come back out
3 here in just a few minutes.

4 (WHEREUPON, the jury exits at approximately
5 1:56 p.m.)

6 **THE BAILIFF:** The jury is secure, Your
7 Honor.

8 **THE COURT:** All right. Yes?

9 **MS. HINTON:** Thank you, Your Honor. I
10 apologize. I'm trying to put my hands on the
11 case. I will continue to do so as I talk. But in
12 Mr. Warder's cross-examination of the witness, I
13 believe that he attempted to allude or did
14 allude to improper coaching. My notes reflect
15 that he asked her how many times did you go over
16 these questions; how many times did you
17 practice; was your mother present -- I believe
18 he asked that twice -- was she present when --
19 when that took place. Your Honor, I believe that
20 there is case law that says when the defense
21 tries to allude to improper coaching that the
22 State may submit evidence of the full statement,
23 not limited to time and place disclosure any
24 longer, but the full disclosure by the Minor of
25 anyone that she disclosed to prior to that

1 alleged coaching. In this case, that alleged
2 coaching would have been when she began meeting
3 with me at the Solicitor's office sometime in
4 preparation for this case, which would have been
5 September or October of this year. So I think
6 any statements that she has given prior to that,
7 the State can now elicit the full extent of
8 those statements.

9 **THE COURT:** All right. Mr. Warder?

10 **MR. WARDER:** I don't know what she's
11 trying to allude is admissible. I asked her had
12 those questions been -- if she went over them
13 because she was having trouble answering. I was
14 trying to find out if those were the same
15 questions that she should have been able to
16 answer.

17 **THE COURT:** You need this for your current
18 -- for your next witness?

19 **MS. HINTON:** Well, Your Honor, I mean, she
20 would be one of the ones. Really, pretty much
21 every witness I have today would have been a
22 disclosure prior to that. I apologize, Judge. I
23 know I have this case somewhere in my binder. I
24 did not --

25 **THE COURT:** Yeah, I'm not -- I'm not

1 familiar with that case. I'm going to hear that
2 case before I --

3 MS. HINTON: If the Court will indulge me
4 for one moment, I --

5 THE COURT: All right.

6 MS. HINTON: -- I will find it.

7 (WHEREUPON, there is a pause.)

8 THE COURT: The jury has sent a note that
9 the foreperson is Stephen Talley.

10 MS. HINTON: Judge, may I just go to my
11 office and look?

12 THE COURT: Yeah, let's take a five-minute
13 break.

14 (WHEREUPON, the Court goes off the record at
15 approximately 2:01 p.m.)

16 (WHEREUPON, the Court goes on the record at
17 approximately 2:08 p.m.)

18 THE COURT: All right. I have reviewed the
19 case presented. I'll be glad to hear from you.
20 My -- my initial reaction, I don't think what --
21 his questioning goes to the level as they've
22 indicated here, but I'll be glad to hear your
23 argument after you went through all the trouble
24 getting this case.

25 MS. HINTON: Thank you, Your Honor. I

1 think it's statutory. It's 801(d)(1)(d). And I
2 think that it's any -- or specific references by
3 defense counsel as to coaching and whether the
4 Minor has practiced before testifying. And in
5 -- the case that I'm relying on is State v.
6 Jeffcoat, which is 350 S.C. 392. Essentially,
7 the State elicited the entirety of a statement
8 from the remaining witnesses. The Court allowed
9 that to go beyond the time and place exception
10 because they felt that the defense counsel had
11 raised the issue of improper influence or
12 coaching by asking the Minor whether she
13 practiced. I understand the Court's ruling. I
14 won't beat a dead horse, Judge, but I would ask
15 this, in light of the case, I would ask that he
16 be cautioned to go any further into that,
17 because if he does, I would ask the Court
18 revisit the Jeffcoat case.

19 **THE COURT:** Well, he does so at his own
20 peril. I think the next thing does say counsel
21 inquired whether the Minor had talked to the
22 mother, whether the Solicitor told the Minor
23 what things to say. I think that kind of pushes
24 it a little beyond. So I'm going to deny your
25 motion based on information presented at this

1 point. And if we need to revisit it at any point
2 in the future, then, of course, I'll be glad to
3 do so.

4 MS. HINTON: Thank you, Your Honor.

5 THE COURT: All right. Anything further
6 before we bring the jury back?

7 MS. HINTON: No, I do want to make sure
8 that my next witnesses understand that they are
9 -- that the Court is ruling that they are
10 limited to the time and place exceptions.

11 THE COURT: Yes. All right. For all the
12 witnesses coming up, what the Solicitor said is
13 correct. You are limited to time and place. I'm
14 sure y'all have discussed this. All right.

15 Bring the --

16 Ready to bring the jury back in?

17 MS. HINTON: Yes, Your Honor.

18 THE COURT: All right.

19 (WHEREUPON, the jury enters at approximately
20 2:10 p.m.)

21 THE COURT: All right. I believe Mr.
22 Talley has been elected as the foreperson, or
23 appointed or volunteered, whatever. We've got
24 you as the foreperson. All right.

25 The State may proceed.

1 **MS. HINTON:** Thank you, Your Honor. The
2 State will call Mary Elizabeth Couch.

3 **THE CLERK:** Place your left hand on the
4 Bible and raise your right.

5 **MARY COUCH**
6 having first been duly sworn, testifies as follows:

7 **THE CLERK:** If you would, have a seat and
8 state your name for the record please.

9 **THE WITNESS:** Mary Elizabeth Couch.

10 **DIRECT EXAMINATION**

11 **BY MS. HINTON:**

12 **Q** All right. And you might have to speak up
13 for me. All right. Mary, what does Minor call you?

14 **A** Beth.

15 **Q** Okay. And how are you related to Minor ?

16 **A** That's my niece.

17 **Q** All right. Are you guys close?

18 **A** Uh-huh.

19 **Q** Is that a yes?

20 **A** Yes.

21 **Q** Okay. You've got to say yes or no, not Uh-
22 huh or Huh-uh. Are you involved -- have you been
23 involved in Minor 's life since her birth?

24 **A** Yes, ma'am.

25 **Q** And did Minor ever make a disclosure of

1 sexual abuse to you?

2 A Yes, ma'am.

3 Q Did you say yes?

4 A Yes, ma'am.

5 Q Did she tell you where it had happened to
6 her?

7 A At Megan's house.

8 Q Okay. Did she tell you where in Megan's
9 house it had happened?

10 A On the couch.

11 Q Okay. Did she tell you when it happened to
12 her?

13 A She didn't tell me an exact day.

14 Q Did she give you any context as to when?

15 A I don't --

16 Q If the answer's no, that's okay.

17 A I mean, I don't -- when she told me, it was
18 when her mama had took her to the doctor.

19 Q Okay. All right. What were you guys doing
20 when Minor told you what had happened to her?

21 A Watching a movie.

22 Q And where were you?

23 A At Diane's house.

24 Q Okay. And who is Diane to you?

25 A My sister.

1 **Q** Okay. And is that Minor 's mom?

2 **A** Minor 's mom.

3 **Q** Who was in the room when she told you what
4 had happened?

5 **A** Me, a friend of mine, Christie, Minor .

6 **Q** Okay. And when she told you what happened,
7 how was she acting?

8 **A** I mean, she was nonstop. She was running
9 around the room just like she -- just -- I don't
10 know, just like running in circles like she couldn't
11 get it out, you know?

12 **Q** Okay. What prompted Minor to tell you what
13 happened?

14 **A** I have no idea.

15 **MR. WARDER:** Objection, Your Honor. The
16 witness couldn't possibly know that.

17 **MS. HINTON:** She said I don't know.

18 **THE COURT:** All right. Let me --

19 **MS. HINTON:** Her answer was I have no
20 idea, so I think that was appropriate given --

21 **THE COURT:** All right. Sustained.

22 **BY MS. HINTON:**

23 **Q** What's Minor like compared to what she was
24 like before? Have you seen any changes in Minor ?

25 **A** Yes.

1 Q Okay. Can you tell me what those changes
2 are?

3 A She don't -- she would flip out, just as in
4 just show out.

5 MR. WARDER: Specific feelings and stuff,
6 she don't -- I don't think --

7 THE COURT: I'm not sure that's -- I'm
8 going to overrule. I think what she's stating is
9 not a feeling.

10 BY MS. HINTON:

11 Q Tell me some of the differences that you
12 observed in Minor .

13 A She's calm. She's a lot calmer. That's --
14 for the most part, that's -- I mean, the way she can
15 talk to somebody is different.

16 Q In response to what Minor told you, what
17 did you do?

18 A I got my sister ---

19 Q Okay.

20 A --- Diane.

21 Q All right. And after you got your sister,
22 what did you do?

23 A We listened to her.

24 Q After that, what did you do?

25 A Called the police.

1 **Q** Okay. When you called the police, what was
2 Minor 's reaction?

3 **A** She went in her room and told us she hated
4 us and that she wouldn't never tell us nothing again
5 because somebody was going to be mad at her.

6 **Q** Beth, that's all I have. Answer any
7 questions Mr. Warder has. Okay.

8 **MR. WARDER:** Your Honor, if it pleases the
9 Court, I don't have any questions.

10 **THE COURT:** All right.

11 **MS. HINTON:** Thank you, Your Honor. May
12 she be excused?

13 **THE COURT:** Yes. Next witness.

14 **MS. HINTON:** Yes, Your Honor. The case --
15 sorry. The State would call Casey Diane Couch.

16 **THE CLERK:** If you would, place your left
17 hand on the Bible and raise your right.

18 **CASEY COUCH**

19 having first been duly sworn, testifies as follows:

20 **THE CLERK:** Thank you, ma'am. If you
21 would, have a seat and state your name for the
22 record please.

23 **THE WITNESS:** Casey Couch.

24 **DIRECT EXAMINATION**

25 **BY MS. HINTON:**

1 Q Casey, do you go by Diane?
2 A I do.
3 Q Okay. How do you know Minor ?
4 A She's my daughter.
5 Q Okay. When was Minor born?
6 A [REDACTED], 2007.
7 Q Okay. Speak up just a little bit for me.
8 Okay?
9 A [REDACTED] 2007.
10 Q Okay. So how old is Minor now?
11 A She's nine.
12 Q All right. Do you know Megan?
13 A I do.
14 Q How do you know Megan?
15 A She's a cousin.
16 Q All right. What's Megan's last name?
17 A (Indiscernible.)
18 Q Okay. Is she your cousin?
19 A Yes.
20 Q Did Minor ever spend any time at Megan's
21 house?
22 A She did.
23 Q All right. Do you know the time frame that
24 she was going over there?
25 A In 2013 and 2014.

1 Q And why was she going over there?

2 A When her father was deported, it was -- it
3 was hard. I was trying to get a job.

4 Q Would Minor ever spend the night over
5 there?

6 A She did.

7 Q Okay. When Minor first started going over
8 to Megan's house, did she like going over there?

9 A She did.

10 Q Okay. Was there a time when Minor 's
11 attitude about going over there changed?

12 A Yes.

13 Q Okay. Can you tell me about that?

14 A Every once in a while, it was kind of like
15 a meltdown.

16 Q Okay. Did she ever disclose sexual abuse to
17 you?

18 A She did.

19 Q Okay. Did she tell you where it had
20 happened?

21 A On the couch at Megan's house.

22 Q Okay. Did she tell you when it had
23 happened?

24 A She couldn't give me an exact date.

25 Q Okay. In response to what Minor told you,

1 what did you do?

2 A I went on the back porch and I called the
3 police.

4 Q Okay. And did they come to your house?

5 A They did.

6 Q Did they speak to you?

7 A They did.

8 Q Okay. And did they also speak to Minor ?

9 A They did.

10 Q Prior to Minor disclosing sexual abuse to
11 you, had she been sick at all?

12 A She had complained when she peed that it
13 burned.

14 Q Okay. And in response to her complaining
15 that when she peed that it burned, what did y'all do?

16 A She went to Cannon ---

17 Q Okay.

18 A --- ER.

19 Q All right. And do you have any idea when
20 she went to Cannon ER?

21 A It was in August.

22 Q Of what year?

23 A 2014.

24 Q Okay.

25 A 2015.

1 Q Okay. How long after that visit did Minor
2 disclose sexual abuse to you?

3 A That was in August, so just a few weeks
4 later.

5 Q Okay. Have you seen any changes in Minor ?

6 A From then, yes. At first, it was -- the
7 behavior was like throwing stuff, just screaming. But
8 now, she'll talk to you. You know, she can say "I'm
9 mad at you."

10 Q Okay.

11 A She can go in her room and close the door
12 and then come out and be okay with you.

13 Q Okay. Is Minor in counseling?

14 A She is.

15 Q How long has she been in counseling?

16 A She's been in mental health counseling for
17 a year and a half. She's been in Julie Valentine
18 counseling for a year.

19 Q Diane, that's all I have. Please answer any
20 questions Mr. Warder may have.

21 **THE COURT:** Mr. Warder.

22 **CROSS-EXAMINATION**

23 **BY MR. WARDER:**

24 Q You told us that she went to the doctor for
25 irritating pain when she urinated?

1 **A** Uh-huh.

2 **Q** And that was in August of 2014?

3 **A** Uh-huh.

4 **Q** And she disclosed this to you a few weeks
5 after August, so it would have been about September
6 of 2014?

7 **A** Uh-huh.

8 **Q** Thank you.

9 **MS. HINTON:** Nothing further, Judge. May
10 she be excused?

11 **THE COURT:** All right. Step down. Any
12 objection to her being excused?

13 (No audible response.)

14 Any objection to her being excused?

15 **MR. WARDER:** I'm sorry, Your Honor. I
16 couldn't hear.

17 **THE COURT:** That's fine. I mumbled.

18 **MS. HINTON:** You ready for our next. --

19 **THE COURT:** Yes.

20 **MS. HINTON:** Thank you, Your Honor. The
21 State would call Billy Trotter.

22 **BILLY TROTTER**

23 having first been duly sworn, testifies as follows:

24 **THE CLERK:** Sir, if you would, have a seat
25 and state your name for the record please.

1 **THE WITNESS:** My name is Billy Trotter.

2 **DIRECT EXAMINATION**

3 **BY MS. HINTON:**

4 **Q** Okay. Deputy Trotter, where are you
5 employed?

6 **A** I'm employed with the Pickens County
7 Sheriff's Office.

8 **Q** How long have you been there?

9 **A** Seven years.

10 **Q** Okay. In what capacity are you employed
11 there?

12 **A** I am currently a deputy sheriff.

13 **Q** And did you have occasion to respond to
14 Minor r's residence?

15 **A** I did.

16 **Q** Do you know when you responded to her
17 residence?

18 **A** Yes, ma'am. I do. I responded there on --
19 let me get my eyes out here -- on August 29th, 2013
20 at approximately 7:30 in the afternoon.

21 **Q** Okay. And when you responded, what type of
22 call were you responding to?

23 **A** It was dispatched as a call involving a
24 sexual assault.

25 **Q** Okay. And when you got there, what's the

1 first thing that you did?

2 A I spoke with the mother, who was the
3 complainant.

4 Q Okay. And when you spoke to the mother, was
5 the young child with her?

6 A She was in another room at the time.

7 Q Okay. Why is it important for you to speak
8 to the mother without the child there?

9 A Well, the mother was my complainant and I
10 needed to determine what I -- what kind of situation
11 I had that I was facing.

12 Q Okay. And after you spoke to the mother,
13 did you ever have an opportunity to talk to the
14 child?

15 A Yes, ma'am. I do.

16 Q Okay. And what was that child's name?

17 A That child's name was Minor .

18 Q Okay. And how old was she at the time?

19 A She was six.

20 Q Okay. And did Minor disclose sexual abuse
21 to you?

22 A Yes, ma'am. She did.

23 Q Did she tell you where that sexual abuse
24 happened?

25 A She did.

1 Q Okay. And was that within Pickens County?

2 A Yes, ma'am. It was at [REDACTED].

3 Q Okay. Do you know who lived at that
4 address?

5 A At that time --

6 Q Actually, let me strike that question. When
7 Minor disclosed sexual abuse to you, how was she
8 acting when she disclosed to you?

9 A She was very embarrassed, did not want to
10 speak, really. It was like it was traumatic for her
11 to tell me what happened.

12 Q Okay. When you get these types of cases,
13 generally, what's the next step in your
14 investigation?

15 A I take the initial report and then I turn
16 it over to investigations for further investigating.

17 Q Okay. Is that what you did in this case?

18 A Yes, ma'am.

19 Q Do you know who took over after you?

20 A Captain Nix did. The case was assigned to
21 him.

22 Q Okay. Deputy Trotter, that's all I have.
23 Please answer any questions Mr. Warder may have.

24 A Okay.

25 MR. WARDER: Your Honor, I have no

1 questions.

2 **THE COURT:** All right.

3 **MS. HINTON:** Thank you, Your Honor. May he
4 be excused?

5 **THE COURT:** Yes, he may. Any objection to
6 him being excused?

7 **MR. WARDER:** No, sir.

8 **MS. HINTON:** Ready, Your Honor?

9 **THE COURT:** Yes.

10 **MS. HINTON:** Thank you. The State would
11 call Detective or Captain Marvin Nix please.

12 **MARVIN NIX**

13 having first been duly sworn, testifies as follows:

14 **THE CLERK:** Thank you, sir. If you would,
15 have a seat. State your name for the record
16 please.

17 **THE WITNESS:** Marvin Nix.

18 **DIRECT EXAMINATION**

19 **BY MS. HINTON:**

20 **Q** Captain Nix, where are you employed?

21 **A** Pickens County Sheriff's Office.

22 **Q** How long have you been employed there?

23 **A** 25 years.

24 **Q** Okay. Prior to becoming a captain, were you
25 a detective over there?

1 **A** I was.

2 **Q** Do you recall what years you were
3 detective?

4 **A** I was actually a detective from 2005 to
5 probably 2014.

6 **Q** Did you have occasion to become involved in
7 the case with Minor ?

8 **A** I did.

9 **Q** And how did you get that case?

10 **A** Normal procedure, any type of those cases,
11 initially, a road unit goes and takes the initial
12 report, gets the information. It comes to us in the
13 detective division for follow-up.

14 **Q** Okay. And did you determine through this
15 case the age of the Minor at the time of the abuse?

16 **A** I did.

17 **Q** Okay. What was her age?

18 **A** She was six.

19 **Q** And what was the age of the defendant?

20 **A** 25 or 27.

21 **Q** Okay. And who was the defendant in this
22 case?

23 **A** I determined it to be Jose Reyes Reyes.

24 **Q** Okay. Now, let's back up a little bit. When
25 you got the case, was that the name that was given to

1 you as the offender?

2 A No, ma'am.

3 Q Okay. What was the name that was given to
4 you?

5 A Fernando.

6 Q Okay. And how did you determine that
7 Fernando was also Jose Reyes Reyes?

8 A Initially, I went out to the residence to
9 try to make contact with him. I met with his wife or
10 live-in girlfriend, Megan, and she actually gave me
11 the information.

12 Q Okay. All right. Did you attempt to speak
13 to Minor about this case?

14 A I did.

15 Q And where was that?

16 A Pickens Elementary.

17 Q And tell me what happened when you tried to
18 speak with her?

19 A I initially went to try and speak with her
20 and she became so upset I really couldn't speak with
21 her.

22 Q Okay.

23 A But I did get out of her that Fernando was
24 the person that lived with Megan.

25 Q Okay. Captain Nix, that's all I have at

1 this time. Please answer anything Mr. Warder may
2 have.

3 **MR. WARDER:** Your Honor, if it pleases the
4 Court, I have no questions.

5 **THE COURT:** All right.

6 **MS. HINTON:** Your Honor, may he be -- he's
7 going to hang around anyway.

8 **THE COURT:** All right.

9 **MS. HINTON:** And Judge, may we approach
10 real quick on scheduling?

11 **THE COURT:** Yes.

12 **(WHEREUPON, a bench conference is held off the**
13 **record.)**

14 **THE COURT:** All right. Sometimes -- this
15 is that part where you have to be flexible.
16 Sometimes it's difficult to know exactly what
17 the schedule is going to be, so we're going to
18 ask you to take a break. Go back to the jury
19 room. Again, do not discuss the case at all.
20 Just take a break and enjoy all the little
21 snacks. All right. Head back to your jury room.

22 **(WHEREUPON, the jury exits at approximately**
23 **2:28 p.m.)**

24 **THE COURT:** All right. We'll be at ease
25 for about 10 minutes, if not longer. So just let

1 us know.

2 MS. HINTON: I will. Thank you, Your
3 Honor.

4 (WHEREUPON, the Court goes off the record at
5 approximately 2:28 p.m.)

6 (WHEREUPON, the Court goes on the record at
7 approximately 3:01 p.m.)

8 (WHEREUPON, the jury enters at approximately
9 3:01 p.m.)

10 THE COURT: All right. Okay. We'll
11 proceed. Hope everybody had a good break. You
12 can proceed.

13 MS. HINTON: Thank you, Your Honor. The
14 State would briefly re-call Captain Nix.

15 MARVIN NIX
16 previously sworn, testifies as follows:

17 THE COURT: And I will remind you you are
18 under oath.

19 THE WITNESS: Yes, sir.

20 DIRECT EXAMINATION

21 BY MS. HINTON:

22 Q Captain Nix, I failed to ask you when you
23 were on the stand before, as part of your
24 investigation, did you determine a time frame of when
25 this event occurred?

1 **A** Yes.

2 **Q** Okay. And what was that time frame?

3 **A** The best I can figure through my
4 investigation was sometime between January, 2013 and
5 June, 2013.

6 **MS. HINTON:** That's all I have. Thank you.

7 **THE COURT:** Cross-examination?

8 **MR. WARDER:** Your Honor, if it pleases the
9 Court, I have no questions for this witness.

10 **THE COURT:** Okay.

11 **MS. HINTON:** Thank you, Your Honor. The
12 State would call Victoria Tate.

13 **THE CLERK:** If you would, place your left
14 hand on the Bible and raise your right.

15 **VICTORIA TATE**

16 having first been duly sworn, testifies as follows:

17 **THE CLERK:** Thank you, ma'am. If you
18 would, have a seat and state your name for the
19 record please.

20 **THE WITNESS:** My name is Victoria Tate.

21 **DIRECT EXAMINATION**

22 **BY MS. HINTON:**

23 **Q** Ms. Tate, where are you employed?

24 **A** I'm employed at Julie Valentine Center.

25 **Q** Okay. In what capacity are you employed?

1 **A** I'm employed as a child therapist.

2 **Q** Okay. Can you tell the Court a little bit
3 about your educational background?

4 **A** Yes, I have a Masters of Arts in counseling
5 from Webster University and I'm a licensed
6 professional counselor through the state of South
7 Carolina.

8 **Q** Okay. Do you serve on any -- or coordinate
9 any training or attend any training as part of your
10 job?

11 **A** Yes, I do.

12 **Q** Can you tell the Court about that?

13 **A** Yes. I'm trained and rostered as a
14 therapist to use Trauma-Focused Cognitive Behavioral
15 Therapy through the Medical University of South
16 Carolina. I have attended South Carolina Network of
17 Children Advocacy Centers trainings on child abuse,
18 physical abuse, domestic violence and treatment.

19 **Q** Okay. And how long have you been a licensed
20 counselor in South Carolina?

21 **A** I've been a licensed counselor since 1998.

22 **MS. HINTON:** Your Honor, at this time, the
23 State would move to have her admitted as an
24 expert in child abuse counseling.

25 **THE COURT:** Mr. Warder, any objection?

1 **MR. WARDER:** No, Your Honor.

2 **THE COURT:** All right. Then we will admit
3 her as an expert in child abuse counseling.
4 Ladies and Gentlemen, let me give you a little
5 bit of information. Normally, a witness can not
6 testify except about things that they directly
7 observed through their senses. When somebody has
8 been designated as an expert, then they can
9 testify about their opinions in their respective
10 fields. This can -- this is based on their
11 education, training and background. But when you
12 consider this testimony at the conclusion of the
13 trial, you are to give it the weight that you
14 feel is appropriate. Okay.

15 You may proceed.

16 **MS. HINTON:** Thank you, Your Honor.

17 **BY MS. HINTON:**

18 **Q** Ms. Tate, do you counsel Minor ?

19 **A** Yes, I do.

20 **Q** And how long have you been counseling her?

21 **A** I've been counseling Minor since March 10th
22 of 2016.

23 **Q** Okay. Are you still currently counseling
24 her?

25 **A** Yes, I am.

1 Q Did Minor ever make a disclosure of sexual
2 abuse to you during your counseling?

3 A Yes, she did.

4 Q Okay. Did she tell you where that abuse had
5 happened?

6 A She told me the abuse happened at Megan's
7 house.

8 Q Okay. Can you please tell me some of the
9 observations that you have made throughout your
10 sessions with Minor ?

11 A Yes. Minor appears embarrassed. She appears
12 ashamed. She blames herself for what happened. She's
13 very anxious. She, at times, is aggressive. She also
14 wants to avoid talking about things that have
15 happened to her.

16 Q Okay. When you say she's embarrassed and
17 ashamed, is there anything in particular that she's
18 embarrassed or ashamed about?

19 A She's embarrassed and ashamed that she
20 couldn't stop the abuse.

21 Q Ms. Tate, that's all I have. Please answer
22 any questions that Mr. Warder may have.

23 **THE COURT:** Mr. Warder?

24 **CROSS-EXAMINATION**

25 **BY MR. WARDER:**

1 **Q** If children are -- if children make a small
2 -- tell a lie, does that sometime make them
3 embarrassed and ashamed?

4 **A** It could.

5 **Q** And if they told a very important lie to
6 the police or somebody like that, does that make them
7 more ashamed and embarrassed?

8 **A** It would depend on who the child is.

9 **Q** Thank you.

10 **MS. HINTON:** No further questions. May she
11 be excused?

12 **THE COURT:** Thank you. Any objection to
13 her being excused?

14 **MR. WARDER:** No, Your Honor.

15 **THE COURT:** All right. Thank you.

16 **MS. HINTON:** Thank you, Your Honor. The
17 State would call Dr. Mary Fran Crosswell to the
18 stand.

19 **MARY-FRAN CROSSWELL**

20 having first been duly sworn, testifies as follows:

21 **THE CLERK:** Thank you, ma'am. If you
22 would, have a seat and state your name for the
23 record please.

24 **THE WITNESS:** My name is Mary Fran
25 Ratchford Crosswell.

DIRECT EXAMINATION**BY MS. HINTON:**

Q Dr. Crosswell, where are you employed?

A I'm employed by the Greenville Health System.

Q Okay. And do you hold a title over there? Are you a part of a team?

A Yes, I'm employed within the Division of Forensic Pediatrics Child Abuse and Neglect. I am a child abuse pediatrician at the hospital.

Q Okay. And can you tell the Court a little bit about your educational background?

A Yes, I received my undergraduate degree from Wake Forest University, my medical degree from the University of Louisville School of Medicine. I completed a pediatric residency at the Greenville Hospital System, and I am board certified in both General Pediatrics and in Child Abuse Pediatrics.

Q And how long have you been board certified in those areas?

A I was board certified in General Pediatrics in the year 2003 and in the Child Abuse Pediatrics in 2011.

Q 2000 and? I'm sorry.

A 11.

1 Q 11. And as part of your job, do you attend
2 any trainings or are you involved in any trainings?

3 A Yes. I annually am required to attend
4 continuing medical education courses in my field.

5 Q Okay. And have you ever test by --
6 testified as an expert before?

7 A Yes, I have.

8 Q Okay. And was that in criminal court?

9 A Both in criminal and in family court.

10 Q Okay. Do you have any idea of the number of
11 times that you testified as an expert?

12 A I would estimate 40 times.

13 Q Okay. Are you here because you are under a
14 subpoena?

15 A Yes, I am.

16 Q Are you being paid by the State to be here?

17 A No, I'm not.

18 **MS. HINTON:** Your Honor, at this time, we
19 would move Dr. Crosswell as an expert in Child
20 Abuse Pediatrics.

21 **THE COURT:** All right. Any questions, Mr.
22 Warder?

23 **MR. WARDER:** No, Your Honor.

24 **THE COURT:** All right. Any objection to
25 the motion for qualification?

1 **MR. WARDER:** I'm not sure what Child Abuse
2 Pediatrics -- whether that's special expertise
3 or not.

4 **THE COURT:** Well, other than that, any
5 other?

6 **MR. WARDER:** No.

7 **THE COURT:** All right. Well, then I will
8 grant the State's motion. Again, as I just told
9 you, an expert -- you know, normally, a person
10 can't testify about anything that's not within
11 their direct knowledge. But somebody that's been
12 qualified as an expert, in this case, in Child
13 Abuse Pediatrics, is able to give their
14 testimony in their particular field. This does
15 not mean that you have to accept the opinion,
16 but you are still just to give it the weight
17 that you feel is appropriate, just like all the
18 other evidence before you.

19 So you may proceed.

20 **MS. HINTON:** Thank you, Your Honor.

21 **BY MS. HINTON:**

22 **Q** Dr. Crosswell, did you have the opportunity
23 to meet with Minor ?

24 **A** Yes, I did.

25 **Q** Okay. And where did you meet with her?

1 **A** At the Julie Valentine Center.

2 **Q** Okay. And on what date did you meet with
3 her?

4 **A** September 18th, 2013.

5 **Q** Okay. And when you meet with children at
6 the Julie Valentine Center, as part of your
7 examination, do you go through a question and answer
8 session with the children?

9 **A** Yes, as a pediatrician, I take a detailed
10 history from both the caregiver and the patient, if
11 possible.

12 **Q** Okay. And did you do that in this case?

13 **A** Yes, I did.

14 **Q** And when you say that you take it from both
15 the caregiver and the patient themselves, is the
16 patient present when you're speaking with the
17 caregiver?

18 **A** No.

19 **Q** Okay. And why not?

20 **A** Well, typically, I like for both the parent
21 and the patient to be able to speak freely without
22 being concerned about the other person hearing it or
23 being affected by it. And much of the information
24 that I'm obtaining can be sensitive in nature. I want
25 the parent to be able to share any concerns that they

1 have about their child without their child being
2 present to hear those concerns.

3 Q And does that work the other way as well?

4 A Yes, it does.

5 Q So when you spoke to Minor in this
6 instance, was her mother present?

7 A No, she was not.

8 Q Were any family members present?

9 A No family members. The only person present
10 was a Child Life Specialist who works with me and who
11 is present with me throughout the entire evaluation.

12 Q Okay. As part of your medical examination
13 of Minor, did she disclose information that was
14 pertinent to your medical examination and diagnosis?

15 A Yes, she did.

16 Q And what was that disclosure?

17 A She described being touched in her vaginal
18 area by both a hand and a penis.

19 Q Okay. And was that on top of her clothes or
20 under her clothes?

21 A Underneath her clothes.

22 Q Now, describe to the court a little bit
23 about what your overall examination is, physical
24 examination.

25 A So it starts off as a general pediatric

1 exam from head to toe, so looking at the eyes, ears,
2 nose, mouth, working the way down, listening to the
3 heart, lungs, feeling the abdomen, uh, stomach. The
4 last piece of the examination is a genital exam. It's
5 performed with the use of a colposcope, which is a
6 piece of medical equipment that allows a good light
7 source, the ability for magnification and the ability
8 to photo document any physical findings that might be
9 seen.

10 Q Okay. And did you do that vaginal
11 examination of Minor ?

12 A Yes, I did.

13 Q And did you have any specific findings on
14 her vaginal examination?

15 A No, there were no acute or chronic findings
16 on her genital exam or vaginal exam.

17 Q Okay. So would it be safe to say that her
18 vaginal examination was normal?

19 A Yes, it was.

20 Q Okay. In your field and your expertise,
21 having a normal vaginal exam, is that, for lack of a
22 better term, normal?

23 A It is normal to have a normal exam. Most --
24 up to a little over 97 percent of physical exams in
25 children who are being evaluated for sexual abuse are

1 normal. In many cases, it's because the nature of the
2 abuse didn't leave an injury and in other cases, the
3 injury can heal very rapidly without leaving any
4 scarring or signs that it was present.

5 Q Okay. So is a normal exam indicative of
6 sexual abuse not happening?

7 A It is -- it is -- no, it is not indicative
8 of it not happening.

9 Q Now, as part of your evaluation, do you
10 also evaluate for potential sexually transmitted
11 diseases?

12 A Yes, I do.

13 Q Okay. And did you do that in Minor 1's
14 case?

15 A Yes, I did.

16 Q And as part of that, do you also review any
17 prior medical history that might be relevant?

18 A Yes, I do.

19 Q And in your review of that history, did you
20 determine whether or not Minor had been diagnosed
21 with a potential sexually transmitted disease?

22 A Yes, she had been diagnosed with -- on a
23 visit to the emergency room --

24 MR. WARDER: Objection. This is hearsay.

25 THE COURT: I mean, this is part of her

1 evaluation.

2 **MR. WARDER:** Your Honor, before the --
3 whether she had a physical condition that was --
4 for example, a tumor or something, someone would
5 have to examine her and come and testify she has
6 a tumor. You can't say out of written records.

7 **THE COURT:** All right. Well, let me -- I'm
8 going to ask y'all to step out in your jury room
9 for just a minute. I'll let you come back in in
10 just a moment.

11 (WHEREUPON, the jury exits at approximately
12 3:17 p.m.)

13 **THE BAILIFF:** The jury is secure, Your
14 Honor.

15 **THE COURT:** All right. I guess before I
16 hear argument, what is the nature of -- what's
17 the -- I'm going to allow you to proffer her
18 testimony.

19 **MS. HINTON:** Okay. Would you -- you want
20 me to proffer?

21 **THE COURT:** Yes, I want to hear this
22 outside of the presence of the jury then I will
23 hear any argument.

24 **MS. HINTON:** Okay.

25 **BY MS. HINTON:**

1 Q Dr. Crosswell, as part of your examination,
2 do you review prior medical visits as part of the
3 examination?

4 A Yes, I do.

5 Q Okay. Did you do that in this case?

6 A Yes, I did.

7 Q And as part of your review of the records,
8 did you determine whether or not she had been
9 diagnosed with a potential sexually transmitted
10 disease?

11 A Yes, I did.

12 Q Okay. And when did that diagnosis happen?

13 A The diagnosis of the potential --

14 Q Yes.

15 A It occurred when she was seen at Cannon
16 Emergency Room, the record's dated August 24th, 2013.

17 Q Okay. And what was that potential sexually
18 transmitted disease that she was diagnosed with?

19 A Herpes Simplex Type 1 in the genital area.

20 **THE COURT:** Was she diagnosed with it or
21 was --

22 **THE WITNESS:** There -- can I answer that?

23 **THE COURT:** Yeah.

24 **THE WITNESS:** There was a lab report --
25 there was a lab that confirmed she had HSV. The

1 doctor made the diagnosis, but confirmed it with
2 the laboratory result, which I was relying on.

3 **THE COURT:** All right. And how is she
4 going to be using this in her testimony,
5 ultimately?

6 **MS. HINTON:** That's it, Judge. Just that
7 there was a prior diagnosis of it. She did not -
8 - so she did not test for that STD specifically
9 after that because there was already a prior
10 diagnosis of that, but tested for others, which
11 was negative.

12 **THE COURT:** I mean, is she going to be
13 using this as the basis of her overall opinion?

14 **MS. HINTON:** No, Judge. Just frankly, the
15 allegations that are in this case is that she
16 has herpes and so does he. I think, as an
17 expert, she can rely on the works of other
18 experts.

19 **THE COURT:** That's what I'm saying,
20 towards her ultimate -- opinion that she's going
21 to ultimately give.

22 **MS. HINTON:** Is that Minor is positive for
23 HSV-1.

24 **THE COURT:** Mr. Warder?

25 **MR. WARDER:** Of course, all it does is

1 defeat my right to cross-examine the doctor that
2 made the diagnosis. She's -- she's just, by
3 hearsay, putting into the record that she looked
4 at the record and this is what it indicates.
5 That's not the proper way, I would submit that
6 if they are going to put in the records of a
7 doctor that diagnosed her with herpes, then they
8 need to bring the doctor.

9 **THE COURT:** Well, I mean, if she's going
10 to testify that as a child abuse -- as an expert
11 in Child Abuse Pediatrics and --

12 **MR. WARDER:** This wouldn't be either a
13 test she ran or that was in her area of
14 expertise.

15 **THE COURT:** But it's in her evaluation.
16 Would it not be a -- something that she relied
17 on in making her evaluation in this matter?
18 What's the next step that she does because of
19 her forensic testing?

20 **MS. HINTON:** Well, what she ends up doing
21 is, you know, she goes to her forensic
22 interview, which we are not seeking to admit, so
23 I wouldn't elicit that testimony. But the
24 purpose is -- she would testify, I believe --
25 and I don't want to put in the doctor -- doctor

1 -- words in the doctor's mouth, is that it is
2 concerning, given the disclosure and the fact
3 that she has herpes in her vaginal area. That is
4 concerning to her as a medical expert.

5 **THE COURT:** I guess, then, what is her
6 ultimate opinion though?

7 **MS. HINTON:** Is that she's positive for
8 HSV-1. I mean, that's her medical diagnosis is
9 that she has an STD. And Judge, if I may, the
10 rule is Rule 43(m)(2) that allows experts to
11 give opinions based on facts or data, which
12 would otherwise not be admissible provided that
13 the facts or data are the type reasonably relied
14 upon by experts in a particular field informing
15 opinions or inferences in the subject matter. So
16 I think it's well within the rule.

17 **THE COURT:** Anything else?

18 **MR. WARDER:** Judge, it's like if there's
19 someplace in the medical records that said she
20 had cancer, it would be like the doctor is now
21 giving the diagnosis of cancer, not as part of
22 some other bigger larger thing. It just is a way
23 to avoid bringing that doctor and getting that
24 hearsay in, than bringing an expert that's read
25 some other doctor's, and it isn't part of the

1 ultimate opinion she's giving.

2 MS. HINTON: Judge, I have a case on
3 point, too, from the Supreme Court of South
4 Carolina, Creed versus Columbia, 310 S.C. 342.
5 The Supreme Court said that a general
6 practitioner can testify as to the neurological
7 results of a junior high schooler after an
8 accident and ---

9 THE COURT: Let me see that.

10 MS. HINTON: --- and cited that rule.

11 MR. WARDER: Of course, this isn't a
12 general -- this is an expert who's not giving an
13 opinion outside of reading that her record has
14 some hearsay in it.

15 (WHEREUPON, there is a pause.)

16 THE COURT: All right. In light -- I think
17 that Creed v. Columbia is definitely on point
18 and I think it allows for the testimony to come
19 in over the objection of the defendant.

20 MS. HINTON: Thank you, Your Honor.

21 THE COURT: All right. Anything else
22 before we bring the jury back?

23 MS. HINTON: No, Your Honor.

24 THE COURT: Bring them back.

25 (WHEREUPON, the jury enters at approximately

1 3:24 p.m.)

2 **THE COURT:** All right. You may proceed.

3 **MS. HINTON:** Thank you, Your Honor.

4 **BY MS. HINTON:**

5 **Q** Dr. Crosswell, I think when we left off, I
6 was asking you, in your evaluation, to determine
7 whether or not Minor had any potential STDs, did you
8 review any prior medical records?

9 **A** Yes, I did.

10 **Q** And did any of those records indicate that
11 Minor had been diagnosed with a potential STD?

12 **A** She had been diagnosed with a potential
13 STD.

14 **Q** Okay. And where did that diagnosis come
15 from?

16 **A** It came from a lab -- a lab report that was
17 done at Cannon Memorial Emergency Room.

18 **Q** Okay. And do you know the date of that lab?

19 **A** August -- the date she went to the
20 emergency room was August 24th, 2013.

21 **Q** Okay. And remind me again, what was the
22 date that you met with her?

23 **A** September 18th, 2013.

24 **Q** Okay. And the lab indicated that she had
25 what potential STD?

1 **A** Herpes Simplex Virus, Type 1.

2 **Q** In your expertise as a child abuse
3 pediatrician, is it, given Minor 's disclosure and the
4 diagnosis -- well, let me back up. The diagnosis of
5 Herpes Simplex Virus 1, what area of her body was she
6 diagnosed with having it?

7 **A** In her genital area.

8 **Q** So given the fact that Minor had made the
9 disclosure to you and she had Herpes Simplex Virus 1
10 in her vaginal area, is that concerning to you as a
11 child abuse pediatrician?

12 **A** It is concerning. I had taken a detailed
13 medical history and I knew that she had had previous
14 cold sores around her mouth a couple of years prior
15 to me seeing her, based on the history from her mom.
16 With Herpes Simplex Virus, it can go away, but it
17 remains in the body in a latent form, usually at the
18 site of the infection. So she had had no recurrence
19 in that couple of years since her first diagnosis of
20 a cold sore. It wasn't typed -- she wasn't seen by a
21 doctor for that. Mom just gave a history that she had
22 a cold sore, which, from my medical training, is most
23 likely due to Herpes Simplex Type 1.

24 The fact that she did not have another
25 recurrence at that site and had a second occurrence

1 at her genital area was concerning. I can't say
2 definitively that it was caused from sexual contact
3 because it can be transmitted from hand to genital
4 area. I would have expected a recurrence at the site
5 prior to that happening, but I can't exclude that
6 that is the way that she obtained that infection.

7 Q But it is your testimony that a six-year-
8 old who makes that type of disclosure to you and is
9 also positive in her genital area for Herpes Type 1
10 is concerning?

11 A It is concerning.

12 Q That's all I have, Dr. Crosswell. Please
13 answer any questions Mr. Warder may have.

14 **CROSS-EXAMINATION**

15 **BY MR. WARDER:**

16 Q Dr. Crosswell, Herpes Simplex Type 1 is
17 usually oral, is that right?

18 A It's not necessarily usually oral anymore.
19 In fact, more than half of the genital herpes can be
20 caused by Type 1.

21 Q Okay. And you can give yourself vaginal
22 herpes by picking up the virus on paper, cloth, your
23 hands and transferring it to the vaginal area?

24 A Correct.

25 Q Okay. And how did you determine that the

1 child hadn't had another cold sore in the last two
2 years?

3 A I had to base that on the history that I
4 had from --

5 Q Do you have notes in there of when you
6 asked the child when her last cold sore was?

7 A I asked the mom about the cold sore cause
8 she was six.

9 Q Now, let me see. There was no firsthand
10 information from the child that the cold sore has
11 even stopped, is that true?

12 A No. I don't typically take that type of
13 history from a six-year-old.

14 Q Okay. So you made this diagnosis from the
15 stopping of the cold sores. That's what concerned
16 you? Another cold sore?

17 A No, the fact that the second recurrence was
18 at the genital site.

19 Q Are you telling me that -- that she -- the
20 mother gave you a history of repeated oral herpes, is
21 that right?

22 A I'm sorry. Can you repeat that question?

23 Q It was repeated oral herpes or just one
24 instance of oral herpes in this whole child's life?

25 A She described that she first had a cold

1 sore two years ago and had not had a recurrence of
2 the cold sores.

3 Q And she knew that by talking to her
4 daughter, I take it?

5 A Cause she takes care of her daughter, and
6 they're painful, so the child would have --

7 Q Well, now, we've all had cold sores. We
8 don't go to the doctor with cold sores?

9 A No.

10 Q We don't always go to our moms and our dads
11 with our cold sores.

12 A No.

13 Q And it wouldn't be usual for a child not to
14 say, Mom, I have that cold sore back again.

15 A You're right. Excuse me. You're right. I'm
16 relying on mom observing and getting feedback from
17 her daughter.

18 Q Okay. You wouldn't know if she had a cold
19 sore unless you saw -- actually saw it -- unless the
20 child showed it to you, would you?

21 A Would I know that?

22 Q Would any parent know their child had a
23 cold sore if the child didn't point it out? They
24 can't see it.

25 MS. HINTON: Objection, Your Honor. I

1 mean, I don't know where he's going with this,
2 but would any parent know, I think, is way
3 outside the scope.

4 **THE COURT:** I'm going to allow it.
5 Overruled.

6 **THE WITNESS:** I can't tell you that yes or
7 no. I can tell you that many times, they are
8 painful, many times, they are visible, and
9 that's how parents become aware that their child
10 has a cold sore.

11 **BY MR. WARDER:**

12 **Q** Many times, they are not that painful.

13 **A** I can't comment on that.

14 **Q** You had a cold sore?

15 **A** I have not had a cold sore.

16 **Q** And so, anyway, this child had -- the
17 transformation could actually go the other way. I
18 guess if she had vaginal herpes, somehow it could go
19 to your mouth, is that right?

20 **A** It could.

21 **Q** Thank you.

22 **REDIRECT EXAMINATION**

23 **BY MS. HINTON:**

24 **Q** Dr. Crosswell, Mr. Warder asked you if you
25 could get vaginal herpes from paper or touching or --

1 he gave several reasons. Can you also get HSV-1 in
2 your vagina area if someone has HSV-1 and then
3 touches you in your vaginal area?

4 A Yes, you can.

5 MS. HINTON: That's all I have.

6 THE COURT: Anything further?

7 **RECROSS EXAMINATION**

8 **BY MR. WARDER:**

9 Q Nothing you can say makes it any more
10 likely whether it was by somebody else touching her
11 or somebody bringing an arm down from her mouth,
12 could you?

13 A No.

14 Q It's just kind of 50/50?

15 A I wouldn't even -- I couldn't put odds on
16 that.

17 Q Thank you.

18 MS. HINTON: Can she be excused, Your
19 Honor?

20 THE COURT: Any objection to her being
21 excused?

22 MR. WARDER: No, Your Honor.

23 THE COURT: All right. You may be excused.
24 All right. I think --

25 MS. HINTON: Your Honor, those are all the

1 witnesses that the State has for today.

2 **THE COURT:** All right. Ladies and
3 Gentlemen, this is being flexible, so you get an
4 early day off just because the witnesses or the
5 next witness, as I understand, is very lengthy
6 and was not able to make it until in the
7 morning. We'll go ahead and break for the day.

8 Again, I'm going to give you my four
9 warnings: Do not discuss the case among
10 yourselves or with anyone else. That would not
11 be appropriate in any way. Do not do any
12 independent investigation of the case. That
13 includes the elements of the crime or any type
14 of investigation whatsoever or about any of the
15 parties. Do not pay any attention to any media
16 if you should see any media about this event,
17 social media, newspaper, anything like that. And
18 lastly, if you are contacted by anyone outside
19 of the clerk's office, then please let the
20 bailiffs know. Give as much information as you
21 can about that contact.

22 With that being said, we'll start back at
23 9:30 in the morning. So be back in your jury
24 room by 9:30. Thank you.

25 **(WHEREUPON,** the jury exits at approximately

1 3:33 p.m.)

2 MS. HINTON: Judge, I believe Mr. Warder
3 wants to address you on scheduling and I'd like
4 to address you on the defendant's bond.

5 THE COURT: Oh, okay.

6 MS. HINTON: I don't know which matter you
7 want to take up first.

8 THE COURT: Scheduling.

9 MR. WARDER: Your Honor, I may be very
10 short. We may have testimony in before noon
11 tomorrow.

12 THE COURT: Okay.

13 MR. WARDER: I didn't want you -- we
14 wanted to make the most efficient use of your
15 time.

16 THE COURT: Okay. We'll have a jury charge
17 ready in the morning. I'm not sure what you're
18 asking.

19 MR. WARDER: I just wanted you to know if
20 they are calling back or not.

21 THE COURT: Oh, as far as the jury. We
22 told them we're going to leave a message.
23 They're going to call back at noon.

24 MR. WARDER: I didn't want you thinking I
25 was going to run --

1 **THE COURT:** I got you. I appreciate your
2 letting the court know that. That's an issue --
3 I'll be glad to hear from you.

4 **MS. HINTON:** Thank you, Your Honor. As you
5 know, the jury has been sworn. The defendant is
6 now off bond. I would ask that he be taken into
7 custody. As you know, this charge carries a
8 mandatory minimum of 25 years up to life in
9 prison. I mean no offense by this and I'm going
10 strictly off what the investigation revealed was
11 the potential that Mr. Reyes was not a legal
12 documented citizen. So that obviously causes us
13 some concern. I would ask Your Honor to take him
14 into custody.

15 **THE COURT:** All right. Mr. Warder?

16 **MR. WARDER:** Your Honor, my client has
17 shown up like clockwork for this case. It's
18 unimaginable that he does not want to come to
19 court and participate in the finishing of this
20 so he can get -- he's been concerned about
21 clearing his name and that's why he's here. He's
22 always known about the penalty. I've always told
23 him it was 25 years to life. He just doesn't
24 represent a flight risk, Your Honor. He has
25 family support. He's got a work history here.

1 His employer is here. They've worked together
2 for years. He's not going anywhere. My country
3 loves illegals. It's the policy of our
4 president.

5 **THE COURT:** Talk to him before you say
6 anything.

7 **(WHEREUPON, Mr. Reyes consults with Mr. Warder.)**

8 **MR. WARDER:** My client tells me that if he
9 had planned to run, he would have already done
10 it.

11 **THE COURT:** Well, and I appreciate that,
12 but my routine is a charge carrying this amount,
13 unless you give me good reason otherwise, which
14 I think we were just talking about that we're
15 going to finish the trial obviously tomorrow,
16 then we're just talking about one evening. So
17 I'm going to -- his bond has been revoked or
18 expired with the swearing of the jury. I'm going
19 to require that he be in custody.

20 All right. 9:30 in the morning.

21 **(WHEREUPON, the Court recesses for the day at**
22 approximately 3:38 p.m.)

23

CERTIFICATE

109

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens, South Carolina, on this 25th day of April, 2017.

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

Teresa B. Johnson

Official Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF PICKENS) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Jose Reyes Reyes,) 2013-GS-39-03217
6 Defendant.) December 13, 2016
7 Pickens, South Carolina

8
9
10 B E F O R E:

11 HONORABLE PERRY H. GRAVELY, JUDGE; and a jury
12
13

14 A P P E A R A N C E S:

15 BRANDI B. HINTON, ESQUIRE
16 Attorney for the State

17 RICHARD H. WARDER, ESQUIRE
18 Attorney for the Defendant
19
20
21

22 Margaret A. Woods
23 Circuit Court Reporter
24
25

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 THE COURT: All right, uh, are we ready to bring the jury
2 in?

3 MS. HINTON: Yes, Your Honor.

4 THE COURT: Mr Warder, are we, are we ready?

5 MR. WARDER: Yes, sir.

6 THE COURT: All right, bring the jury in.

7 (The following takes place in the presence of the jury.)

8 THE COURT: Good morning, I hope everybody had a pleasant
9 evening. I I appreciate your patience, uh, uh, sometimes, uh,
10 you have other matters to attend to, other hearings when
11 you're the only court in town so we had, uh, another matter,
12 uh, outside a this case, uh, to deal with and, uh, so that's
13 what we handled and at this point we will continue, uh, with
14 the State's case. Ms. Hinton.

15 MS. HINTON: Thank Your Honor, the State would call Ivery
16 Cohen to the stand.

17 (Whereupon, the witness came forward.)

18 THE BAILIFF: Good mornin', you will place your left hand
19 on the Bible, raise your right.

20 IVERY COHEN, having been first
21 duly sworn, testified as follows:

22 THE BAILIFF: Thank you, ma'am, you will have a seat and
23 state your name for the record, please.

24 THE WITNESS: My name is Ivery Cohen.

25 DIRECT EXAMINATION BY MS. HINTON:

IVERY COHEN - DIRECT EXAMINATION BY MS. HINTON

1 Q. Ms. Cohen, uh, can you tell the Court a little bit about
2 your educational background.

3 A. Yes, um, I went to Brown Mackie for medical
4 assisting, ---

5 Q. Okay.

6 A. --- um, I graduated from there in 2014.

7 Q. Okay, and what are you currently doing?

8 A. I'm currently in nursing school at ECPI University.

9 Q. Okay, and, uh, prior to going into nursing school, were
10 you employed anywhere?

11 A. At Any Lab Test Now, Woodruff Road.

12 Q. Okay. Can you tell me a little bit about what you do at
13 Any Lab Testing Now.

14 A. Yes. Um, while I was there I worked as a medical
15 assistant, um, we do a lotta lab work, um, and drug testing,
16 uh, TB testin', things like that.

17 Q. Okay. Is it safe to say that the name a the place is
18 true, that you'll do pretty much any sorta lab testing?

19 A. Um, pretty much, ---

20 Q. Okay.

21 A. --- yeah.

22 Q. Um, part a that do you test for sexually transmitted
23 diseases?

24 A. We do.

25 Q. Okay. Uh, did Jose Reyes Reyes come to your facility for

IVERY COHEN - DIRECT EXAMINATION BY MS. HINTON

1 testing?

2 A. Yes.

3 Q. Okay, and uh, did you, um, draw blood from ---

4 A. Yes.

5 Q. --- him? Okay, and tell me about just in general the
6 procedures of when you draw blood from someone, um, how you
7 make sure that that blood is associated with that person.

8 A. Okay, when they first come in, um, they have to fill out
9 paperwork giving their name, date a birth, address, um,
10 contact information. Uh, when we have someone that does, um,
11 any type a STD testin', they have to show us a ID, um, so that
12 when they come back and pick it up that we know it's them, um,
13 so once they get all the paperwork done it's keyed into a
14 computer, um, we have a system that is linked to the lab that
15 we use, um, so once we put in all of the information it prints
16 out a label that we put on their blood tubes and, uh, it'd
17 state their first and last name, um, a middle name if they
18 gave one and, um, their date of birth and it also give them a
19 number so that when that label is scanned by a lab they match
20 it up with, make sure it's who the tube says it is.

21 Q. Okay, and did you al -- do all that in Mr. Reyes's case?

22 A. Yes.

23 Q. Okay. When you draw blood do you use gloves?

24 A. Yes.

25 Q. Okay, um, and once you the draw the blood do you seal it

IVERY COHEN - DIRECT EXAMINATION BY MS. HINTON

1 in any manner?

2 A. Um, the tubes are already sealed, uh, we do make sure
3 that we make the patient, um, verify that their name and date
4 of birth are correct before it's sent off.

5 Q. Okay, so is that after you draw the blood you make them
6 verify ---

7 A. Yes.

8 Q. --- that? Okay. Um, do you test in-house?

9 A. Um, no.

10 Q. Okay, and and where do you generally send or where did
11 you generally send your stuff for testing?

12 A. Labtech Diagnostics in Anderson.

13 Q. Okay, and how would the vials get to Labtech Diagnostics?

14 A. We have a courier.

15 Q. Okay. Ms. Cohen, that's all the questions I have, please
16 answer anything Mr. Warder may have.

17 A. Okay.

18 THE COURT: Mr. Warder.

19 MR. WARDER: We have no questions, Your Honor.

20 THE COURT: All right, thank you.

21 MS. HINTON: May she be excused, Your Honor?

22 THE COURT: She may be excused.

23 (Whereupon, the witness left the stand.)

24 MS. HINTON: You're free to go.

25 THE WITNESS: Thank you.

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 THE COURT: Oh, I'm sorry, yeah, next witness.

2 MS. HINTON: Thank Your Honor. Uh, State would call Dawn
3 Stewart to the stand.

4 (Whereupon, the witness came forward.)

5 THE BAILIFF: If you would place your left hand on the
6 Bible, raise your right.

7 DAWN MARIE STEWART, having been
8 first duly sworn, testified as follows:

9 THE BAILIFF: You will have a seat, state your name for
10 the record, please.

11 THE WITNESS: Dawn Marie Stewart.

12 DIRECT EXAMINATION BY MS. HINTON:

13 Q. Ms. Stewart, can you tell the Court a little bit about
14 your educational background.

15 A. Um, I went to Tri-County Tech and took medical assisting
16 and I worked at, uh, Anderson Family Care for nine and a half
17 years and have been at Labtech Diagnostics for the last five
18 years.

19 Q. Okay, and at Labtech Diagnostics what is your role over
20 there?

21 A. I'm the lab supervisor.

22 Q. Okay, and tell me a little bit about your day-to-day
23 duties as a lab supervisor.

24 A. Uh, make sure all the phlebotomists are, um, performin'
25 their jobs correctly, I make sure all the specimens comin' in.

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 are accession correctly, labeled correctly, any issues they're
2 put to the side to be noted and called and call any critical
3 labs and make sure the back laboratory where the tests are
4 bein' performed is goin' smoothly.

5 Q. Okay, uh, would it be safe to say that you're in charge
6 of quality control?

7 A. Yes.

8 Q. Okay, and as part of your job do you also run tests?

9 A. Yes, ma'am.

10 Q. Okay, uh, and as part of your job and your background as
11 a medical assistant do you also read tests?

12 A. Yes, ma'am.

13 Q. Okay. Um, Your Honor, at this time the State would move
14 to qualify her as an expert in laboratory testing and
15 diagnosis.

16 THE COURT: Any additional questions or objections?

17 MR. WARDER: Just a couple.

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION BY MR. WARDER:

20 Q. You're not a doctor, are you?

21 A. Correct.

22 Q. And, uh, you operate, uh, lab equipment to test and
23 analyze?

24 A. Yes, sir.

25 Q. Okay, and what training do ya have at -- on that

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 equipment, is it ---

2 A. I have certificates from the actual manufacturers that
3 came and trained on those equi -- that equipment.

4 Q. Do, uh, uh, you haven't done any peer review -- view the
5 work or anything like that for written mag -- for articles or
6 anything?

7 A. No, sir.

8 Q. Thank you.

9 A. Thank you.

10 THE COURT: All right, um, any objection or ---

11 MR. WARDER: Well, I'm I'm just not sure she'd she meet,
12 that she'd meet the standard be qualified as an expert in
13 laboratory tech -- technique, she has training to run the
14 equipment I guess but but certainly no expertise in the area.

15 THE COURT: And, uh, well I believe based on the
16 information that has been provided that she can qualify as a
17 lab -- what your actual request was ---

18 MS. HINTON: Um, laboratory testing and diagnosis.

19 THE COURT: Okay, I believe she falls under that category
20 and, ladies and gentlemen, as I, uh, mentioned to you
21 yesterday, uh, when someone is qualified as an expert, uh,
22 then they can go beyond, uh, uh, the scope of what a normal
23 person can testify, they can testify, uh, as to their opinion,
24 uh, based on their, uh, training and background, uh, but
25 you're to consider this the same way as you feel appropriate,

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 uh, as as you do any other testimony. All right, you may
2 proceed.

3 MS. HINTON: Thank you, s ---

4 BY MS. HINTON: .

5 Q. Uh, Ms. Stewart, can you tell me, uh, how do you receive,
6 um, samples into your lab, how do they get there?

7 A. We have, uh, couriers who go around to all of our
8 facilities, excuse me, and, uh, pick up specimens, they bring
9 them back to the lab and they're all sorted individually and
10 matched, um, we have about, uh, four or five couriers at at
11 this time.

12 Q. Okay. Tell me you said they're sorted and matched, can
13 you tell me what that means.

14 A. Once the specimens come in from the courier, um, we have
15 a labelin' system in the back, everything's separated per
16 facility. Once every specimen comes in, it is placed out on
17 the table and it is matched with each individual label and
18 every tube is analyzed and made sure that there's been no
19 tamperin' with or hasn't been compromised.

20 Q. Okay, if a tube was tampered with or compromised, what
21 would you do with that tube?

22 A. It's immediate rejection.

23 Q. Okay. Does that mean you would not test it?

24 A. We would not test it, we would call the facility and
25 reject it.

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 Q. Okay. Uh, do you do anything on a daily basis to ensure
2 the quality in your lab?

3 A. We run, uh, controls every single day. Before any
4 patient specimens are ran by law we have to run controls and
5 they have to be within normal limits or we cannot report or
6 run patient specimens.

7 Q. Okay. Uh, and would you have done that prior to, um,
8 testing any samples?

9 A. Yes.

10 Q. Okay. Did you receive a sample from Jose Reyes Reyes in
11 your lab?

12 A. Yes, ma'am.

13 Q. Okay, was it, um, sufficient for testing?

14 A. Yes, ma'am.

15 Q. Had it been tampered with in any way?

16 A. No, ma'am.

17 Q. Okay. Um, were you the actual one who ran that lab?

18 A. Yes, ma'am.

19 Q. Okay. Can you tell me what kind of machine you ran that
20 lab on.

21 A. The cobas e411.

22 Q. Okay, tell me a little bit about that machine in layman's
23 terms.

24 A. It's made, uh, the manufacturer's Roche. Um, we run, uh,
25 hepatitis panels, also as well on that machine. vitamin D, um,

1 it's, you can run a lot of STDs off of that machine, that's
2 our main one.

3 Q. Okay. Do you send in a bunch a samples at once or is it
4 one at a time, how's that machine run?

5 A. It -- there's, uh, five tubes can fit on a rack at a time
6 and each tube has a barcode with that patient's name on it
7 that we, it r -- it comes already with a barcode on it and the
8 patient's name from the facilities outside. Once it gets
9 there we match our barcode with a barcode that's on it with
10 the patient's name and that's what the machine reads.

11 Q. Okay. Are you hooked to the same computer ses -- system
12 as Any Lab Test Now?

13 A. Correct, it's oh, it's a online, uh, lab web portal.

14 Q. Okay. Um, when you ran the tests for Mr. Reyes Reyes,
15 did you receive any results on that test?

16 A. Yes.

17 Q. Okay, um, and what specifically were you testing for?

18 A. Uh, HSV-1 and 2.

19 Q. Okay, and HSV-1 and 2 what in in layman's terms what's
20 that called?

21 A. It's herpes.

22 Q. Okay. Uh, so are there two types of herpes?

23 A. Correct.

24 Q. Okay, and was Mr. Reyes Reyes positive for either type of
25 herpes?

DAWN MARIE STEWART - DIRECT EXAMINATION BY MS. HINTON

1 A. HSV-1.

2 Q. Can you do, um, a urine test for herpes?

3 A. No, ma'am.

4 Q. All right, so how do you have to check for herpes?

5 A. Either through blood or through a VCN which is a vaginal
6 swab or a urethral swab, it swabs the lesion.

7 Q. Ms. Stewart, that's all I have, please answer any
8 questions Mr. Warder may have.

9 THE COURT: Mr. Warder.

10 MR. WARDER: I have no questions, Your Honor.

11 THE COURT: All right.

12 MS. HINTON: Thank Your Honor, may she be excused?

13 THE COURT: Yes, you may. Thank you.

14 THE WITNESS: Thank you.

15 (Whereupon, the witness left the stand.)

16 THE COURT: All right.

17 MS. HINTON: Thank Your Honor, the State would call
18 Shauna Galloway-Williams.

19 (Whereupon, the witness came forward.)

20 THE BAILIFF: Mornin'.

21 SHAUNA GALLOWAY-WILLIAMS,
22 having been first duly sworn, testified as follows:

23 THE BAILIFF: Thank you, ma'am, if you would have a seat,
24 state your name for the record, please.

25 THE WITNESS: Shauna Galloway-Williams.

1 DIRECT EXAMINATION BY MS. HINTON:

2 Q. Ms. Galloway-Williams, where are you currently employed?

3 A. At the Julie Valentine Center.

4 Q. Okay. What is your, uh, title over there?

5 A. I'm the executive director.

6 Q. Okay. Can you tell the Court a little bit about what the
7 Julie Valentine Center is.

8 A. We are the child abuse and sexual assault recovery
9 center, we serve Greenville and Pickens County, we provide
10 prevention, investigation and assessment, advocacy and
11 treatment services to, um, anyone who's been impacted by child
12 abuse or sexual assault.

13 Q. Okay. Can you tell the Court a little bit about your
14 educational background.

15 A. I have a bachelor's degree in psychology from Winthrop
16 University and a master's degree in counseling from Clemson
17 University.

18 Q. Okay, and how long have you been with the Julie Valentine
19 Center?

20 A. Um, I've been employed with the Julie Valentine Center
21 for nine years.

22 Q. Okay, how long have you served as executive director?

23 A. I've been executive director for seven of those years.

24 Q. Okay, and what type of of training do you do? Do you do
25 training to to keep up with ---

SHAUNA GALLOWAY-WILLIAMS - DIRECT EXAMINATION BY MS. HINTON

1 A. Um, ---

2 Q. --- research?

3 A. --- yes. Um, so I participate in training, I'm a
4 licensed professional counselor in the State of South Carolina
5 so I'm required to, um, obtain continue education requirements
6 on a regular basis so, uh, most of my training has been in the
7 area of child maltreatment, child abuse and sexual assault,
8 um, I have over a hundred and fifty skills-based hours
9 specifically related to assessing, uh, children when there are
10 allegations of abuse or neglect, um, I also conduct training.
11 Um, I provide training for, uh, professionals in the field as
12 well as, um, uh, the general public in in an awareness, um,
13 uh, capacity and I also am a, uh, adjunct faculty member for
14 USC Upstate in their Child Advocacy Studies program.

15 Q. Okay, and have you ever testified as an expert before?

16 A. I have.

17 Q. Okay. Have you done that in both family court and
18 general sessions court?

19 A. I have.

20 Q. Do you know how many times you've been qualified as an
21 expert?

22 A. Um, in in general sessions over thirty-six times.

23 Q. Okay. Your Honor, at this time the State would move
24 Shauna Galloway-Williams as a blind expert in child abuse
25 dynamics and disclosure.

1 THE COURT: ~~All~~ right, any questions certify?

2 MR. WARDER: No, Your Honor.

3 THE COURT: All right, any objections?

4 MR. WARDER: No, sir.

5 THE COURT: All right, then she is so qualified, uh, and
6 again, uh, ladies and gentlemen, this is, uh, again that
7 expert category, uh, so, uh, she can testify beyond the scope
8 of a normal witness, a normal lay witness and you are to, uh,
9 to give it the weight that you deem appropriate.

10 BY MS. HINTON:

11 Q. Ms. Galloway-Williams, uh, to be clear have you ever met
12 Minor , the Minor in this case?

13 A. I have not.

14 Q. Okay. Um, do you know anything about the specifics of
15 her case?

16 A. I don't.

17 Q. Okay, and, uh, even if a child receives services at your
18 center, um, how do you ensure that you don't, you are not
19 familiar with the details of their case?

20 A. Well we serve somewhere between eight or nine hundred
21 children each year, ---

22 Q. Um-hum.

23 A. --- um, if I'm not directly involved in that case in some
24 capacity then it's very likely that I don't have any knowledge
25 of the case specifics.

SHAUNA GALLOWAY-WILLIAMS - DIRECT EXAMINATION BY MS. HINTON

1 Q. Okay, and were you directly involved in Minor 's
2 case?

3 A. I was not.

4 Q. Okay. All right, so I wanna talk about, uh, just child
5 abuse in in general, in general terms. What does it mean, uh,
6 for a child to have a delayed disclosure?

7 A. Um, well "delayed disclosure" is the term that, uh, we
8 use to refer to a child not disclosing abuse right away, um,
9 not telling someone as soon as it happens, um, it is a common
10 occurrence among, um, those who have been abused: sexual
11 abused, physically abused or neglected, uh, for many different
12 reasons.

13 Q. Okay, and what are some a the reasons that you would see
14 delayed disclosure in a case?

15 A. Um, well one of the most common reasons for delaying
16 disclosure is that most children are abused by someone that
17 they know, they love and they trust, uh, so they often have a
18 relationship with the person that has abused them, um, that
19 can make it very difficult for them to tell someone about
20 what's happened, there may be aspects of that relationship
21 that are positive, um, in addition to the fact that they were
22 also abused and that makes it very difficult for them to make
23 a disclosure, uh, this may also be someone who has some sort
24 of power or authority in, um, in their world or in their life
25 which may also influence their ability to tell. Uh, many

1 children are afraid, they're afraid of what will happen to
2 them or someone else if they tell, they may have been
3 threatened, uh, these threats coulda been direct threats where
4 they were told that if they tell something will happen to them
5 or they may be indirect, um, whereas they may be seen and the
6 person that has harmed them harmed other people and they
7 internalize that that may happen to them. Um, sometimes
8 children, uh, don't have the words to describe what's happened
9 to them, if it's a very young child they may not have the
10 language or cognitive abilities to describe what's happened,
11 they just may know that something was wrong, um, and
12 sometimes, um, children may feel responsible or guilty for
13 what's happened, um, there's a lot of shame and, um,
14 embarrassment associated with, uh, with sexual abuse in
15 particular and a lot of times children feel responsible in
16 some way or they're embarrassed to talk about that with
17 others.

18 Q. Okay. Um, and can you talk about, uh, whether or not
19 children disclose everything at once or how that generally
20 happens.

21 A. Well we refer to disclosure as being a process, uh,
22 meaning that we don't expect that the first time that a child
23 tells that they are going to tell every every single detail
24 about every experience of abuse that they've had. Um,
25 sometimes they disclose one piece of information, wait to see

SHAUNA GALLOWAY-WILLIAMS - DIRECT EXAMINATION BY MS. HINTON

1 how others are gonna respond to that or what happens next and
2 then they may tell additional pieces of information, um, their
3 contact with the person that has, um, abused them may also
4 impact how much information they share or don't share, um,
5 really the response that they receive once they have disclosed
6 will impact a lot of times whether or not they tell. The
7 other thing that, uh, influences that is the questions that
8 they're being asked so, for instance, um, the questions that,
9 uh, law enforcement investigator is asking the child or a DSS
10 worker is asking the child or a mother is asking a child may
11 be different from the questions that, um, someone in my
12 capacity may be asking them and so for different reasons, um,
13 or because of those questions the child may disclose different
14 pieces of information, children answer questions based on, uh,
15 you know, what they're being ask.

16 Q. Okay, and do you expect when a child discloses that
17 they're able to pinpoint a specific date and time?

18 A. Um, most children have a really hard time with, um, dates
19 and time, it's an abstract concept, um, we tend to be -- say
20 that until a child is 12 or older they really have a hard time
21 grasping what that is so, uh, they may not be able to tell us
22 the exact date, time, uh, month and year that something
23 happened and so we often ask them questions about other things
24 that might, um, connect events, uh, maybe to when they were in
25 school, what grade they were in, what house they were living

1 in at the time, uh, ~~what season it is, if it's a holiday~~
2 season when it happened or not, uh, we may ask them questions
3 about daytime or nighttime, things that, um, uh, that they're
4 better able to, uh, identify and connect with events in their
5 life.

6 Q. Okay, and can you tell the Court how that is affected by
7 chronic abuse.

8 A. Certainly. Um, if a child is abused repeatedly or or
9 over, uh, the course of time or numerous times, they may have
10 a hard time describing, um, dates and times of each incident
11 that happened, um, again, they may be able to pinpoint, um,
12 certain locations or they may be able to attach that to a
13 grade or a season, um, if the abuse, uh, happened the same way
14 every time, uh, they may have a hard time distinguishing which
15 time, uh, happened when, uh, it's, it in many ways is like,
16 uh, if we repeat an event or a scenario, you know, if we go to
17 the grocery store the same day every week, uh, we go down the
18 same aisles, we park in the same parking spot but if you ask
19 me to tell you exactly what I bought on a particular date or
20 time I may not be able to give you every single item in that
21 list, that's sort of what that's like, if there's a repeated
22 incident, they may be able to tell you the generalities of it
23 but may not be able to give you all of those specific details.
24 Q. And is it co -- or in children who are sexually abused,
25 do you often see changes in behavior?

SHAUNA GALLOWAY-WILLIAMS - DIRECT EXAMINATION BY MS. HINTON

1 A. You can. Um, you know, with some children you may see no
2 changes at all, with some children you may see, um, a complete
3 behavior change: A child who, um, has normally been very
4 social and very active becoming more isolated and withdrawn,
5 uh, you may see a child's grades, uh, deteriorate in school or
6 their performance in school deteriorate, uh, you may see
7 acting out behaviors, you may see, um, self-harming behaviors
8 and again, on the other extreme of that you may see no
9 behavior changes at all.

10 Q. Okay, and I think I just have one final question: When
11 talking about child abuse in general, what is grooming?

12 A. Um, grooming's what we refer to as, um, really sort of
13 developing a trusting relationship with a child and really
14 testing the waters, uh, for abuse so, uh, maybe introducing a
15 child to sexual behavior in a casual way leading up to more,
16 uh, more progressive, uh, or in a more progressive way so; for
17 example, um, maybe touching a child on on their arm or their
18 stomach, um, or their their bottom and then later touching
19 them under their clothes, um, and then on their private areas,
20 um, it may mean exposing a child to sexual materials so maybe
21 showing them pictures or books or movies in a s -- in a way to
22 normalize sexual behavior for the child, um, and to later
23 develop a trusting relationship with them.

24 Q. Are you paid to be here today?

25 A. I'm not?

SHAUNA GALLOWAY-WILLIAMS - CROSS-EXAMINATION BY MR. WARDER

1 Q. All right, are you here because I served you with a
2 subpoena?

3 A. That is correct.

4 Q. Ms. Galloway-Williams, that's all I have, please answer
5 any questions Mr. Warder may have.

6 THE COURT: Mr. Warder.

7 CROSS-EXAMINATION BY MR. WARDER:

8 Q. Ms. Galloway, are you on a salary from, uh, the people
9 that employ you?

10 A. Yes, I'm paid by the Julie Valentine Center.

11 Q. Okay, and you're still gettin' that salary today.

12 A. Yes.

13 Q. So when you say you're not paid, uh, you mean you're not
14 gettin' any extra money outside a your regular salary for you
15 regular job.

16 A. It means I'm not being paid by anyone here to be here,
17 I'm paid just like I would be if I were at the center behind
18 my desk or, um, in a counseling room.

19 Q. Is that state-funded or ---

20 A. We are not state-funded, no. We are a non-profit
21 organization, we're a 501 C3 so, um, about a third of our
22 funding comes from United Way agencies, both Greenville and
23 Pickens County United Way, we also have grants, um, federal
24 grants through the Victims of Crime Act, Violence Against
25 Women Act and another third of our funding comes from fund

1 raising and, uh, private donations or foundations.

2 Q. Okay, so you're really gettin' paid today, you're just
3 getting' your regular salary today.

4 A. That's correct, um-hum.

5 Q. Okay, and you haven't, uh, uh, ever seen this child as
6 far as you know, is that right?

7 A. That is correct.

8 Q. And, uh, you don't know anything about the particulars
9 of this case.

10 A. No.

11 Q. Have you studied false allegations of child abuse?

12 A. Uh, yes.

13 Q. What's some a the reasons that children give false
14 allegations of child abuse?

15 A. Some a the reasons why children would give a false
16 allegation?

17 Q. Sure.

18 A. Uh, what we tend to see more than false allegations are
19 false denials of disclosures so, ---

20 Q. Okay, ---

21 A. --- uh, ---

22 Q. --- you don't know anything about false allegations? I
23 asked you about false allegations.

24 A. Certainly, so, uh, statistically about 2 to 4 percent of
25 allegations of child sexual abuse are determined to be false

1 allegations and sometimes those allegations, um, are not
2 necessarily that the child has made a false statement but that
3 someone else has made a false statement instead.

4 Q. So you don't know anything about a child that would make
5 a false allegation.

6 A. No, I'm sa -- there are certainly false allegations that
7 I guess at 2 to 4 percent statistically are the false
8 allegations of disclosure.

9 Q. Have you, uh, uh, have you done any studies on that?

10 A. Have I myself done any studies?

11 Q. Yeah.

12 A. I don't do any research.

13 Q. You you just read and then, uh, uh, uh, tell us about
14 what you read?

15 A. Um, well I read and I practice and I teach and attend
16 training as well.

17 Q. All of that's from somebody else's research or ---

18 A. That's correct, I'm not a researcher.

19 Q. Thank you.

20 THE COURT: All right, any redirect?

21 MS. HINTON: No, Your Honor, may she be excused?

22 THE COURT: Yes, any objection her being excused?

23 MR. WARDER: No.

24 THE COURT: All right, thank ---

25 THE WITNESS: Yes, sir.

MOTIONS AND MATTERS

1 THE COURT: --- you very much.

2 (Whereupon, the witness left the stand.)

3 THE COURT: All right.

4 MS. HINTON: Thank Your Honor, at this time the State
5 rests.

6 THE COURT: All right, uh, ladies and gentlemen, uh, that
7 the State has rested means that they have, uh, put in all the
8 evidence in their case in chief, uh, so this is a point where
9 we need to take a a break, uh, to discuss some some other
10 issues, uh, so it, I'm gonna ask you get back to your, uh,
11 jury room at this time, uh, and this is may be a little bit
12 longer break than just a short break so, uh, just, uh, you
13 know, we'll we'll call ya back as soon as possible. Again,
14 this is not the time to discuss the case among yourselves or,
15 uh, you know, we'll that you'll begin deliberation at the
16 conclusion of the trial so after you've received all the
17 evidence and all of the the law of the case but this time if
18 you'll go return to your jury room and we'll call ya right
19 back out when we get things started.

20 (The following takes place outside the presence of the
21 jury.)

22 THE BAILIFF: Jury is secure, Your Honor.

23 THE COURT: Thank you. All right, anything from the
24 defendant?

25 MR. WARDER: Your Honor, at this time of course we would

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1 move for a directed verdict. Uh, Your Honor, uh, taking the
2 evidence most favorable to the State there's certainly
3 insufficient evidence that a a jury could conclude that there
4 was a a crime of first degree criminally sexual conduct
5 occurred, uh, the Minor has testified that she was, uh,
6 touched, I don't think there's sufficient proof of of either
7 penetration or a a touching in a fashion that would constitute
8 first degree, sorry, uh, criminal sexual conduct.

9 THE COURT: Okay. Ms. Hinton.

10 MS. HINTON: Thank Your Honor. As you know the standard
11 is if there's any evidence it is to be submitted to the jury,
12 I certainly think there's sufficient evidence. Minor
13 testified on Monday that he put his finger in her private and
14 also put his tongue in her mouth, I think that qualifies as
15 penetration under the law, um, I think there's been ample
16 evidence, if Your Honor would like me to go more specifically
17 into it, I'm happy to but I don't wanna belabor the point.

18 THE COURT: Right. I mean, I I think in looking at the
19 statute, uh, under which he's charged it's a sexual battery
20 and a sexual battery, uh, think under the definition, I'm
21 looking up sexual battery that, uh, there is sufficient
22 evidence for it to be a jury question so I'm gonna deny your
23 motion. Anything else from the defendant? Ya'll --
24 anybody -- I'm sorry.

25 MR. WARDER: Other than, Your Honor, I need probly a few

MOTIONS AND MATTERS

1 minutes, uh, recess here to talk to my client.

2 THE COURT: Right, I was gonna look into, uh, what do you
3 antic -- do ya'll have any, uh, proposed jury charges?

4 MS. HINTON: Um, the only thing I would ask Your Honor
5 and it's probly already included is that you use the firmly
6 convinced language, if you wanna use both and reasonable
7 doubt, that's fine but since I use that in my opening I would
8 ask that that be included but absent that I don't have
9 anything specific.

10 THE COURT: All right, Mr. Warder.

11 MR. WARDER: Judge, I don't have anything that wouldn't
12 be in your your regular charge.

13 THE COURT: Oh, all right. Uh, then any propo -- I know
14 there's a little bit difference sometimes on these CSCs, any,
15 uh, any discussion on the, uh, verdict form?

16 MS. HINTON: Not from the State, Your Honor.

17 THE COURT: All right. All right, we'll take, uh, 'cause
18 I need to review a couple things as well, let's take a 15-
19 minute break, that'll give you sufficient time, we'll come
20 back out, you can let me know what ya'll need to do.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right, uh, all right, Mr. Warder, what
23 is, uh, what is the intent of your client as far as testifying
24 or present any type of defense?

25 MR. WARDER: Your Honor, uh, uh, I think my client will

MOTIONS AND MATTERS

1 take the stand here ---

2 THE COURT: All right.

3 MR. WARDER: --- today ---

4 THE COURT: Um, I guess if you will, uh, you'll stand and
5 do we wanna have an interpreter for this, it's just to make
6 sure he understands all my questions?

7 MR. WARDER: Uh, yes, sir, we've handed up the
8 interpreter.

9 THE COURT: All right, uh, Mr. Reyes, uh, if you don't
10 understand my questions like, I mean, you unders -- you're
11 able to understand me now, right?

12 THE DEFENDANT: Yeah.

13 THE COURT: Okay. If you don't understand any a my
14 questions then then let me know so we can involve the
15 interpret, I just wanna make sure you totally understand, uh,
16 uh, these questions. It's my understanding from, uh, your
17 attorney that you, uh, plan to testify, is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Now, um, just before you, uh, do
20 that I wanna make sure, uh, first of all, have you had
21 sufficient time to talk with your attorney about whether
22 you're gonna testify or not, have you?

23 THE DEFENDANT: Yeah.

24 THE COURT: All right, and you understand there are
25 certain strategic, uh, or or there certain strategies that you

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1 have for not testifying which will allow him to to make a a
2 closing argument, it'll affect that he -- he'll have the last
3 closing argument, stuff like that, ya'll talked about those
4 strategies?

5 THE DEFENDANT: Yes.

6 THE COURT: All right, is any criminal record that will
7 be ---

8 MS. HINTON: Uh, no, Your Honor, the only criminal
9 offense he has is a June 2015 CDV first offense, uh,
10 conviction.

11 THE COURT: All right, uh, do you plan to introduce that?

12 MS. HINTON: Not unless the door is open.

13 THE COURT: Okay, uh, you have, uh, and you've discussed
14 with your attorney that, uh, uh, generally that would not, uh,
15 be allowed but under certain circumstances, uh, uh, the
16 prosecutor could bring that, uh, prior conviction up, do ya
17 understand that?

18 (Attorney/client discussion held off the record.)

19 THE COURT: All right, do you understand the question
20 then?

21 THE DEFENDANT: Yes.

22 THE COURT: All right, uh, and, uh, you realize that you,
23 uh, you have the absolute constitutional right that you don't
24 have to testify?

25 THE INTERPRETER: Yes.

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1 THE COURT: Okay. Did -- all right, I guess if we're
2 gonna do the interpreting role then you need -- you need, all
3 right, I I guess let's go into interpreter mode on this then
4 'cause I'm gonna ask you the question, you ask him then he's
5 gotta give you the response to respond back so that I know
6 he's responded, okay?

7 THE INTERPRETER: Okay, yes, sir.

8 THE COURT: All right, do you realize you do have the,
9 uh, the right to remain silent, that nobody can make you
10 testify?

11 THE INTERPRETER: Yes.

12 THE COURT: All right, and that, uh, if you decide not to
13 testify then that cannot be used against you in any way and I
14 would, uh, ... all right, and that the -- I would instruct the
15 jury that they could not consider that, uh, uh, in their
16 deliberation, okay, because the State would still have the
17 burden of proof beyond a reasonable doubt. All right. Okay,
18 you understand this, right?

19 THE INTERPRETER: Yes.

20 THE COURT: And and based on your discussions with your
21 attorney, uh, and the information that I've given you, do you
22 wish to testify?

23 THE INTERPRETER: Yes, Your Honor, ---

24 THE COURT: All right.

25 THE INTERPRETER: --- testify.

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1 THE COURT: Uh, all right then, uh, anything else that
2 you wanna ask while on the record on this?

3 MR. WARDER: No, Your Honor.

4 THE COURT: All right. All right, and we thank you. Are
5 we ready to proceed then?

6 MR. WARDER: Yes, sir.

7 THE COURT: All right.

8 MS. HINTON: Yes, Your Honor.

9 THE COURT: All right, bring the jury out. Um, are we
10 gonna use the interpreter at all for this questioning?

11 MR. WARDER: I don't think so but ---

12 THE COURT: She was sworn yesterday so . . .

13 THE CLERK: Correct.

14 (Whereupon, a discussion was held off the record.)

15 (The following takes place in the presence of the jury.)

16 THE COURT: All right, ladies and gentlemen, uh, thank
17 you for your patience, uh, and at this point, uh, that as I
18 indicated the State rested and now the defendant will present
19 any, uh, evidence that they feel appropriate. Mr. Warder.

20 MR. WARDER: Your Honor, if it please the Court, we call
21 Megan Corcher.

22 (Whereupon, the witness came forward.)

23 THE BAILIFF: You'll place your left hand on the Bible,
24 raise your right.

25 MEGAN RENE MOLINA, having been

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 first duly sworn, testified as follows:

2 THE COURT: Now if you would have a seat, state your name
3 for the record, please.

4 THE WITNESS: Megan Renee Molina.

5 DIRECT EXAMINATION BY MR. WARDER:

6 Q. Megan, how long have you known Jose?

7 A. Since I was 17.

8 Q. Okay. How did you meet Jose?

9 A. We met at a social gathering and we ended up meetin' up
10 and I ended up gettin' pregnant with our first daughter.

11 Q. Okay. Where did you and Jose live at?

12 A. In Hendersonville, North Carolina with his cousin.

13 Q. How long did you and Jose live in Hendersonville?

14 A. Uh, about two to three yea -- about two to three years
15 and then I moved to Pickens with my mama and her husband and
16 me and him and our daughter lived with my parents.

17 Q. Okay. You lived in Hendersonville for a couple years, is
18 that right?

19 A. Yes, sir, 'cause he had family up there and we had a
20 mobile home.

21 Q. Okay, Jose had family in Hendersonville, uh, and he had a
22 job up there.

23 A. Yes, sir, he did.

24 Q. Okay. Did that job end before you moved to Pickens?

25 A. Uh, yes, sir and he come down to work and he's been

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 workin' with Mr. Elrod ever since.

2 Q. Okay, so you and him moved from Hendersonville down here
3 and where did you pick to live down here?

4 A. With my mother and my stepdad Charlie Sanchez.

5 Q. Okay, and what type of residence was that?

6 A. It was a house, 2-bedroom and one bath and, uh, it was a
7 white house in Pickens not far from here.

8 Q. Okay. Did there come a time that you moved out and got a
9 place a your own?

10 A. Yes, sir, uh, my grandpa passed away and I moved in his
11 trailer, it was he felt that, my mom owns the mobile home, so
12 he felt that I needed a place to stay for me and my daughter
13 before he passed away.

14 Q. Okay, and is that the mobile home you were living in in
15 2013?

16 A. Yes, sir, ---

17 Q. Okay.

18 A. --- we was actually remodelin' the mobile home at the
19 time because, uh, it needed a lotta work done and I had lived
20 with my mother, she moved to Six Mile in a mobile home that my
21 uncle had owned for years and it went back 'cause the taxes
22 got, you know, back and he co -- we couldn't afford to pay it
23 and so I was livin', my mom was involved in helpin' me get my
24 grandpa's house situated so we would have a stable home for
25 our kids.

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 Q. Okay. Now the mobile home that you and Jose occupied
2 that was your grandfather's, is it a singlewide?

3 A. Yes, sir, it's a small one, it's only a 2-bedroom and
4 1 bath, it's it's really really small and, uh, I mean, it's
5 not that big at all.

6 Q. Okay, wanna turn your attention to the time period of
7 January to June of 2013, were you living in that home?

8 A. I'm sorry, Richard, can you ---

9 Q. Were you ---

10 A. --- ask me ---

11 Q. --- living ---

12 A. --- again ---

13 Q. --- there there int -- between January and June of 2013?

14 A. Yes, sir, I was.

15 Q. Okay, and who was living with you?

16 A. My sister Tammy Lynn Valencia, her husband Jose Luis
17 Gravada (phonetic), her daughter, she had her daughter in
18 February and, uh, we all lived together, it was crowded but we
19 managed because we needed, my sister needed a place to go, she
20 was stressed 'cause her and her old man couldn't meet ends
21 meet and her old man worked for Jamie Elrod too and they're
22 best friends my sister's old man and my old man, my ex,
23 which---

24 Q. Oh ---

25 A. --- is my daughter's daddy.

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 Q. --- okay, your daughter's ex and your first ---

2 A. I mean, ---

3 Q. --- your old man ---

4 A. --- my sister's ex.

5 Q. Jose is your old man.

6 A. Yeah (laughed).

7 Q. Okay. Uh, and they both work for for Jamie Corcher.

8 A. Yeah, ---

9 UNIDENTIFIED MAN: Elrod.

10 A. --- for Jamie Elrod.

11 UNIDENTIFIED MAN: Cor ---

12 Q. Cor -- Elrod.

13 A. Yeah, ---

14 Q. Okay.

15 A. --- he owns a big concrete company, him and his dad.

16 Q. Okay, and, uh, Minor would come over and stay with
17 you?

18 A. Yes, sir, she's been comin' to my house since 2010. I've
19 been keepin' her, uh, she would get dropped off and she would
20 even scream even then. Minor, um, she's always been the child
21 that ne -- she's always liked to stay with her mama but when
22 she got dropped off with people she would scream like that any
23 time, it was not just beca -- when this incident happened,
24 this was before the incident supposedly happened and Minor
25 would stay with me at times, that's why she said when she

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 stayed with me she liked stayin' with me because, you know.

2 Q. How often would Minor come and stay with you?

3 A. She would ask to come and stay with me all the time and I
4 would sometimes, me and Jose and my daughters would go stay
5 with Dianne and Ismael Sanchez which is Minor 's father.

6 Q. Okay, they would stay there too sometime?

7 A. Yeah, we would stay over there, we stayed over there
8 quite a few times.

9 Q. Okay. When they stayed with you and Jose at the trailer,
10 how many people would be at the trailer then? There'd be you,
11 Jose ---

12 A. Uh, it it was, we've had a lotta people, mean, my sister,
13 I mean, her her baby which is only a baby but now she's not a
14 baby no more and my two babies which is 7 and 5 now.

15 Q. Okay.

16 A. --- and, uh, me and him ---

17 Q. Okay.

18 A. --- and, uh, Jose Luis Gravado which is in Mexico right
19 now, he got deported.

20 Q. Okay, so there's least seven or eight people there?

21 A. Yeah, it was crowded but we made it work.

22 Q. Okay. What were the sleeping arrangements?

23 A. Uh, me and him slept in our bedroom which is in my
24 grandpa's bedroom, my girls slept in the room that my papa
25 slept in before he died ---

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 Q. Okay, you ---

2 A. --- and ---

3 Q. --- have your bedroom?

4 A. Yes, sir, and, uh, **Minor** slept with my girls. She's
5 never ever ever slept on my couch and I never got the couch
6 until August of 2013 and they're sayin' this happened in
7 January.

8 Q. Okay, when you're sayin' that that they slept with your
9 girls, where would your girls sleep at ---

10 A. In ---

11 Q. --- visibly ---

12 A. --- the room that my grandpa passed away in which is on
13 the other side a the house where my front door is.

14 Q. Okay, and who'd sleep in the other bedroom?

15 A. Me and Jose ---

16 Q. Okay.

17 A. --- and my sister and them would sleep on the couch
18 because we didn't have no room in the house, I mean, and her
19 daughter slept in my bedroom in the crib 'cause I helped my
20 sister 'cause she di -- she was sick, they cut her extra when
21 she had her cesarean and I had to help my sister take care of
22 the baby which is ---

23 Q. Okay, ---

24 A. --- my niece.

25 Q. --- that was in the period there between ---

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 A. Yes, it's been in that period a time and 'cause my sister
2 had her baby in February of 2013.

3 Q. Okay. Uh, in that period did anything, did anybody
4 complain or tell you that anything had happened, there was
5 anything wrong in the house?

6 A. N -- in -- sir?

7 Q. Did ---

8 A. I'm sorry, Richard.

9 Q. --- did Minor complain or did she say anything ---

10 A. No, sir, ---

11 Q. --- had ha ---

12 A. --- Minor 's never, Minor 's never complained to me, I
13 mean, me and her -- she stayed with me, she liked stayin' with
14 the girls, the girls enjoyed havin' Minor over, I mean, I miss
15 Minor till today. I mean, I've seen Minor recently since the
16 case.

17 Q. Well that ---

18 A. Minor ---

19 Q. --- and ---

20 A. --- come to, um, my mother's house over there and, uh,
21 over here in Pickens next to, close to Cannon, not far from
22 Canno's Trailer Park and I've seen a, she come to Judidia's
23 (phonetic) birthday party and I seen Minor ever since, I --
24 and Christian's been to my mama's house which she lives in
25 since my now that this supposedly happened at.

MEGAN RENEE MOLINA - DIRECT EXAMINATION BY MR. WARDER

1 Q. Okay. Was there ever a a time of privacy or when when
2 this coulda happened during that that time?

3 A. No, sir, and I don't really take naps during the day, I
4 don't leave my kids up because I'm a good mother and I like to
5 make sure that my kids are not gettin' into anything, they're
6 only 7 and 5, if I leave 'em up then they could get hurt or
7 anything.

8 Q. Okay. Did did Jose get up and and roam around the house
9 at night or anything?

10 A. No, he's he's a heavy sleeper, ---

11 Q. And he ---

12 A. --- he doesn't get up that easy, I mean, but trust me, I
13 know because his boss has had plenty a times where he's had to
14 knock on my door to wake him up.

15 Q. And how many hours a week does Jose work?

16 A. Oh, he worked all the time, I never seen him, I mean, I
17 missed him a lot but I knew he had to work 'cause, I mean, we
18 have ---

19 Q. Would ---

20 A. --- bills and stuff.

21 Q. --- would he work more than a 40-hour week?

22 A. Oh, he worked more than that sometimes, they worked outta
23 town sometimes too, they didn't come in for days or weeks or
24 maybe a month or two.

25 Q. Thank you, you answer any question the State might have.

MEGAN RENEE MOLINA - CROSS-EXAMINATION BY MS. HINTON

1 A. ~~Yes, sir.~~

2 THE COURT: Cross-examination.

3 MS. HINTON: Thank Your Honor.

4 CROSS-EXAMINATION BY MS. HINTON:

5 Q. Mornin', Megan.

6 A. Good mornin', Brandi.

7 Q. How are ya?

8 A. I'm good, how are you?

9 Q. I'm good. Um, so you said that your sister lived with
10 you after she had her baby in February of 2013, correct, ---

11 A. Yes.

12 Q. --- that was your testimony?

13 A. Yes, ma'am.

14 Q. Okay, um, and it's true that she lived with you briefly,
15 isn't that correct?

16 A. No, briefly 'cause me and Jose's been split up.

17 Q. So my question was she lived with you for a brief period
18 of time, isn't that correct?

19 A. Yeah, my sister lived with me for a brief period, that
20 she lived with me because she didn't have no one to help her
21 with her daughter ---

22 Q. Sure.

23 A. --- and her husband worked all the time and my sister was
24 sick when she had the baby, she stayed with me and, uh, me
25 and, uh, my daughters had stayed with her at the hospital ---

MEGAN RENEE MOLINA - CROSS-EXAMINATION BY MS. HINTON

- 1 Q. Okay.
- 2 A. --- when she had her daughter ---
- 3 Q. Okay, ---
- 4 A. --- and ---
- 5 Q. --- an -- I'm sorry, I didn't mean ---
- 6 A. Sorry.
- 7 Q. --- to cut you off, ---
- 8 A. --- that's, hah, ---
- 9 Q. --- go ahead.
- 10 A. She come back and she stayed with me and her husband's
- 11 been stayin' with, her and her husband's been stayin' with us
- 12 'cause he's been workin' with Mr. Elrod, ---
- 13 Q. Okay.
- 14 A. --- her, well her husband works with Mr. Elrod too, ---
- 15 Q. Okay, ---
- 16 A. --- he used to.
- 17 Q. --- and she was staying with you in February 2013,
- 18 correct?
- 19 A. Yes, ma'am, she'll stay with me in January or at least
- 20 the end a December because I remember right after Christmas
- 21 she moved in 'cause she didn't have nowhere to go.
- 22 Q. Okay, and when she would stay she would sleep on your
- 23 couch, is that correct?
- 24 A. Uh, my sister, ---
- 25 Q. Yes.

1 A. --- yes, ma'am, 'cause ---

2 Q. Okay.

3 A. --- we had a little trailer.

4 Q. Okay, ---

5 A. I mean, ---

6 Q. --- and ---

7 A. --- I didn't have the sectional at the time, I had the
8 sectional, uh, I went and found out I did not get my sectional
9 till August of 2013.

10 Q. Okay, but your testimony's not that you didn't have a
11 couch in 2013 ---

12 A. No, I didn't, I didn't really have a cou -- it wasn't
13 what you call a couch but my sister's boyfriend slept on the
14 floor, it was more like a a love seat thing. My sister slept
15 on the love seat thing and he slept on the floor beside her.

16 Q. Okay. I met your sister, correct?

17 A. Yeah, Tammy.

18 Q. Okay. Okay, and how tall is your sister? She's pretty
19 tall, isn't she?

20 A. Lord, probly about 5 somethin', probly 'bout si -- I
21 don't know.

22 Q. I mean, she's close to 6 feet tall, is that a fair
23 estimate?

24 A. Yeah, that's fair.

25 Q. Okay, uh, and she slept on that couch.

MEGAN RENEE MOLINA - CROSS-EXAMINATION BY MS. HINTON

- 1 A. Yeah, my sister slept on there.
- 2 Q. Okay, uh, you are a full-time stay-at-home mom,
- 3 correct?
- 4 A. Yeah, I stay at home with my girls, ---
- 5 Q. Okay.
- 6 A. --- um, because, I mean, when they're not in school,
- 7 yeah, I stay home with them. The only places they would go is
- 8 my mama's and I don't let my girls just go just anywhere, I
- 9 mean, they -- Emilda, she's went to her friends house but I
- 10 don't let my girls just go anywhere.
- 11 Q. Okay, and you have two children with Mr. Reyes, correct?
- 12 A. Yes, they're his.
- 13 Q. Okay, two girls, correct?
- 14 A. (Nodded in the affirmative.)
- 15 Q. Is that a yes?
- 16 A. Yeah, I'm ---
- 17 Q. Okay.
- 18 A. --- sorry.
- 19 Q. That's okay. Um, and so Jose is the one who works, is
- 20 that correct, not that stayin' stayin' home isn't work but ---
- 21 A. No, ---
- 22 Q. --- he's the one who goes ---
- 23 A. --- hah.
- 24 Q. --- out to a job, correct?
- 25 A. Yes, ma'am.

MEGAN RENEE MOLINA - CROSS-EXAMINATION BY MS. HINTON

1 Q. And he is the sole income, correct?

2 A. Yes, ma'am.

3 Q. Okay, and you guys are no longer together, is that
4 correct?

5 A. No, ma'am.

6 Q. Ya'll are are together or not?

7 A. Mean, no, we we are, we have become friends because we
8 have two kids, we need to work out our problems and our issues
9 because it's not healthy for our kids.

10 Q. Sure, and you need his financial support, correct?

11 A. Yes, I do.

12 Q. Okay, and, um, he's gotta work for you to have financial
13 support, correct?

14 A. Yes, ma'am.

15 Q. Okay. Um, in fact, Jose's been known to be a little
16 tight with his money, is that fair to say?

17 A. I mean, he has but what what what man isn't.

18 Q. Okay. Um, and in fact, in March of 2015 you guys had got
19 into an altercation over him not giving you money for the
20 kids, is that correct?

21 A. Yes, I mean, we have but we, I mean, that has nothin' to
22 do with my anything, I mean, with my girls or anything, he's,
23 I mean, he's always been a good father and he's never harmed
24 them.

25 Q. I'm not asking you that, I'm asking ---

MEGAN RENEE MOLINA - CROSS-EXAMINATION BY MS. HINTON

1 A. Oh.

2 Q. --- if you guys got into an altercation ---

3 A. Yes, ---

4 Q. --- in ---

5 A. --- we did.

6 Q. --- March of 2015 ---

7 A. Yes, ma'am.

8 Q. --- over money.

9 A. Yes, ma'am.

10 Q. Okay, and that was because he wouldn't share his tax
11 return with you, correct?

12 A. Yes.

13 Q. Okay, and so you took some of that money so that you could
14 buy food for your children, is that correct?

15 A. I did.

16 Q. Okay, and he accused you of stealing that money, is that
17 correct?

18 A. Yes.

19 Q. Okay. You said that there was never any privacy, um, in
20 that trailer but you slept, correct? You ---

21 A. Yes, ---

22 Q. --- you sleep.

23 A. --- I slept but me and him a -- he's always slept with
24 his arms around me and he's a, he's not a light sleeper, he
25 don't get up just all night and I know when he gets up and ---

1 Q. --- Okay.

2 A. --- and he's a hard sleeper, I mean, it's not easy for
3 him to even get up for work in the mornin' but he still does
4 it, I mean, somebody has to actually wake him up, ---

5 Q. Well ---

6 A. --- mean, there's been times his boss mans' come down
7 there and woke both of us up.

8 Q. --- and you're hard to wake up when you're tired, aren't
9 you?

10 A. Well, yeah, but not not like that. I mean, when I've
11 had, mean, when I've had kids I'm up at six o'clock in the
12 mornin', I'm up with my girls every mornin' no matter how
13 tired I am because I'm a mother, that's my job.

14 Q. Okay, but you sleep, is that correct?

15 A. Yeah, I mean, I sleep, yeah.

16 Q. Okay, and you shower.

17 A. Yeah.

18 Q. Okay, and the bathroom, isn't it true the, in the trailer
19 in your house the bathroom is o -- actually located off of
20 where your and Jose bed bedroom was, correct?

21 A. Yes, but me and him took showers together.

22 Q. Okay, but all -- every day?

23 A. Yeah, I mean, ---

24 Q. Okay, so ---

25 A. --- that's where, ---

MEGAN RENEE MOLINA - CROSS-EXAMINATION BY MS. HINTON

1 Q. --- you wouldn't ---

2 A. --- I mean, ---

3 Q. --- you would leave your children alone then, correct?

4 A. Yes, but technically I would know where he's -- I mean,
5 by the designation of where he's at, he's in the shower with
6 me when I take a shower.

7 Q. Every time he showered, you took a shower.

8 A. Yeah, 'cause that's what we, I mean, we used to do
9 that.

10 Q. On March the 25th a 2015 when ya'll got into that
11 altercation, was Jose in the shower with you?

12 A. He wa -- he come in from work.

13 Q. I'm asking you was Jose in the shower with you when you
14 got into that altercation ---

15 A. No, I was in the shower 'cause he was comin' in from work
16 late.

17 MS. HINTON: That's all I have, Judge.

18 THE COURT: Any redirect?

19 MR. WARDER: No, Your Honor.

20 THE COURT: All right, you may step down.

21 (Whereupon, the witness left the stand.)

22 MR. WARDER: Call Jamie Elrod.

23 (Whereupon, the witness came forward.)

24 THE BAILIFF: You'll place your left hand on the Bible,
25 raise your right.

JAMIE ELROD - DIRECT EXAMINATION BY MR. WARDER

1 JAMIE ELROD, having been
2 first duly sworn, testified as follows:

3 THE COURT: Thank you, sir, if you would have a seat,
4 state your name for the record, please.

5 THE WITNESS: Uh, my name's Jamie Elrod.

6 DIRECT EXAMINATION BY MR. WARDER:

7 Q. Jamie, what type business do you have?

8 A. Concrete.

9 Q. What's the name of it?

10 A. Tri State Concrete.

11 Q. Where's it located?

12 A. Uh, well, we mostly work in Greenville, Spartanburg,
13 there's really no office. Uh, my actual boss is here today,
14 he mainly does the paperwork his house.

15 Q. Okay, and, uh, tell me about how you know Jose.

16 A. Well, uh, I met Jose 'cause their neighbor and they come
17 up sayin' he needed a job so I hired him.

18 Q. Okay. You live how far from Jose?

19 A. A hundred yards, hundred and fifty yards.

20 Q. Okay. You see him on a regular basis?

21 A. Yes, every day when he lived down there.

22 Q. Okay. You've been to his house?

23 A. Many times.

24 Q. And what kind employee is Jose?

25 A. Uh, he's he's a really good employee, uh, he's a hard

JAMIE ELROD - DIRECT EXAMINATION BY MR. WARDER

1 worker, fast learner, smart.

2 Q. Work a lotta hours?

3 A. Yeah, we worked a lotta hours.

4 Q. What would a, what would a a busy week, how many hours
5 would you work on?

6 A. Um, durin' the summer we work 60, 70 hours, in the winter
7 sometimes little slower, it could be 30 to 50 hours, just
8 depending.

9 Q. Okay. Do ya travel when you work?

10 A. Yeah, sometimes.

11 Q. And when you say concrete work, you mean like pourin'
12 driveways and floors and that type a thing?

13 A. Commercial stuff, large stuff.

14 Q. Okay, and did you, did you employ anybody else that lived
15 at that house?

16 A. Yes.

17 Q. Who was that?

18 A. Taleka (phonetic) which is, uh, Meg -- not Megan buth,
19 uh, Tammy's I guess ex-boyfriend I guess.

20 Q. Okay. Uh, the house was a, was it a lotta people in the
21 house?

22 A. Well the four lived there plus the kids.

23 Q. Okay, so the four adults and and four kids?

24 A. Well well I guess when her daughter was born I guess
25 three kids so, yeah.

JAMIE ELROD - CROSS-EXAMINATION BY MS. HINTON

1 Q. Okay, so it'll be seven people all the time?

2 A. Correct.

3 Q. And then would there be some people that they would come
4 over and stay short period?

5 A. Yeah, occasionally yes.

6 Q. So there'd be eight or nine people.

7 A. Occasionally.

8 Q. Thank you, answer any questions the solicitor might have.

9 THE COURT: Cross-examination.

10 MS. HINTON: Thank Your Honor.

11 CROSS-EXAMINATION BY MS. HINTON:

12 Q. Mr. Elrod, you live in that house?

13 A. No.

14 Q. So you have no idea what went on inside that house,
15 correct?

16 A. No, ma'am.

17 MS. HINTON: That's all I have, Judge.

18 THE COURT: All right, any redirect?

19 MR. WARDER: No.

20 THE COURT: All right, thank you may step down.

21 (Whereupon, the witness left the stand.)

22 MR. WARDER: Jose.

23 (Whereupon, the defendant came forward.)

24 THE BAILIFF: Please place your left hand on the Bible,
25 raise your right.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 JOSE REYES, having been first duly
2 sworn, testified as follows:

3 THE BAILIFF: Thank you. Have a seat, state your name
4 please for the record.

5 THE DEFENDANT: My name is Jose Reyes.

6 DIRECT EXAMINATION BY MR. WARDER:

7 Q. Jose, when did you, uh, move to South Carolina?

8 A. Around 2016, uh, two thou -- 2006, sorry.

9 Q. Okay, in 2006 where in South Carolina did you start to
10 live?

11 A. And for then I moved to Hendersonville, North Carolina, I
12 do framin' over there for about three or four years.

13 Q. Okay, and and where's that located at? in Columbia?

14 A. No in so -- uh, Hendersonville, North ---

15 Q. Okay.

16 A. --- Carolina.

17 Q. Okay, you went to Hendersonville. You came -- you had
18 family in Columbia.

19 A. Yes, ---

20 Q. Okay, ---

21 A. --- I come ---

22 Q. --- and ---

23 A. --- to Greenville, South Carolina where I first come here
24 for then I moved, I found a job in Hendersonville, North
25 Carolina so I move over there.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 Q. Okay, and then how long did you work in Hendersonville?

2 THE COURT: You ---

3 A. About three or four years.

4 THE COURT: You've got to ---

5 Q. Jose, can ya ---

6 THE COURT: --- speak into the microphone just so I

7 can ---

8 THE DEFENDANT: Okay.

9 THE COURT: --- make sure everybody hear.

10 BY MR. WARDER:

11 Q. Uh, what type a work did ya do up there in Hen ---

12 A. Framin'.

13 Q. Okay, how long did ya have that job?

14 A. 'bout three or four years.

15 Q. 'kay, and who did you work for?

16 A. I worked for, uh, I don't exactly remember the company,
17 it was a Hart (phonetic) Construction, somethin' like that.

18 Q. Okay, and when did ya meet Megan?

19 A. I met Megan, uh, around 2009 -- 2008.

20 Q. And where did you meet her at?

21 A. I met, uh, within a friend's house in Greenville.

22 Q. Okay, met her in Greenville?

23 A. Um-hum.

24 Q. Okay. Did there come occasion, a time when she moved
25 with her -- with you to where you were workin'?

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

- 1 A. 'scuse me?
- 2 Q. Did she move to where you were working?
- 3 A. Yeah, di --
- 4 Q. Okay.
- 5 A. Yeah, we date probly about two months and for that when
- 6 she move over there with me.
- 7 Q. Okay, and that was in Hendersonville.
- 8 A. Yes.
- 9 Q. How long did you and her live in Hendersonville?
- 10 A. Uh, probly two years, two years and a half.
- 11 Q. Okay, and how'd ya get to Pickens?
- 12 A. Uh, I I quit my job over there, well I no, I no have no
- 13 more job over there so I move over here 'cause I was gonpa
- 14 start workin' over here in Pickens ---
- 15 Q. Okay, and who ---
- 16 A. --- so ---
- 17 Q. --- did ya start workin' for?
- 18 A. I started working' for, uh, well I I worked a couple
- 19 weeks, uh, doin' framin' for some other guy and for then I
- 20 meet Jamie is he give me a job.
- 21 Q. And that was in 2008?
- 22 A. It's around 2010 the start or somethin' like that.
- 23 Q. Okay, and so you workin' for him since 2010.
- 24 A. Um-hum.
- 25 Q. And where do ya live at? Where did you live at?

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 A. When I moved for, uh, for Hendersonville I move with my
2 mother-in-law.

3 Q. Okay, how long did you stay with your mother-in-law?

4 A. Uh, probly two years till somethin'.

5 Q. Okay, and then you got the house that that you and Megan,
6 uh, occupied together?

7 A. Yes.

8 Q. And how long did ya live in that house?

9 A. I live probly three to four years ---

10 Q. Okay, ---

11 A. --- in ---

12 Q. --- in 2013 is that's where you were livin'?

13 A. Yes.

14 Q. And the first six months you and Megan live there?

15 A. Excuse me?

16 Q. The first six months of 2013 you and Megan live ---

17 A. Yes.

18 Q. --- in that ---

19 A. Yes.

20 Q. And who else was living in?

21 A. Uh, Megan's sister and her boyfriend, ---

22 Q. Okay, who's ---

23 A. --- my ---

24 Q. --- that?

25 A. Jose Luis Guevara.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

- 1 Q. What's his name?
- 2 A. Jose Luis Guevara.
- 3 Q. And what was her sister's name?
- 4 A. Tammy Corcher ---
- 5 Q. Did anybody else stay there besides, uh, ---
- 6 A. --- and my my two children.
- 7 Q. Okay. Did they have children with them?
- 8 A. Yeah, she, uh, at the time she she have a little child.
- 9 Q. Okay. Now how did -- di Minor come and stay at the
- 10 house?
- 11 A. Yes, yes, sometimes, yes.
- 12 Q. Okay, and how was Minor related to everybody?
- 13 A. Well they are family.
- 14 Q. Okay. Megan and Minor 's family?
- 15 A. Yeah.
- 16 Q. How are they related, do you know?
- 17 A. Think they are cousins or somethin'.
- 18 Q. And would Minor spend just one night or would she come
- 19 and spend longer periods a time?
- 20 A. Yeah, she spend a night. Yeah, she spend a night.
- 21 Q. 'kay, did, uh, her parents ever stay there?
- 22 A. No.
- 23 Q. 'kay. Well did did you know Minor 's parents?
- 24 A. Yes, I know them.
- 25 Q. Okay. Did ya know her father?

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 A. Yes, we was pretty good friends, I used to hangin' a lot
2 with him and, uh, her, uh, and his, uh, wife or girlfriend.

3 Q. Okay. Uh, did you, did you hol -- loan money or did you
4 help support ---

5 A. Yes, I, sometimes he he asked me, uh, to let him borrow
6 money to help him pay the bills and the stuff so I let him
7 borrow money and stuff.

8 Q. Okay. Did, uh, uh, the, did givin' the money to to, um,
9 Minor 's parents that cause any problems with you and Megan?

10 A. Um, sometimes she say why I was gonna he -- why I was
11 helpin' them and yeah, sometimes she got mad but . . .

12 Q. Okay, she got mad 'cause you were givin' money to help
13 support?

14 A. Um-hum.

15 Q. What do ya do about that? quit?

16 A. No, no. No, I would let her borrow money because he was
17 my friend, you know, and I knew I's gonna help him.

18 Q. And, uh, uh, did, uh, uh, Minor 's father did there come a
19 time that he got, uh, uh, sent back to Mexico?

20 A. Yeah, yeah.

21 Q. When was that? you don't remember?

22 A. I no remember the, uh, but, uh, he was drivin' and think
23 he got, he on, some think it's his wife that send him to, uh,
24 back to Mexico.

25 Q. Okay, did you provide any for -- more money for, uh,

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 Minor 's mother after that?

2 A. No.

3 Q. Okay, and did they, then subsequently this event they,
4 uh, they reported this?

5 A. Um-hum, yes.

6 Q. Now you've been accused a this this indictment of having
7 criminal sexual contact with Minor , ---

8 A. No.

9 Q. --- she testified here, you heard her, ---

10 A. Um-hum.

11 Q. --- she said you touched her, did ya do that?

12 A. No.

13 Q. She said that, uh, uh, you fondled her private areas, did
14 ya do ---

15 A. No.

16 Q. --- that? She said you got on top of her and and, uh,
17 touched her with your penis, ---

18 A. No.

19 Q. --- did ya ever do any of those things?

20 A. No.

21 Q. Uh, what were the the sleeping arrangements there, uh,
22 where'd Minor sleep at?

23 A. Well she sleep in the other room with my childs, in the
24 living room she sleep, uh, in the living room asleep, um,
25 Tammy and her boyfriend.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 Q. Okay. Were there always other people in the room with
2 her?

3 A. Yeah, so there was, uh, my two child's was when, uh, with
4 Minor .

5 Q. Now when you heard about these charges, what did you
6 do?

7 A. I di -- when I heard about this, I I just, uh, you know,
8 no give any im -- importation, you know, I, or I don't know
9 how you say because the people, there's a bunch a time I back
10 and forth so, uh, uh, there's no ti, uh, period a time, you
11 know, there was that serious but when, uh, when somebody tell
12 me there was the, I was having, uh, arrest to the casa -- como
13 se dice?

14 THE COURT: All right, uh, let me tell the jury we have,
15 uh, an interpreter that has already been sworn in, uh, for
16 purposes make sure that, uh, everything's understood, it's my
17 understanding that, uh, uh, he needs an interpreter this time
18 and that we've got her on standby so that's her purpose is,
19 all right.

20 (Whereupon, the interpreter approached the witness
21 stand.)

22 MS. HINTON: Judge, you know ---

23 THE COURT: Again, hold ---

24 MS. HINTON: --- I ju ---

25 ---THE COURT: --- on. We we, uh, if he's sayin' somethin',

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 you need to be interpreting ---

2 THE INTERPRETER: Yeah, ---

3 THE COURT: --- it I I ---

4 THE INTERPRETER: --- what when when the detective came
5 to the house, uh, go ahead, please sir, he went, he came over
6 for an interview, that he had a warrant for his arrest, that
7 he turned himself in because he says he knew he had not
8 committed anything.

9 BY MR. WARDER:

10 Q. After they -- you turned yourself in sometime later you
11 learn that they said that, uh, uh, the the child had a
12 sexually transmitted disease, is that right?

13 A. Yes.

14 Q. 'kay, did you do anything when they -- you heard that?
15 Did you go get a test?

16 A. Yes, I went get a test.

17 Q. Why did ya do that?

18 A. Because, uh, I was trying to prove that I don't have
19 anything, they whatever she said she have some kinda sickness
20 or whatever so was trying to prove that I, uh, I no have
21 a noth -- nothin', it wasn't me or whatever.

22 Q. 'kay. Have you ever had a a a disease sexually
23 transmitted?

24 A. No, no.

25 Q. Do ya today have a sexually transmitted disease?

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 A. No.

2 Q. Have ya ever had a cold sore in your life?

3 A. Yeah, sometime.

4 Q. And that's a cold sore in your mouth.

5 A. Um-hum.

6 Q. Not very often?

7 A. No.

8 Q. So the first thing you did when you you learned that the
9 child had a sexual and transmitted disease was you tried go
10 down and get the documents that would prove you didn't have
11 a ---

12 A. Yeah, I, yeah, I I went to get a test and when I got a
13 test I went to get it and give it, uh, to whatever they
14 needed.

15 Q. Okay. Did ya take one test or did you take more?

16 A. I take 'bout three tests, blood tests, all kinds a test.

17 Q. Okay, you took every kinda test they had?

18 A. Yeah, yeah.

19 Q. Oh. And they told you you had, uh, uh, herpes simplex
20 virus 1 from cold ---

21 A. Um-hum.

22 Q. --- sores?

23 A. Yeah, I ask the doc, the doctor, uh, what what it was,
24 what I mean, what they think it means, she said ---

25 MS. HINTON: Objection, Judge, ---

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

1 THE COURT: Yeah, you ---

2 MS. HINTON: --- can't testify ---

3 THE COURT: --- can't ---

4 MS. HINTON: --- to what the doctor said.

5 THE COURT: All right, I'm gonna object to the hearsay, I
6 mean, I'm gonna sustain objection, hearsay, sorry.

7 BY MR. WARDER:

8 Q. Okay, so you never did any a the things she accused you
9 of ---

10 A: No, sir.

11 Q. --- and you've done all you can prove that you didn't.

12 A. Yes, sir, it's it's what I am here to trying to prove.

13 Q. Okay, and here today you're trying to tell the jury ---

14 A. Yes, sir, ---

15 Q. (Indiscernible cross-talk.)

16 A. --- I I stand here. If if if I feel like I was, uh, ---

17 (Whereupon, the defendant began to speak in Spanish.)

18 If I feel like I -- you -- I was guilty, I know on otro
19 days GPS to pagin' ---

20 MS. HINTON: Judge, ---

21 A. --- you all that morning ---

22 MS. HINTON: --- I'm gonna object ---

23 MR. WARDER: I'm gonna ---

24 MS. HINTON: --- to this, can we approach?

25 THE COURT: Yes.

JOSE REYES - DIRECT EXAMINATION BY MR. WARDER

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

2 THE COURT: All right, and let me make sure too on this,
3 interpreter, if he a -- if he a -- I mean, a real, if he asks
4 you a question, I think right then he asked you how to say
5 somethin' in English sound like, but when he asks you a
6 question, you have to interpret exactly, say exactly what he
7 says and you can get back to him just so we have the record
8 complete, all right? Okay.

9 BY MR. WARDER:

10 Q. Okay. You still workin'?

11 A. Yes.

12 Q. You still work work for Mr. Elrod?

13 A. Yes.

14 Q. You set up a life here in the community?

15 A. Excuse me?

16 Q. Are you involved in the community in any other way?

17 A. Yes.

18 Q. Uh, go to church here?

19 A. Yes.

20 Q. Your minister here with ya?

21 A. Um-hum.

22 Q. Answer any questions the solicitor might have.

23 THE COURT: And you'll just stay here in case there's any
24 issues, thanks.

25 THE INTERPRETER: (Nodded in the affirmative.)

JOSE REYES REYES - CROSS-EXAMINATION BY MS. HINTON

1 CROSS-EXAMINATION BY MS. HINTON:

2 Q. Jose, how tall are you?

3 A. About 5'6.

4 Q. 5'6. You still pay for your children? You still provide
5 financial support to them?

6 A. Yes.

7 Q. Okay. Are you the sole financial support for them?

8 A. Yes.

9 Q. And you testified that you went and got tested for STDs
10 when you were asked by the detective whether or not you had
11 one, is that correct, was that your testimony?

12 A. Yes.

13 Q. Okay, and i -- isn't it correct that you went to Cannon
14 Hospital on August the 30th of 2013 and got tested for STDs,
15 is that ---

16 A. Um-hum, ---

17 Q. --- correct?

18 A. --- yes.

19 Q. And isn't it true that you got tested for everything but
20 herpes, isn't that correct?

21 A. Yes.

22 Q. Okay, so you didn't in fact do what they asked for,
23 instead you went and got tested for STDs but not herpes,
24 correct?

25 A. Yeah, because over there they no do that kinda test.

1 Q. I'm sorry?---

2 A. That they tell me over over there they no do the kinda
3 test, I have to go into different doctor.

4 Q. So your testimony is that a hospital does not perform ---

5 A. Um-hum.

6 Q. --- a test for herpes but they ---

7 A. Um-hum.

8 Q. --- perform tests for other STDs, is that your
9 testimony?

10 A. Yeah, yes.

11 Q. And you are in fact positive for herpes simplex virus 1,
12 correct?

13 A. Yeah.

14 Q. That's all I have.

15 THE COURT: All right, any redirect?

16 THE DEFENDANT: No.

17 MR. WARDER: No redirect.

18 THE COURT: All right, you may step down.

19 THE INTERPRETER: Thank you, take care.

20 THE COURT: And thank you.

21 (Whereupon, the defendant left the stand.)

22 MR. WARDER: Your Honor, that be the defendant's case.

23 THE COURT: All right. You anticipate any additional ---

24 MS. HINTON: No, Your Honor.

25 THE COURT: All right. Uh, all right, ladies and

MOTIONS AND MATTERS

1 gentlemen, it's 11:30, the problem is we have, uh, quite a bit
2 of information to go over, uh, and then we'll go into
3 the, both sides have indicated they've completed any testimony
4 so what we have left is closing arguments by the attorneys and
5 then the, uh, the argument and charge, I mean, well the charge
6 which I'll tell you what the law is. Uh, first we've got to
7 go over some things and I've got to make sure everything's
8 ready to go for that so it doesn't make any sense for us to
9 bring you back and then take another break for lunch at that
10 point so we're gon -- I'm gonna have to let you go to what I
11 call the "kindergarten lunch" which is 11:30, um, and I'm
12 gonna ask that you be back at 1:15, all right, and then at
13 that point we will, uh, continue with the case, so again,
14 don't talk about the ca -- you're gonna be on your own for
15 lunch but do not discuss the case among yourselves or with
16 anyone else, do not pay any attention any, uh, media whether
17 it's social media, uh, newspaper, radio, TV, uh, do not do any
18 independent investigation whatsoever, if anybody contacts you
19 any way, uh, then please let the bailiffs know so other than
20 that please have a good lunch, be back in your jury room at
21 1:15.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Okay, a housekeeping matter, madam
25 interpreter, 'cause I never done that, make sure, we have a

MOTIONS AND MATTERS

1 different court reporter today, uh, make sure you give her
2 your information, your name ---

3 THE INTERPRETER: Yes, Your Honor.

4 THE COURT: --- and do come 'fore we take -- all right,
5 uh, any additional motions or anything to bring up from the
6 State?

7 MS. HINTON: No, Your Honor.

8 THE COURT: Anything else from the defendant?

9 MR. WARDER: Uh, no, Your Honor, course I renew my motion
10 for directed verdict ---

11 THE COURT: All right, ---

12 MR. WARDER: --- on the same ---

13 THE COURT: --- uh, ---

14 MR. WARDER: --- ground.

15 THE COURT: --- and I I'm go -- I feel like it is a jury
16 question on that and will deny on the same basis. Uh, let's,
17 uh, the attorneys, uh, step back and let's kinda go over the
18 charge, verdict forms and so forth, uh, and then we'll be at
19 break till till 1:15. Anything else before we we break?

20 MR. WARDER: No, sir.

21 MS. HINTON: No.

22 THE COURT: All right.

23 (Whereupon, a recess was taken.)

24 THE COURT: All right, ya'll wanna look at the verdict
25 forms fine, yes, very basic, I know I've got a copy.

MOTIONS AND MATTERS

1 MS. HINTON: Oh, do we ---

2 (Whereupon, the attorneys approached the bench.)

3 MR. WARDER: Kinda short, to the point.

4 MS. HINTON: Judge, the only thing I will say and it's
5 not a problem for me but on the indictment it reads a Minor
6 cause she was Minor , I don't know if you wanted
7 to change that, I don't -- it doesn't matter ---

8 THE COURT: All right.

9 MR. HINTON: --- to me either way but I just didn't want
10 there to be any confusion.

11 THE COURT: Okay, now wait, let's, we wanna be exact,
12 time to do.

13 MS. HINTON: Thank you.

14 (Pause.)

15 THE COURT: All right, we have made that change to
16 initial Minor , little more involved than we thought.

17 MS. HINTON: Oh, I apologize, thank you.

18 THE COURT: No, I'm, no, I'm glad you caught that, so,
19 uh, all right, anything before we bring the jury in?

20 MS. HINTON: Not from the State, Your Honor.

21 MR. WARDER: No, Your Honor.

22 THE COURT: All right, bring the jury in.

23 (Whereupon, a discussion was held off the record.)

24 (The following takes place in the presence of the jury.)

25 THE COURT: All right, ladies and gentlemen, uh, we are

CLOSING ARGUMENTS

1 now, uh, to kinda the final stage a the trial, I guess next to
2 final stage, the final stage will be deliberation, but that's
3 when we have closing arguments by the attorneys and this is
4 their, it's, again, this is not evidence but this is their
5 summary a their argument about, uh, about what they believe,
6 uh, case is about, uh, and then after that I will give you
7 the, uh, what the law of the case is, the the jury charge and
8 at that point I can finally send you back and say you can
9 begin deliberations but this time if you'll devote your
10 attention, uh, to the attorneys argument. All right, may
11 proceed.

12 MR. WARDER: Gentlemen and ladies of the jury, I confess
13 to you that I'm here today in a situation I never thought I
14 would be in after we've completed a political election where
15 people talked about the Constitution for years, I'm gonna tell
16 you that today the protections in that Constitution come from
17 a literal reading of it, not from some social interpretation
18 or the fact that it's a breathing, living, breathing document
19 that says different things in the document. His Honor will
20 tell you the law, your rights from the Constitution and the
21 effect and he will tell that you should apply that law like it
22 was written, like the law says it is, like it means. I guess
23 the second thing is that the presumption of innocence attaches
24 to anybody accused of a crime, perhaps it's when you're you're
25 accused and it derives from the Constitution itself and from

CLOSING ARGUMENTS

1 the presumption of innocence comes the other things that we
2 will talk about: the burden of proof what it is, what it takes
3 to get a conviction against a citizen that is presumed to be
4 innocent.

5 The difficulty of this crime particularly arises that
6 it's difficult to prove it didn't happen, it's like anything
7 when you've got to prove a negative, that you didn't do
8 somethin'. If you just would imagine maybe that there a
9 situation where there was a a a room at night and the the
10 lights went off, nobody went to the door and the next morning
11 the police came and said somebody said you groped her as you
12 walk in and out of a room, that's how do ya disprove? how do
13 ya prove your innocence? This is part of the burden my client
14 faces and he must rely upon the Constitution and the
15 presumption of innocence. If you shift and try and make me
16 prove I didn't do it, it will be impossible. This is a case
17 where one young Minor says my client did something without
18 any other witness. My client relies upon the presumption of
19 innocence.

20 Now the second thing about this case that I never thought
21 I would hear the candidates have dwelled over the last year
22 about clients and my clients, clients and my, excuse me, they
23 dwelled against persons that are in my client's position, my
24 client's that anyway now and he's here accused of a sex crime,
25 this is what one of the candidates that we build a wall for so

CLOSING ARGUMENTS

1 my client has been affected by two years of polarized legal
2 speech and you've gotta put that outta your mind and say this
3 case the presumption of innocence, what is right in this case.

4 The testimony shows that this was alleged to have
5 happened in the in living room of a small trailer where my
6 client lived. My client says to that first of all the trailer
7 was crowded, there's a number of us live there, there were
8 were people sleeping on the floor, people sleeping in both
9 bedrooms in a 14-foot wide trailer, that, uh, uh, we have
10 different people sleeping on the couch, the victim sometimes
11 slept with his children, does this prove he didn't do it, it
12 makes it less likely but it doesn't prove it. The times not
13 defined, it's someplace in a 6-month period a time, that I
14 can't prove where my client was every minute, I can prove and
15 the testimony shows he worked a lot, a lot of hours he was
16 out, that doesn't prove it couldn't have happened, it makes it
17 somewhat less likely that he wasn't there, that, uh, my client
18 told you the only thing that he could that he knew for sure he
19 didn't do it. In his mind there's not much else he can say
20 about it after he says it didn't happen like an imaginary
21 situation where somebody says you groped 'cause all you can do
22 is say it didn't happen, somebody will either believe you or
23 won't believe you but you can't offer any other evidence,
24 there's no other evidence to offer, that's the position my
25 client finds himself in this case and that doesn't mean he

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1 should be convicted, it means presumes to be innocent.

2 Now my client thrust alone into this allegation and he
3 decided that when they told him that the child had contracted
4 a sexually transmitted disease he went and got tested and he
5 got tested three times and the first time he got tested he
6 didn't know what the the disease was and so he took a test
7 that didn't identify it, he later took a test that showed he
8 had, if it's a sexually transmitted disease he has herpes
9 type-1 which is a cold sore, most of us wouldn't even consider
10 that a sexual disease, many of you or part of you might have
11 had a cold sore, I'm sure you didn't regard yourself as having
12 a sexually transmitted disease. that the testimony of a, one
13 of the doctors, Dr. Mary Crosswell, said that she came, she
14 learned the child had a cold sore two years before that,
15 hadn't broke out again and then, uh, had a cold sore now, that
16 sexually transmitted disease? think of what she told you. You
17 have a, you have HV-1 for life, that it periodically breaks
18 out, it, uh, her mother didn't know of another incident of it
19 before this. My client had that same virus, he denies any
20 contact. Does the fact that the child had another outbreak of
21 her HVS-1 does that prove that my client was involved, I say
22 that it doesn't, it has no probative value, it's a, it's a red
23 herring. My client has done everything and in the world reach
24 a way to prove what he knows to be true and the only thing he
25 can do is rely upon the the presumption of innocence and the

CLOSING ARGUMENTS

1 fact that in our system the State is always required to prove
2 who one guilty beyond all reasonable doubt and that's the crux
3 of this case is the strength of the State's case. The crux of
4 this case is that the State cannot prove my client guilty
5 beyond a reasonable doubt when you can't give the presumption
6 of innocence. His Honor will tell you what a reasonable doubt
7 is. Reasonable doubt is a doubt that would make you hesitate
8 to act, is the one where it's involved so if you consider
9 everything you'd hesitate to act on it then that's a
10 reasonable doubt. Another way of putting it is if you
11 considering all the evidence there's a real possibility for
12 the defendant's innocence, not a and you feel like he might
13 have done it but is there real possibility that he didn't.
14 Evidence that carries guilt beyond a fir -- a reasonable doubt
15 would leave you firmly convinced, not convinced, firmly
16 convinced and I submit to you there's not that category, not
17 that type, not that evidence. This is a case in in its
18 simplest form where one person is saying, He touched me. Now
19 they said he touched me with his finger, uh, she says he
20 touched her with his penis, he says it all happened the living
21 room in the house with all these people, I submit to you the
22 State's not carried it's burden. If you listen to that law as
23 the judge will tell you, the law that the oath requires you,
24 you will find out that the presumption of innocence protects
25 my client until unless the quality of the evidence is such

CLOSING ARGUMENTS

1 that it proves guilt beyond all reasonable doubt.

2 This is a case that my client is faced trying to prove
3 the negative, that he didn't do something and I think you
4 should fairly analyze that. I'd ask you to do the hard thing:
5 to sit and to to apply the law as you will hear it to the
6 facts as you find them to be, you are the whole judge of the
7 facts, you can give each fact the weight you think it
8 deserves. The judge is the ultimate lawyer authority on the
9 law, you have to apply the law as he gives it. I ask you in
10 this case when you accept, analyze the facts as you find them
11 and the law as it's given then it will become apparent the
12 only right thing is the verdict of not guilty, not guilty
13 because there's insufficient evidence. You know, uh, in the
14 United States we use the words "guilty" and "not guilty" for
15 the jury with this and even where our common law came from
16 they use the form of verdict proven or not proven and I think
17 that is a better term to convey or to task that a jury use.
18 You're to decide if this is a proven case; in other words,
19 whether the State has proven it beyond all reasonable doubt or
20 whether it's an unproven case, whether it's against
21 ask you to analyze all of the testimony and all of the
22 evidence you say that there still remains a reasonable doubt,
23 of course an unproven case is a case where the verdict is not
24 guilty. I ask you in this case give the fair, the right and
25 just thing and find the verdict not guilty. Thank you very

CLOSING ARGUMENTS

1 much.

2 THE COURT: Ms. Hinton.

3 MS. HINTON: Thank you. Thank Your Honor. This case is
4 not about politics, it is not about Hillary Clinton or Donald
5 Trump or a wall, this case is about Minor who's
6 6-years-old. Between January and June of 2013 Minor
7 suffered the emotional trauma of being sexually abused at the
8 hands of Jose Reyes. On August the 24th of 2013 Minor
9 suffered the outward physical signs of being abused by Jose
10 Reyes, a physical sign that she will live with for the rest of
11 her life, emotional scars that she will live at -- with for
12 the rest of her life.

13 On August 24th 2013 Minor went to the Cannon
14 Emergency Room and was tested for herpes, she was positive for
15 HSV-1. On August the 29th of 2013 Deputy Trotter testified
16 that he arrived at Minor's residence and that is when
17 she disclosed sexual abuse to him. On August the 30th of 2013
18 the defendant is tested for STDs at that same emergency room,
19 Cannon Memorial Emergency Room, same emergency room that Minor
20 was tested at six days earlier and the defendant was
21 very clear on the stand he was tested for STDs but he was not
22 tested for herpes, not because as Mr. Warder would tell you he
23 didn't know what he was supposed to be tested for but because
24 the hospital couldn't perform that type of test, that was his
25 testimony and I asked him twice and that was his answer twice,

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1 that he couldn't get tested for herpes because the emergency
2 room didn't test for it, the same emergency room that had
3 tested Minor six days earlier. I submit to you Jose
4 Reyes was not doing everything that he could to prove his
5 innocence, he was doing everything he could to try to deceive
6 law enforcement. As we know Jose Reyes tested positive for
7 HSV-1 and I wanna focus real quick on that August 24th
8 diagnosis. This was not a cold sore on Minor 's lips, this was
9 genital herpes, this was HSV-1 in her vaginal area.

10 Now the defense has done what I would call a "kitchen
11 sink case," they have thrown a bunch of things at you just to
12 see what's gonna stick. Mr. Warder first got up in front of
13 you during opening arguments, he told you that this was
14 financially motivated, I heard absolutely no evidence in this
15 case that this is financially motivated. The State made Minor
16 's mother Diane available for cross-examination and not
17 once was she asked about whether or not Jose Reyes financially
18 supported her so I submit to you that's not a valid argument.
19 I told you also at the beginning of this case that people lie
20 for two reasons: they lie to get outta trouble and they lie to
21 get what they want and I want you to think about that, think
22 about the State's witnesses and think about the defense
23 witnesses and what motive they have to lie. I wanna first
24 focus on the defense witnesses, I'm gonna start with Megan.
25 Megan has two children by Jose, she's a stay-at-home mother,

CLOSING ARGUMENTS

1 there is absolutely nothing wrong with that, I'm a mother
2 myself, I highly respect stay-at-home mothers, but Megan
3 doesn't work and kids aren't free, they're very expensive and
4 Megan needs the financial support of Jose so of course she has
5 a motive to get up here and lie to you. Megan could not even
6 keep her own story straight. Her first testimony was that
7 they didn't have a couch until August of 2013 but then she
8 made a mistake, she said that her sister had stayed there and
9 for quite sometime and because it's a 2-bedroom her sister
10 slept on the couch so then it was, Oh, no, we did have a couch
11 in February 2013, we just didn't have a specific type of couch
12 which was of absolute n -- absolutely no relevance to this
13 case, she also said that her sister briefly stayed with them
14 meaning that there was ample time for Jose Reyes to sexually
15 assault Minor on that couch. She also told you that
16 couch was really small but her almost 6-foot sister who had
17 just had serious complications with a C-section delivery was
18 able to sleep on it so I submit to you that the 5'6 Jose Reyes
19 and 6-year-old Minor could be on that couch together.
20 Minor -- she also told you that she always showers with Jose
21 and and this is the problem with Megan's testimony, she talks
22 in extremes because she's trying to cover for him, she never
23 showered without him except for that one time where she has to
24 admit that she showered without him because they had an
25 altercation so when it works in her advantage she's always

CLOSING ARGUMENTS

1 with him but when confronted with the facts of things that
2 have actually happened like their altercation in March of 2015
3 she has to admit that she doesn't always shower with him.
4 Jamie Elrod came up here, he offered nothing to the defense's
5 case: he doesn't live there, he doesn't know what goes on
6 there, he testified that Jose was a good worker, maybe he, is
7 maybe he isn't but he is of no relevance to this case, then
8 Mr. Reyes took the stand. He admitted that the Minor would
9 come over, that the Minor would spend the night, the defense
10 asked if she would come with her parents, no she wouldn't, she
11 would come on her own and she would stay over there which is
12 exactly what Minor told you: that she would go over there and
13 spend the night without her parents. He also admitted that he
14 is a sole support for those children and he told you that he
15 was tested for everything but herpes but admitted that later
16 when he was tested again that he was positive for HSV-1 and
17 that's important because there are two strands of herpes as
18 you heard, there's HSV-1 and there's HSV-2, and I'll get to
19 the doctor's testimony in full in in a little bit but I want
20 you to remember that that is a a significant distinction, that
21 Minor had HSV-1 in her vaginal area which is not the common
22 form of herpes in the vaginal area, this is cold sore herpes
23 in her vagina.

24 Now our case first was Minor , she took the stand at
25 9-years old and she told you that she would go spend the night

CLOSING ARGUMENTS

1 at Megan and Jose's house, Fernando as she calls him, and that
2 Fernando would lay on top of her when she was asleep and night
3 on the couch and he would kiss her and his tongue would go in
4 her mouth and that he would put his fingers in her vagina and
5 that he would put his penis on her privates, she also told you
6 when I asked her if he had said anything to her, she said he
7 said, Do you like it, that's significant because this is a
8 9-year-old who's not exposed to the same sexual things that
9 adults are yet she knows that he told her, Do you like it,
10 which is something that someone would say in a sexual
11 scenario.

12 One thing I thought was significant is that Minor
13 testified this has happened repeatedly but the defense never
14 questioned her on her not maintaining the same story. It has
15 been 1,263 days since June the 30th of 2013 when this abuse
16 ended and for 1,263 days Minor has maintained the same
17 story and that is significant because for 1,263 days that the
18 defense wants you to think that she made that up, that's a
19 long time for a kid to keep the same story straight and along
20 the way she met with different people and along the way she
21 made the same disclosures to them.

22 Mary and Dianne both got up here, they said that Minor
23 disclosed sexual abuse to them, she told them that it happened
24 at Megan's house on the couch and they said when they told her
25 that they were gonna call the police Mary's testimony was that

CLOSING ARGUMENTS

1 **Minor** flipped out, she was upset because someone was gonna be
2 mad at her and she told 'em that she hated them, those are
3 real emotions, those are emotions that can't be faked.

4 Deputy Trotter and Detective Marvin Nix took the stand,
5 Deputy Trotter told you that when he spoke with **Minor** she's
6 very embarrassed, that she was shy, those are emotions that
7 can't be faked. Importantly, he spoke to her outside the
8 presence of her mother and spoke to her mother outside of her
9 presence and the reason that is important and the reason that
10 that's significant is it's real hard to influence somebody if
11 you're not in the room with 'em and that is consistent
12 throughout this case.

13 Detective Nix attempted to talk to **Minor** about the
14 incident and what happened and she couldn't, she broke down,
15 those are real emotions, those can't be faked.

16 Victoria Tate testified, she's **Minor** 's counselor and has
17 been since March of 2016 and her significant testimony was
18 that **Minor** is embarrassed and she's ashamed that she couldn't
19 stop it, that's a real reaction that can't be faked.

20 Dr. Crosswell testified, uh, that normal is normal, she
21 doesn't ex -- expect, uh, always that there will be any
22 outward signs of abuse but **Minor** 's case is unique and it's
23 concerning to her that **Minor** had a cold sore 2000 on her mouth
24 which may or may not have been herpes, the ju -- the doctor
25 said it could be, could not be, but the significant part the

CLOSING ARGUMENTS

1 doctor said and she's the expert is that when the infection
2 manifested itself again it was in her vaginal area and that
3 along with Minor 's disclosure that he touched her in her
4 vagina under her clothes is significant and it's concerning.
5 The lab confirmed that Jose Reyes has HSV-1, same type of
6 herpes that Minor has.

7 Finally, Shauna Galloway-Williams testified and she
8 testified as a blind expert, what that means is that she has
9 never met Minor , she doesn't know anything about Minor 's case,
10 she's testifying as to symptoms of child abuse in general and
11 what's significant about that is that the symptoms and things
12 that she's talking about are things that happened to Minor , it
13 was by someone she knew, love, and trusted, she liked going
14 over there, she trusted Megan and she trusted Jose and they
15 violated her trust. She told you that delayed disclosure is
16 common. Minor didn't disclose until after she told her mom it
17 hurt when she peed, they go and she's got a herpes diagnosis,
18 that's when Minor disclosed. She told you that with chronic
19 abuse time is really hard, especially for children, I submit
20 to you that's why Minor can only tell you that it happened
21 when she was 6 but for 1,263 days and throughout that timeline
22 and up until yesterday when she came in here and testified,
23 she's maintained the same story.

24 The elements of criminal sexual conduct in -- with a
25 minor in the first degree are this: that the child has to be

CLOSING ARGUMENTS

1 under the age of 11, we know that to be true because we know
2 Minor 's only 9-years-old, and there has to be any intrusion
3 into the genital or anal area no matter how slight, Minor 's
4 testimony, it has not been rebutted, is that Jose Reyes put
5 his finger in her vagina on multiple occasions, that is
6 criminal sexual conduct with a minor in the first degree.

7 I don't know if the defense wants you to think that I put
8 Minor up to it or that her mom put her up to it but what the
9 defense cannot get around is that Minor has had the same story
10 throughout time, she met with Deputy Trotter alone, she met
11 with Dr. Crosswell alone and she came in here and told you her
12 story yesterday, what they cannot deny is that Minor 's has has
13 herpes and so does Jose Reyes, that is a crazy coincidence
14 that the man that Minor alleges sexually assaulted her would
15 subsequently test positive for the same STD that Minor has. I
16 submit to you that between January 2013 and June of 2013 Jose
17 Reyes repeatedly sexually assaulted Minor , did it at his
18 home in Pickens County on his couch and you saw yesterday how
19 hard it is for Minor to get up here and tell you what
20 happened, how embarrassed she was to tell you what happened,
21 that's not a vindictive child, that's a child who has the
22 emotional, physical scars of Jose Reyes.

23 The State has the burden of proof in this case and I told
24 you that and that's a burden that we gladly accept and I told
25 you that at the end a this case I had to leave you firmly

JURY CHARGE

1. ~~convicted~~ of his guilt. Jose Reyes walked into this courtroom
2. an innocent man but that does not mean that he leaves here one
3. because if you twelve jurors decide that the State has proven
4. its case beyond a reasonable doubt then he is no longer an
5. innocent man. I submit to you that people lie to get outta
6. trouble and to get what they want and Jose Reyes is in a whole
7. lot of trouble. It has been 1,263 days that Minor has
8. lived with this, today is Jose Reyes's day in court but it's
9. also Minor 's and I would ask that you return the only
10. just verdict for this case and that is guilty, thank you.

11. THE COURT: All right, ladies and gentlemen, um, now
12. comes the, uh, part where I charge you on the law. Uh, as I
13. told ya in the very beginning of this case, uh, you've heard
14. the reference to an indictment, uh, the indictment is merely a
15. charging paper and the defendant is just for the fact that he
16. was arrested, charged and indicted on this charge is not to be
17. considered by you, uh, in the least because he comes in this
18. court, uh, not guilty, innocent until proven guilty, uh, and
19. it's up to you to make the determination of, uh, his innocence
20. or his guilt by the testimony that has been presented that
21. you've heard. Uh, as indicated you've heard a a a a lot of
22. reference and probly, uh, throughout, uh, your life and
23. watching TV you've heard a, probly heard the phrase
24. "presumption of innocence" and that's more than just a TV
25. term, that's more than just a legal term, that is the

JURY CHARGE

1 foundation of our criminal, uh, system, uh, and and by
2 Mr. Reyes pleading not guilty that mean, that puts the burden
3 totally on the State to prove the defendant guilty. Uh, a
4 person charged with committing a criminal offense in this
5 state is not required to prove himself innocent, it's
6 important rule of law that defendant in a criminal trial no
7 matter what the seriousness of the charge is will always be
8 presumed innocent, uh, unless and until, uh, the State has
9 proven him guilty beyond a reasonable doubt, this does not end
10 when a person comes into the courtroom or when the testimony
11 begins, it's only, uh, when the State has met its burden and
12 you've made a determination that, uh, that the State has met
13 their burden.

14 Uh, "reasonable doubt," you've heard that phrase said it
15 lotta times as well. A reasonable doubt is the kind of doubt
16 that would cause a reasonable person to hesitate to act.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the defendant's guilt. There are very few
19 things in this world that we know with absolute certainty and
20 in criminal cases the law does not require, uh, that, uh,
21 proof overcome every possible doubt and based on your
22 consideration of the evidence you're firmly convinced that the
23 defendant is guilty of the crime charged, you must find the
24 defendant guilty; the other hand, you think there's a real
25 possibility that defendant is not guilty, you must give the

JURY CHARGE

1 defendant the benefit of doubt and find him not guilty.

2 Uh, I remind you that during this trial you all have had
3 different duties to perform, as the trial judge it's my
4 responsibility is to preside over the trial and I have the
5 duty to ru -- rule on admissibility of evidence offered during
6 the trial, you're only to consider competent evidence, uh,
7 that was received in the process of this trial, there's any
8 testimony that's ordered stricken from the record then you
9 must disregard that testimony. You are, you are to consider
10 only the testimony which has been presented from the witness
11 stand, uh, and any exhibits which been made part a the record
12 and any stipulations of counsel.

13 I have a du -- the additional duty to charge you on the
14 law. As the presiding judge I'm the sole judge of the law,
15 it's your duty to accept the law as I give it to ya; 'nother
16 words, you're to disregard, uh, if you feel like the law
17 should be something different, you feel like it is something
18 different or, uh, you previously understood it to be something
19 different that is, uh, not your prerogative. As a, as a jury
20 taking the oath of a juror, you have, uh, agreed to administer
21 the law as I give it to ya at this point, uh, but you're the
22 sole exclusive judge of the facts of this case. As a judge I
23 cannot intimate, I cannot infer anything about the facts of
24 this case because that's totally your province as a jury to
25 decide what the facts are. If anything I've done or anything

JURY CHARGE

1 I've said made you think that I have an opinion on those
2 facts, gonna ask you to disregard that because that would be
3 invading your province and you're the ones that determine what
4 the facts are of this case.

5 There's two types of evidence which you have to consider,
6 that's direct and circumstantial evidence, um, there's no
7 difference about the weight of these but the two, let me
8 explain what these two type are. Direct evidence is the
9 testimony of a person who claims to have actual knowledge of a
10 fact such as an eyewitness of what they observed and that
11 testimony or that evidence immediately establishes the main
12 fact to be proved. Circumstantial evidence is a little
13 different, it's when, uh, you have to prove a chain of e -- of
14 facts or chain of circumstances to prove a particular fact, it
15 is evidence which immediately establishes collateral facts
16 which the main fact may be inferred so circumstantial evidence
17 is based on inference and not necessarily on personal
18 knowledge or observation. Our law makes no distinction
19 between the weight or value to be given to either direct or
20 circumstantial evidence nor is there a greater degree of
21 certainty required for circumstantial evidence over direct
22 evidence, you should weigh all the evidence in the case as you
23 feel is appropriate and after weighing all the evidence if
24 you're not convinced of the guilt of the defendant beyond a
25 reasonable doubt then you're to find the defendant not guilty.

JURY CHARGE

1 -- In making your determination in, uh, determining what the
2 facts are, you have to determine the credibility of witnesses
3 who've testified in the case and credibility mainly -- merely
4 means believability, it, uh, becomes your duty as a jury to
5 analyze and to evaluate the evidence and determine which
6 evidence convinces you of its truth. In determining the
7 believability of witnesses who've testified, you may believe
8 one witness over several witnesses or several witness over one
9 witness, you may believe part of a witness's testimony,
10 disregard, uh, the the remaining part or you may disregard the
11 testimony its entirety or accepting its in its entirety,
12 that's totally up to you to determine, uh, what that, uh,
13 weight should be considered and when you consider what a, uh,
14 whether a witness has exhibited, uh, any interest, bias,
15 prejudice or other motive in the case that's to be considered
16 by you, you may also consider the appearance of the witnesses
17 while they're on the stand.

18 All right, there's been several witnesses and as I've,
19 that have been -- were designated as experts, as I told ya at
20 that time our rules of evidence don't normally permit a
21 witness to testify about opinions or conclusions, uh, unless
22 they're, uh, been, uh, qualified as an expert witness. A
23 witness who by education, experience, has become expert in a
24 certain field, science or profession, they can, uh, state
25 their opinion which is relevant and material and on material

JURY CHARGE

1 matters, uh, based on their training of -- and their
2 qualifications as an expert. You should consider any expert
3 opinion received in evidence in this case like any other
4 evidence, you give it the weight that you think it deserves.
5 If you decide that the opinion of an expert witness is not
6 based on su su sufficient education or experience or if you
7 conclude that the reason given in support that opinion are not
8 sound or that the opinion is outweighed by other evidence then
9 you may disregard that opinion in, opinion in its entirety.
10 Expert witness's testimony is to be giving no greater weight
11 than that of other witnesses simply because the witness is an
12 expert; further, you're not required to accept an expert's
13 opinion even though it is not contradicted, again, you need to
14 give it the weight which you feel is appropriate.

15 Now this case we've had testimony, uh, of a child, uh,
16 during the, you've heard the testimony from, well from a child
17 and where witness is a child you must determine as with any
18 other witnesses whether that testimony is believable. In
19 deciding believability you may consider not only matters that
20 I have already discussed with you but you may also consider
21 the age of the child, the child's ability to observe and
22 remember facts and the child's ability understand and answer
23 questions because young children may not fully understand what
24 is happening here, it's up to you to decide whether the child
25 or children understood the seriousness of appearing as a

JURY CHARGE

1 witness at this criminal trial, whether the child or, uh,
2 understood the questions, whether the child has a good memory
3 and whether child understands the difference between lying and
4 telling the truth; in addition, young children may be
5 influenced by the way questions are asked, is up to you as the
6 jury to decide whether child understood the questions asked.

7 Now in this case the defendant is charged with criminal
8 sexual conduct with a minor in the first degree, now I'm gonna
9 define with you what our state law, uh, says is are the
10 elements, that's found in Section 16-3-655, subsection (A),
11 that's the official designation for it, it requires, uh, that
12 the State prove beyond a reasonable doubt that the defendant
13 engaged in a sexual battery with a victim who is less than
14 11-years-old, all right, uh, a sexual battery with a victim
15 who's less than 11-years-old. All right, a sexual battery,
16 let me define that for you because that's a term that's
17 specifically unique to find, uh, if you find based on the law,
18 if you, if you determine that the defendant is guilty of this
19 charge. Uh, a sexual battery is a sexual intercourse,
20 cunnilingus, fellatio, anal intercourse, or any intrusion,
21 however slight, of any part of a person's body or any object
22 into the genital or anal openings of another person's body
23 except when intrusion is co -- accomplished for medically
24 recognized treatment or diagnosis purposes. The State must
25 also prove beyond a reasonable doubt that the victim was less

JURY CHARGE

1 than 11-years-old at the time of the sexual battery. Uh,
2 consent, willingness, indifference or ignorance on the part of
3 a minor, if any, as to what was taking place does not in any
4 way affect the charge of criminal sexual conduct with a minor.

5 All right, hand this to, I'm gonna, Mr. Foreman, I'm
6 gonna hand you a jury verdict form, I'm gonna go over it with
7 you so you'll know what you're having to do. All right, so
8 you'll, this (indicating) is the verdict form, this is what
9 you will have back in your jury room and what you're gonna
10 have to complete when you finish your deliberations. The
11 first, the top part is merely the caption of a case, uh, and
12 then it's if you'll see down there it says, "As to the charge
13 of first degree criminal sexual conduct with a minor," uh,
14 "with" initial, "CS," uh, indictment, and that's the
15 indictment number, "We, the jury, unanimously find the
16 defendant Jose Reyes Reyes," and then you have to chip --
17 check one or the other and there's no particular, uh, you
18 don't don't pay any attention to the order of 'em, we have to
19 put 'em in some order, if you find that the State has met it's
20 burden, uh, beyond a reasonable doubt of this charge then you
21 will check the blank where it says guilty, if you find that
22 the State has not met its burden beyond a reasonable doubt
23 then you will check not guilty, so you need to check one or
24 the other. Once you have completed, uh, uh, the verdict form
25 then you will sign your name and you will date it, so that's

JURY CHARGE

1 the, uh, this it's very, uh, simple but very serious form.
2 Uh, now there's two, there's two possible verdicts on that but
3 you, now, I mean, ladies and gentlemen, your verdict must be
4 unanimous and again, that that means all twelve of you must
5 decide on what the verdict is, uh, this is not majority rule,
6 but it's all twelve of you, uh, so what will take place is
7 we'll, uh, once you have reached a verdict then you will knock
8 on the door, let the, uh, and the, let the bailiff know that
9 you reached a verdict and then we will, uh, further instruct
10 you what you need to do but, uh, and at any point when you get
11 back there you have any questions, uh, Mr. Foreman, what you
12 will do there's, you should have some pen and paper back
13 there, you will make a note, you're to write out a note, write
14 out a question or any comments you want to direct to the
15 Court, you will write that out, uh, sign your name at the
16 bottom and date it, knock on the door and give it to the
17 bailiff and the bailiff will bring it to me and then we'll,
18 uh, respond however is appropriate.

19 Uh, now I'm gonna send you, you can put that on the bar
20 right now, I'm a, I'm a send you back to your jury room but
21 this is not the time to actually begin your deliberations
22 because; one, I've got to discuss with the attorneys that we
23 have gone over everything, okay, if I missed anything or I've
24 stated anything incorrectly then I will bring you back out,
25 uh, and give you some additional, uh, charge, if we, uh, do

JURY CHARGE

1 not, uh, if it, if it, if it is appropriate begin
2 deliberation, your signal is I will have the bailiff bring the
3 verdict form in to ya and at that point, uh, the, uh,
4 alternates will have to step out because the alternates
5 cannot, uh, participate in the deliberation and you say, Well
6 I've sat here till two days, I, you know, but what your your
7 role has been very important, uh, if something would've
8 happened to any of the the jurors or, uh, there'd been a
9 conflict which it has happens more times than you'll believe
10 then you're, it's very important that you're there and ready,
11 you've heard testimony, uh, to proceed with deliberation so I
12 don't want you to think that, uh, because you're not involved
13 in the final stage that your role has not been important
14 because it has been very important and it has, uh, allowed us
15 to go forward if something would have happened so, uh, you
16 know, that happens like I said quite frequently so I do, I
17 want you to let you know that I do appreciate it but at this
18 point, uh, again, if you'll go back in your jury room, do not
19 beli -- begin deliberations until I've, uh, have gotten the
20 two, uh, alternates have moved out and you've gotten the
21 verdict form so at this time you'll go back to your jury room.

22 (The following takes place outside the presence of the
23 jury.)

24 THE BAILIFF: Jury is secure, Your Honor.

25 THE COURT: All right, any exception or objections of of

JURY CHARGE

1 the charge on behalf of the State?

2 MS. HINTON: No, Your Honor.

3 THE COURT: On behalf of the defendant?

4 MR. WARDER: No, Your Honor.

5 THE COURT: All right, well if you will trade that piece
6 a paper for the two alternates, tell them they can begin
7 deliberations.

8 (Whereupon, the jury began deliberations at 2:15 p.m.)

9 THE COURT: All right, we'll be at ease until further
10 notice.

11 (Whereupon, a recess was taken.)

12 (Whereupon, a verdict was reached at 2:49 p.m.)

13 THE COURT: My understanding we have a verdict on the
14 case. All right, uh, are we ready to the jury bring the
15 verdict back the ---

16 MS. HINTON: Yes, ---

17 THE COURT: --- State?

18 MS. HINTON: --- Your Honor.

19 THE COURT: The defendant?

20 MR. WARDER: Yes, sir.

21 THE COURT: Uh, and I would direct, uh, I know that
22 there's numerous people on both sides this case in the
23 courtroom, uh, I will, uh, require that there'll be complete
24 composure regardless of what the verdict is. Uh, you see
25 these gentlemen here (indicating), I will not hesitate to have

VERDICT

1 them take you out with any disruption whatsoever, uh, this is
2 not the time or the place for that so I just remind everybody
3 that you're in courtroom and I want complete composure so
4 bring the jury in.

5 (The following takes place in the presence of the jury.)

6 THE COURT: All right, Mr. Foreman, I understand you've
7 reached a verdict.

8 JURY FOREMAN: We have, Your Honor.

9 THE COURT: You can hand it to the bailiff.

10 (Whereupon, the jury foreman complied.)

11 THE COURT: All right, appears in proper format, if
12 you'll publish the verdict.

13 THE CLERK: Thank Your Honor. This is Indictment Number
14 2013-GS-39-3217 the State vs. Jose Reyes Reyes, as to the
15 charge of first degree cri -- criminal sexual conduct with a
16 minor ~~Minor~~ indi -- we, the jury, unanimously find the
17 defendant guilty. Is this your verdict and still your
18 verdict, so say you all by raising your right hand. Thank you
19 very much. Your Honor.

20 (Whereupon, a discussion was held off the record.)

21 THE COURT: All right, anything else from the jury before
22 release 'em from the State?

23 MS. HINTON: No, Your Honor.

24 THE COURT: Anything else from the defendant?

25 MR. WARDER: No, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: All right, uh, I wanna thank you for your
2 services, I know this has been a very difficult case, I
3 appreciate your attention, uh, to this, uh, matter, uh, we
4 have, uh, that will conclude your jury service for the week,
5 uh, we've released the term, we are now going into "plea
6 court" as they call it, uh, but again, thank you, this a very
7 important, uh, role that you've played. Uh, if you'll go back
8 to your jury room and I will when, uh, I will be glad to come
9 back there and answer any questions in just a few minutes if
10 ya'll have any so, uh, you'll follow the bailiff back to the
11 jury room, thank you. Oh, and that the foreperson you need to
12 sign somethin'.

13 THE CLERK: I'll I'll go over that with ya.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: All right, are ya'll ready proceed with
17 sentencing or do you need a minute?

18 MS. HINTON: Uh, your Honor, if I may, um, ---

19 THE COURT: Well I guess we hear -- any ---

20 MS. HINTON: I'm sorry.

21 THE COURT: Be glad to hear from the defendant.

22 THE BAILIFF: Jurors secure, Your Honor.

23 THE COURT: Right, it's not on sentencing but I've
24 I've -- any motions from the defendant?

25 MR. WARDER: No.

MOTIONS AND MATTERS

1 THE COURT: Okay.

2 MS. HINTON: Your Honor, the Minor did wanna be
3 present for sentencing, do you have any objection to her being
4 present?

5 THE COURT: That's fine and conti ---

6 (Pause.)

7 THE COURT: Is she close by?

8 MS. HINTON: She is, she's in our office, Judge.

9 (Pause.)

10 THE COURT: Do you have the sentencing sheet?

11 MS. HINTON: I do, Your Honor.

12 THE COURT: All right, uh, in State vs. Jose Reyes Reyes
13 Reyes sexual, criminal sexual conduct first degree with a
14 minor less than 11-years-old, uh, jury has found you guilty,
15 I'll be glad to hear from ya although, uh, my reading of the
16 statute is -- is there any discretion?

17 MS. HINTON: Your Honor, it's ---

18 MR. WARDER: Yes, ---

19 MS. HINTON: --- a man -- I'm sorry.

20 MR. WARDER: --- that there is discretion.

21 MS. HINTON: It is a mandatory minimum of 25 years that
22 I do not think it's discretionary or suspendible, uh, but
23 anywhere from 25 up to life in prison.

24 THE COURT: Yes, but I'll be glad to hear from ya as far
25 as the mandatory minimum, anyway I'll be glad to hear whatever

SENTENCE

1 you want.

2 MR. WARDER: Your Honor, uh, he, my client has, uh, no
3 significant criminal record real old, uh, no no aggravators,
4 no no priors, uh, I would certainly urge that, uh, I I
5 consider the minimum to be very harsh and I certainly would
6 urge the Court impose the minimum sentence on this.

7 THE COURT: Anything else from the Minor ?

8 MS. HINTON: Yes, Your Honor, the Minor did ask me to
9 address the Court on behalf. Uh, first, they appreciate the
10 Court's time and; second, uh, Minor 's mother wanted me to
11 reiterate to the Court that she doesn't feel as Mr. Reyes
12 showed any mercy on her child, uh, and would ask that you take
13 that into consideration in imposing your sentence.

14 THE COURT: And I'll I I wanna make sure ya'll have
15 the last word, I don't -- anything else you wanna tell me,
16 Mr. Reyes, anything you wanna tell me?

17 THE DEFENDANT: No.

18 THE COURT: All right, the sentence the Court is you be
19 confined to State Department of Correction for 28 years.

20 MS. HINTON: Thank Your Honor.

21 (Note from the jury marked Court's Exhibit No. 1 for
22 identification.)

23

24

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on December 13, 2016 at the time and place heretofore set forth; and that the foregoing pages numbered from 5 through 98, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

April 9, 2017

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

WITNESSES

Terry Marvin Nix

Pickens County Sheriff's Office

10/24/2013

ARREST WARRANT NUMBER

2013A3910300636

ACTION OF GRAND JURY

~~FILED~~

~~FILED~~

MAR 17 2015

[Signature]
Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date:

12/13/2016

DOCKET NO. 2013-GS-39-3217
CCL

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

MAR 17 2015

TERM 2013

THE STATE

vs.

JOSE REYES REYES

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on **MAR 17 2015** the Grand Jurors of Pickens
County present upon their oath:

That JOSE REYES REYES did in Pickens County, between the dates of January 1, 2013 and June 30,
2013, commit a sexual battery on Minor who was less than eleven years of age. This is in violation of
§16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Jose Reyes Reyes

AKA:

Race: HISPANIC Sex: M Age: 29

DOB: 1987 SS#:

Moorefield Memorial Hwy.

City, State, Zip: Pickens, SC 29671

DL#: SID#:

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

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

TO: Sex, Crim Sex Cond, 1st Deg W/Min <11 Yr

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3903217

A/W#: 2013A3910300636

Date of Offense: 1/1/2013

S.C. Code § 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Hinton, Brandi Batson 77844
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 28 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 3.15
TOTAL	\$	\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Mary H. Hays
2755
12/13/16

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of March, 2018.

RECEIVED

MAR 16 2018

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

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ATTORNEY FOR APPELLANT

This 16th day of March, 2018.

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MAR 16 2018

SC Court of Appeals