

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Dorchester County

Honorable Robert E. Hood, Circuit Court Judge

CESAR O. PORTILLO,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001741

APPENDIX

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State of South Carolina)	Court of General Sessions
)	First Judicial Circuit
County of Dorchester)	2010-GS-18-00357

The State,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
Cesar Orlando Portillo,	)	
	)	
Defendant.	)	
	)	
_____	)	

July 19, 2011
St. George, South Carolina

B e f o r e:

The Honorable Diane S. Goodstein, Judge

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Russell Hilton, Esquire
Attorneys for the Plaintiff

Mitch Farley, Esquire
Mary LeMatty, Esquire
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Circuit Court Reporter

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1 (On the record at 11:26 a.m.)

2 THE COURT: Thank you all so much and please be
3 seated. All right. Ms. Hall, if you'll please call our
4 first case for trial.

5 MS. HALL: Thank you, Your Honor. If it pleases the
6 Court ---

7 THE COURT: Yes.

8 MS. HALL: --- the State will call the case of the
9 *State vs. Cesar Orlando Portillo*, Indictment No. 2010-GS-
10 18-0357.

11 THE COURT: Thank you so much. Ladies and gentlemen,
12 let me tell you what has just occurred. Ms. Hall, who is
13 one of our assistant solicitors here in Dorchester County -
14 - in South Carolina, you know, we're so unique in many
15 ways. And we're unique in this regard as well, and that is
16 that in, I think, all 49 other states, the prosecuting
17 attorney is called the "district attorney," "the district
18 attorney." In South Carolina we call the prosecuting
19 attorney "solicitors," "solicitors." And Ms. Hall is an
20 assistant solicitor and she has just called our first case
21 for trial.

22 Now, ladies and gentlemen, in just a moment, I am
23 going to be reading to you some of the allegations,
24 allegations, of the indictment. And the reason that I'm
25 going to be doing that is because I want to learn, I want

1 to find out, whether or not any of you know or think you
2 may know, or if you have heard or think you may have heard,
3 to include today, anything about these allegations.

4 Now, ladies and gentlemen, let me also tell you what
5 an indictment is and what it is not. What an indictment
6 is, is a notice document. It is notice to a citizen that
7 the State alleges that that citizen has violated one or
8 more of the criminal laws of the State of South Carolina.
9 What an indictment is not is any evidence of any of the
10 allegations that it contains, that it contains.

11 Now, if you could -- Ms. Hall, if you could pass up
12 the indictment for me, please.

13 Now, ladies and gentlemen, additionally, I'm going to
14 be asking you some questions and the --

15 (Ms. Hall hands up a document to the Court.)

16 THE COURT: Thank you so much. You are going to hear
17 me ask if you know certain individuals. And the question
18 is going to be this: Are you related by blood or marriage,
19 or acquainted with so-in-so.

20 I want to define the term "are you acquainted with,"
21 because my definition intentionally is a very general
22 definition. When I ask are you acquainted with someone,
23 I'm trying to find out if you have any connection with that
24 individual at all.

25 Let me give you some examples: It may be that you

1 went to school with someone, who I'll ask you about, 20
2 years ago. You haven't thought about this person, you
3 haven't seen him in 20 years; but you know that you went to
4 school with this person 20 years ago. And you would
5 respond, "Yes, I know so-in-so. I went to school with him
6 20 years ago."

7 It may be that you simply work at the same location,
8 someone who I'll ask you about. May be you occasionally
9 wave at each other across the parking lot and that is the
10 extent of your relationship. Well, believe it or not,
11 that relationship, as limited as it is, would be
12 encompassed within my definition of "acquainted with."

13 So as you see, ladies and gentlemen, I'm trying to
14 find out if you have any connection with the folks I'll be
15 asking you about. So please keep the definition of
16 "acquainted with" in your mind as we go through this
17 process.

18 Now, ladies and gentlemen, in just a moment I'm going
19 to be reading to you some of the allegations of the
20 indictment. And I also want to tell you that Mr. Portillo
21 has pled not guilty, not guilty, to these allegations. And
22 that places upon the State the burden of proving each and
23 every allegation beyond a reasonable doubt.

24 Now, ladies and Gentlemen, in part -- Indictment 2010-
25 GS-18-0357 alleges in part that (as read): "In Dorchester

1 County, South Carolina, on or about January 16, 2010,
2 January 16, 2010, the defendant Cesar Orlando Portillo did
3 engage in sexual battery upon a minor who was less than 11
4 years old, 11 years of age, in that the defendant did
5 perform cunnilingus upon the victim of Complainant .
6 This offense is in violation ..." and gives a code section.

7 Ladies and gentlemen, to these allegations Mr.
8 Portillo has pled not guilty, I must hasten to tell you.

9 Now, my question to you, ladies and gentlemen, is
10 this: Do any of you know or think you may know, or have
11 you heard or think you may have heard anything -- to
12 include today, anything about these allegations? If so,
13 please stand at this time.

14 (No response.)

15 THE COURT: And I find no one standing.

16 Ladies and gentlemen, please allow me to introduce you
17 to you Ms. Meghan Hall, Mr Russell Hilton, and Ms. Kimmons
18 is also present, Ms. Mandy Kimmons.

19 And Ms. Hall, I'm going to call on you to please
20 introduce the other members of the Solicitor's Office,
21 please, to our jury.

22 MS. HALL: Thank you, Judge. We work with the First
23 Circuit Solicitor's Office. The First Circuit is comprised
24 of Dorchester County, Orangeburg County, and Calhoun
25 Counties. And we work for an elected solicitor named

1 "David Pascoe."

2 The other people who are in our office here in
3 Dorchester County are myself, Russell Hilton, Mandy
4 Kimmons, Matt Austin --

5 (Mr. Austin stands.)

6 MS. HALL: You see him here in the back -- Glenn
7 Justis, Barney Giese, Virgil Deas, and Polly Holden.

8 THE COURT: Thank you. Ladies and gentlemen, are you
9 related by blood or marriage, or acquainted with Ms. Hall,
10 Mr. Hilton, Ms. Kimmons, or any of the attorneys or
11 employees that you happen to know, with the First Circuit
12 Solicitor's Office; or any of the individuals that Ms. Hall
13 just mentioned? If so, please stand at this time.

14 (One person stands.)

15 THE COURT: Yes, sir. Your name and number.

16 JUROR: Alvin Glen, 58.

17 THE COURT: And first -- and let me just tell all of
18 you this. I just need to have the information that I ask
19 for. So if you would be so kind to just respond to what I
20 ask.

21 And first of all, yes, sir, tell me who you know.

22 JUROR: Virgil Deas.

23 THE COURT: All right. And would you describe your
24 relationship with Mr. Deas one that is personal or one that
25 is professional?

1 JUROR: We have a church relationship.

2 THE COURT: Very well. All right. You know Mr. Deas
3 through your church.

4 JUROR: Through the church. We don't attend -- we
5 don't have the same alter. We've been at several services.

6 THE COURT: But you know him through your church and
7 his church?

8 JUROR: The church and the barbershop.

9 THE COURT: I understand. As a result of that
10 relationship, just as you have described it, might that,
11 could that, interfere with your ability to be completely
12 fair and impartial both to the State as well as Mr.
13 Portillo? Can you set your relationship with Mr. Deas
14 aside, make up your mind based upon what you hear in court
15 while court is in session?

16 MR. JUROR: Yes.

17 THE COURT: Thank you. Please stay with us.

18 (Another juror stands.)

19 THE COURT: Yes, ma'am. Your name and number.

20 JUROR: Shelda Terry, 144.

21 THE COURT: 144. Tell me who you know.

22 JUROR: Russell Hilton.

23 THE COURT: Russell Hilton. Tell me how you know Mr.
24 Hilton, very briefly.

25 JUROR: I used to do his wife's hair.

1 THE COURT: Okay. Very well. And is that -- is that
2 current or in the past?

3 JUROR: In the past.

4 THE COURT: In the past. As the result of that
5 relationship, might that, could that interfere with your
6 ability to be completely fair and impartial? Can you set
7 that relationship aside and make up your mind based on what
8 you hear in court while court is in session?

9 JUROR: Yes.

10 THE COURT: Thank you so much and please stay with us.

11 (Another juror stands.)

12 THE COURT: Mr. McIntosh, you know everybody.

13 JUROR: I'm acquainted with everyone, with the
14 possible exception of Ms. Holden. I don't believe I've met
15 her.

16 THE COURT: Very Well. And your relationship would be
17 one that is -- if I may, would be both personal as well as
18 professional; is that right?

19 JUROR: That's right, Your Honor.

20 THE COURT: With some of the -- probably some of the
21 solicitors more so than others, yes?

22 JUROR: Yes.

23 THE COURT: Very well. And Mr. McIntosh, can you set
24 those relationships aside and make up your mind based on
25 what you hear in court while court is in session?

1 JUROR: I can.

2 THE COURT: All right. Can you -- and can you set
3 those relationships aside and be fair and impartial both to
4 the State as well as Mr. Portillo?

5 JUROR: I can.

6 THE COURT: Very well. Thank you, Mr. McIntosh. Yes,
7 sir, your name or number?

8 JUROR: 91, Jeffrey McAlhany.

9 THE COURT: Thank you. And tell me who you know.

10 JUROR: Russell Hilton.

11 THE COURT: Very well. And would you describe your
12 relationship as one that is personal or professional?

13 THE JUROR: Personal; through church.

14 THE COURT: Sir?

15 THE JUROR: Through church.

16 THE COURT: Through church?

17 THE JUROR: Yes, ma'am.

18 THE COURT: Very well. Is there -- do you visit each
19 other's homes?

20 THE JUROR: No, ma'am.

21 THE COURT: As the result of that relationship, just
22 how you have described it, might that, could that interfere
23 with your ability to be completely fair and impartial both
24 to the State as well as Mr. Portillo.

25 JUROR: No, ma'am.

1 THE COURT: Can you set that relationship aside and
2 make up your mind based on what you hear in court while
3 court is in session?

4 JUROR: Yes, ma'am.

5 THE COURT: Thank you. Please stay with us. Anyone
6 else?

7 (No audible response.)

8 THE COURT: So we were talking to this side, anybody
9 on this side?

10 (No audible response.)

11 THE COURT: Very well. Very well. Now, ladies and
12 gentlemen, please allow me to introduce you to Mr. Cesar
13 Orlando Portillo. Mr. Portillo, can you stand and face-
14 side to the jury panel?

15 (The defendant complies.)

16 THE COURT: Thank you. Thank you, Mr. Portillo.

17 Ladies and gentlemen, are you related by blood or
18 marriage, or acquainted with Mr. Cesar Orlando Portillo?
19 If so, please stand at this time.

20 (No audible response.)

21 THE COURT: And I find no one standing.

22 Now, ladies and gentlemen, Mr. Portillo is represented
23 by Mr. Mitch Farley and Mary LeMatty. And ladies and
24 gentlemen, before I ask my question, I'm going to call on
25 Mr. Farley to please introduce the folks from his office.

1 MR. FARLEY: How are y'all. I'm Mitch Farley. And
2 I'm -- I work for the First Circuit Public Defender's
3 Office. And it kind of mirrors the Solicitor's Office in
4 that we represent defendants in Orangeburg, Calhoun, and
5 Dorchester County.

6 The Chief Pubic offender is Mark Leiendecker, who's my
7 boss. The Deputy Public Defender is John Loy. As the
8 Judge introduced, Mary LeMatty, who will be assisting me in
9 this case. Missy Meyers is also going to be assisting me.
10 We have Katherine Dahlheim with our office, and as far as
11 our juvenile public defenders, we have Al Davis and Gina
12 McAlhamy.

13 THE COURT: Thank you so much. Ladies and gentlemen,
14 are you related by blood or marriage, or acquainted with;
15 or have you or a member of your immediate family to your
16 knowledge ever been represented by Mr. Farley or Ms.
17 LeMatty; or any of the other attorneys that Mr. Farley just
18 named for you, in the Public Defender's Office or in their
19 office?

20 (A juror stands.)

21 THE COURT: Your name and number.

22 JUROR: Matthew Murdaugh, Juror No. 106. I know Alvin
23 Biggs.

24 THE COURT: All right. And would you describe your
25 relationship with Mr. Biggs as being one that is personal

1 or professional?

2 JUROR: I guess personal. My mother was his secretary
3 for many years.

4 THE COURT: Oh, okay. What is your mother's name?

5 JUROR: Julie Murdaugh.

6 THE COURT: Oh, my goodness. She has -- I forget that
7 she has grown children. Of course, she's now -- she's now
8 a court reporter, yet, in the family court. Of course.
9 All right. Very well. Let me ask you this question: As
10 the result of that relationship, might that, could that
11 interfere with your ability to be completely fair and
12 impartial both to the State as well as to Mr. Portillo?

13 JUROR: (Shakes head back and forth.)

14 THE COURT: That's a "no," isn't it?

15 JUROR: Yes.

16 THE COURT: And can you -- can you set that
17 relationship aside and make up your mind based upon what
18 you hear in court while court is in session?

19 JUROR: Yes.

20 THE COURT: Very well. Thank you so much, and please
21 be seated.

22 (Another juror stands.)

23 THE COURT: And you know everybody.

24 JUROR: I'm acquainted with everybody at the public
25 defender's office, with the possible exception of Ms.

1 Meyers.

2 THE COURT: Ms. Meyers. It won't be long before you
3 know her too, I am sure.

4 (To the audience) Mr. McIntosh runs a small bar here
5 in Dorchester County.

6 Now, can you set your relationships with these
7 attorneys aside and make up your mind based upon what you
8 hear in court while court is in session?

9 JUROR: I can.

10 THE COURT: Very well. Thank you, stay with us, Mr.
11 McIntosh. Now --

12 (Another juror stands.)

13 THE COURT: Yes. Please stand. And your number?

14 JUROR: Twenty-three.

15 THE COURT: Yes, ma'am. Tell me who you know.

16 JUROR: I've heard the name -- is that Mark
17 Leiendecker?

18 THE COURT: Mark Leiendecker.

19 JUROR: He represented my son many years ago when he
20 was ---

21 THE COURT: Exactly. Because he was in private
22 practice up until we created the public defender's office,
23 and he came to the public -- as their public defender. And
24 it's been many years ago?

25 Juror: Many years ago.

1 THE COURT: You don't look old enough for that to have
2 been many years ago.

3 JUROR: That's why I mentioned that.

4 THE COURT: Let me ask you this question: As a result
5 of that professional relationship, do you believe that that
6 might or could interfere with your ability to be completely
7 fair and impartial both to the State as well as to Mr.
8 Portillo?

9 THE JUROR: No.

10 THE COURT: Can you set that relationship aside and
11 make up your mind based upon what you hear in court while
12 court is in session?

13 JUROR: Yes, ma'am.

14 THE COURT: Thank you so much. Please stay with us.
15 Thank you for that.

16 You know, it is so interesting how -- when you
17 activate those brain cells, how they kind of percolate;
18 especially, if it's been a while. I mean, that's very
19 usual.

20 All right. Now, anyone else? Anyone else percolating
21 out there?

22 (No audible response.)

23 THE COURT: All right. Very well. Ladies and
24 gentlemen, next I'm going to read to you a list of
25 potential witnesses, potential witnesses.

1 The attorneys help me at this time of jury
2 qualifications. And they give to me a list of potential
3 witnesses, so that I can ask if you might know any of these
4 folks. And I certainly wouldn't want you to hold it
5 against these folks if they have got to call all these
6 people. Because I want you to understand that they give to
7 me the list of potential witnesses at this juncture, so
8 that I may ask if you know any of these folks.

9 Now, my question as to each and everyone of these
10 people is: Are you related by blood or marriage, or
11 acquainted with any of these folks, any of these
12 individuals?

13 Now, ladies and gentlemen, I'm going to read to you a
14 list. There are number of folks names I'm going to be
15 reading to you. If you happen to be in the courtroom, I
16 would appreciate it if you would just stand. Because so
17 often it is easier to put a face with a name, then to try
18 and think of the name solely. So if you happen to be in
19 the courtroom -- you don't have -- you don't have to be in
20 here, but if you are, I'd appreciate it if you would stand
21 as your name is called.

22 And ladies and gentlemen, when I finish reading this
23 list, if you all need me to read it again, I am more than
24 happy to do that. So help me know that you need to have
25 the list read again.

1 All right. Are you related by blood or marriage, or
2 acquainted with the following individuals: Detective Anne
3 Reese.

4 (Detective Reese stands.)

5 THE COURT: Thank you so much. And this is Detective
6 Reese. Thank you so much and you may be seated.

7 Tim Morgan? Tim Morgan?

8 (No response.)

9 Jessica Atkinson? Jessica Atkinson?

10 (Ms. Atkinson stands.)

11 THE COURT: Oh. And there's Ms. Atkinson in the back.
12 Thank you. Thank you very much.

13 Complainant .

14 (Ms. Hitchens stands.)

15 THE COURT: And that's Ms. Hitchens. Thank you.

16 Lesley Hitches.

17 (Ms. Hitchens stands.)

18 THE COURT: Ah. And there's Lesley Hitchens. Thank
19 you so much.

20 Wanda Bennett. Wanda -- ah.

21 (Ms. Bennett stands.)

22 THE COURT: And there's Ms. Bennett. Thank you.

23 THE COURT: And Dr. Don Elsey. Dr. Don Elsey.

24 (No response.)

25 THE COURT: Dr. Mia Amaya. Dr. Mia Amaya.

1 (No response.)

2 THE COURT: Dr. DeMarco. Dr. DeMarco.

3 (No response.)

4 THE COURT: All right. Derrick Sorrow. Derrick
5 Sorrow.

6 (No response.)

7 THE COURT: Mary Beth Hefner. Mary Beth Hefner.

8 (No response.)

9 THE COURT: And also ladies and gentlemen, in an -- in
10 an abundance of caution, I would ask: Are you related by
11 blood or marriage, or acquainted with; or have you or a
12 member of your immediate family, to your knowledge, ever
13 been treated by Dr. Don Elsey, Dr. Mia Amaya, Dr. DeMarco?
14 If so, please stand.

15 (No response.)

16 THE COURT: And I find no one standing. Let me
17 continue: Are you related by blood or marriage, or
18 acquainted with E.B. ?

19 (Ms. Bonner stands.)

20 THE COURT: Ah. And there's Ms. Bonner. Thank you.
21 Thank you.

22 Jessica Portillo, Jessica Portillo.

23 (Ms. Portillo stands.)

24 THE COURT: Now, Ms. Portillo -- thank you -- I think
25 you stood before, thanks so much. And I apologize if I've

1 called your name out twice. I'm trying not to do that.

2 Deputy Tim Prince. Deputy Tim Prince.

3 (No response.)

4 THE COURT: I don't know if this is helpful. I think
5 I mentioned Tim Morgan. I believe it's Corporal Tim
6 Morgan. Very well.

7 (A juror stands.)

8 THE COURT: And Mr. McIntosh, you know Corporal -- and
9 it probably helped when I said Corporal Morgan as opposed
10 to Tim Morgan. Yes. And is your relationship one that is
11 more personal or professional?

12 Juror: Professional.

13 THE COURT: Very well. Can you set that relationship
14 aside and make up your mind based upon what you hear in
15 court while court is in session?

16 JUROR: I can.

17 THE COURT: Thank you so much. Now, ladies and
18 gentlemen, again, the question as to each of these
19 individuals is: Are you related by blood or marriage, or
20 acquainted with any of those individuals whose name's I
21 just mentioned? If so, please stand at this time.

22 (No response.)

23 THE COURT: And I find no one standing. Now, ladies
24 and gentlemen, I now have certain questions that I must ask
25 of you. And I'm going to begin that process now. Ladies

1 and gentlemen, is any member of our jury panel employed by
2 -- employed by, related by blood or marriage, or a close
3 personal friend, a close personal friend -- let me tell you
4 how close this personal friend is.

5 This close personal friend is so close that when you
6 think of your family members -- like your brother or your
7 sister or somebody that you're close to -- that this person
8 is such a good friend of yours, you can't distinguish
9 between your relationship to this close personal friend and
10 a family member. That's how close they are.

11 And so I ask -- let me just ask it again with that in
12 mind: Are you employed by, related by blood or marriage
13 to, or a close personal friend of a member of any law
14 enforcement agency, law enforcement agency? And just as -
15 part of that, has any member of the jury panel worked with
16 any law enforcement agency?

17 Now, if you need to respond to this question, I'm
18 going to ask you to please stand.

19 (A juror stands.)

20 THE COURT: Very well. All right. And I'm just going
21 to ask you for your number.

22 JUROR: Twenty-two.

23 THE COURT: Thank you. That's it. Thank you so much.

24 Now, is any member of our jury panel employed by,
25 related by blood or marriage to; or a close personal friend

1 of anyone employed by the Attorney General, the Solicitor,
2 or any prosecuting attorney's office? Or has any member of
3 our jury panel worked with any of the above named agencies?
4 If so, please stand at this time.

5 (A juror stands.)

6 THE COURT: Mr. McIntosh, your number is? Whatever
7 your number is. What's your number?

8 JUROR: Ninety-three.

9 THE COURT: Huh?

10 JUROR: Ninety-three.

11 THE COURT: Ninety-three. Thanks. Anyone else?

12 (No response.)

13 THE COURT: Okay. Ladies and gentlemen, I am going to
14 ask three questions together -- three questions together.
15 I'm going to ask that you not respond to any of the
16 questions until I have asked all three. And if you need to
17 respond, I'm going to have you approach, just so you know.

18 So here's the first question: Have you or any member
19 of your immediate family or close personal friend ever been
20 the victim of a crime or ever been accused of a crime? And
21 I'm not talking about a speeding ticket, but victim of a
22 crime or accused of a crime. That's the first question.
23 Don't respond yet.

24 Second one: Is there any member of our jury panel
25 whose immediate family or close personal friend, who -- as

1 a child or who has a child, who has been the victim of a
2 crime; or a child who has made an allegation of criminal
3 wrongdoing against an adult? That's question number two.

4 Question No. 3: Is anybody on our jury panel, member
5 of your immediate family, to your knowledge, or this close
6 personal friend that I keep talking about, that person, to
7 your knowledge, ever been a member -- ever been a member of
8 MAD, Mothers Against Drunk Driving; SAD, Students Against
9 Drunk Driving; CAVE, Citizens Against Violent -- something;
10 or PAR, People Against Rape; Darkness to Light; or any
11 other similar-type organization, which has, as a goal, the
12 promotion of law enforcement and victims' rights?

13 And that's -- it's sort of a sub-part of this: Does
14 any member of our jury panel volunteer for or contribute
15 money to these kinds of organizations?

16 If you need to respond to any of these three
17 questions, I'm going to ask you to please stand and come
18 forward, please. And counsel you may approach as well.

19 (Whereupon the following takes place at sidebar,
20 outside the hearing of the entire panel with all counsel,
21 the Court, the court reporter, and the potential juror.)

22 THE COURT: Yes.

23 COURT SECURITY: Juror No. 60.

24 (Juror approaches.)

25 THE COURT: Hi. Now, I wanted -- let me just (shows

1 document to the juror.) (Indicates) These are -- this one,
2 this one, and this one. Which one are you responding to?

3 JUROR: Number 3.

4 THE COURT: Number 3. All right. And was it you or a
5 member of your family?

6 JUROR: It was me.

7 THE COURT: It was you? And what was the -- what was
8 the offense?

9 JUROR: I was a victim of a sexual battery and assault
10 with intent to kill by my ex-husband.

11 THE COURT: And how long ago was that?

12 JUROR: About 15 years ago.

13 THE COURT: Fifteen years ago. Do you believe that
14 that might or could interfere with your ability to be a
15 juror in this case?

16 JUROR: No, ma'am.

17 THE COURT: Can you set that experience, as painful as
18 it is, aside, and make up your mind based on what you hear
19 in court while court is in session?

20 JUROR: Yes, ma'am.

21 THE COURT: Thank you so much, and stay with us. Did
22 I get your number?

23 JUROR: 60.

24 THE COURT: Oh, yeah, I did. Thank you.

25 (Juror returns to the audience.)

1 COURT SECURITY: Juror 106.

2 (Juror approaches.)

3 THE COURT: And you have facial hair to boot. All
4 right.

5 JUROR: (Laughs.)

6 THE COURT: Are you answering to 3, 4, or 5?

7 JUROR: My uncle was convicted of a crime.

8 THE COURT: Yes. Yes.

9 JUROR: So I don't -- I didn't --

10 THE COURT: I -- I think -- well, I don't know which
11 one it would be. Let's see.

12 JUROR: He was ---

13 THE COURT: He was accused -- okay. Very well.

14 JUROR: Yes, ma'am.

15 THE COURT: And your number is ---

16 JUROR: 106.

17 THE COURT: --- 106. Is -- would that have an affect
18 on your ability to be fair and impartial both to the State
19 as well as Mr. Portillo?

20 JUROR: No.

21 THE COURT: Thank you so much. Please stay with us.

22 (Juror returns to the audience.)

23 (Bench conference.)

24 COURT SECURITY: Juror 22.

25 (Juror approaches.)

1 THE COURT: Hi. Hi. All right. (Indicating) Here
2 are the questions I asked. So would you be responding to
3 3, 4, or 5?

4 JUROR: (No audible response.)

5 THE COURT: Or more than three -- well, which ones?

6 JUROR: (Indicates.)

7 THE COURT: Three. Is it you or a member of your
8 family?

9 JUROR: (No audible response.)

10 THE COURT: It's you, yes?

11 JUROR: My daughter.

12 THE COURT: Your daughter? And -- okay. All right.

13 JUROR: (Crying.)

14 THE COURT: I got tissues. All right. This is
15 bringing up some very troubling memories. Do we need to --
16 do we need to move you to a civil term?

17 JUROR: (No audible response.)

18 THE COURT: Okay. Well, we're gonna do that. Okay.
19 Now breathe, okay?

20 JUROR: (Crying.)

21 THE COURT: Okay.

22 JUROR: Yes, ma'am.

23 THE COURT: Are we breathing? I don't think you're
24 breathing. Are you breathing?

25 JUROR: (No audible response.)

1 THE COURT: Okay. You go right over there to Ms.
2 Hill, and you get a civil term, okay? You pick the week.
3 Give yourself a couple of months, okay? And then you stay
4 with us until you've gotten yourself together, okay?

5 JUROR: Yes, ma'am.

6 THE COURT: Okay. All right.

7 (The juror moves to the civil clerk.)

8 THE COURT: I think I need to observe for the record
9 that she could not even respond to my questions, and that
10 she was - the question was devastating. I can only imagine
11 what her service would be. Okay.

12 COURT SECURITY: Juror 34.

13 (Juror approaches.)

14 THE COURT: Hi. Which one of these questions are you
15 responding to?

16 JUROR: My sister was assaulted ---

17 THE COURT: Your sister was ---

18 JUROR: Yes. Her ex-boyfriend raped her.

19 THE COURT: Okay. Your sister was actually assaulted,
20 was raped. And she identified her ex-boyfriend.

21 JUROR: Yes.

22 THE COURT: Is that right?

23 JUROR: (No audible response.)

24 THE COURT: And that's a "yes"?

25 JUROR: Yes.

1 THE COURT: I see you nodding. I know what you mean,
2 I just need to get your answer for the record.

3 And how long ago are we talking about? Days? Months?

4 JUROR: About 10 years.

5 THE COURT: About 10 years ago?

6 JUROR: Yes.

7 THE COURT: Okay. Now, where were we -- in the Low
8 Country that occurred?

9 JUROR: It was in North Charleston.

10 THE COURT: It was in North Charleston. Okay. And
11 how old -- you -- 10 years ago. I'm trying to figure out
12 how old you were. Ten years ago how old were you?

13 JUROR: Fourteen.

14 THE COURT: Fourteen? Okay. And do -- do you
15 believe, now, that you can set that experience -- your
16 painful experience aside, and make up your mind based on --
17 based on what you hear in court while court is in session?

18 JUROR: Yes.

19 THE COURT: Okay. Do you feel as though you can be
20 fair and impartial to the State and ---

21 JUROR: Oh, yeah.

22 THE COURT: --- Mr. Portillo? Thank you.

23 JUROR: Yes.

24 THE COURT: Okay. Very well. Thank you. Please stay
25 with us.

1 JUROR: No problem.

2 (Juror returns to the audience.)

3 THE COURT: Yeah. Okay.

4 COURT SECURITY: Juror 17.

5 (Juror approaches.)

6 THE COURT: Hi. Which -- now, which one are you
7 responding to?

8 JUROR: I think it's the first one.

9 THE COURT: The first one? Okay. Was it you or a
10 member of your family?

11 JUROR: Huh?

12 THE COURT: All right. This is either a victim of a
13 crime or someone accused of a crime. So does this involve
14 you or a member of your family?

15 JUROR: (No audible response.)

16 THE COURT: You?

17 JUROR: (Nods head.)

18 THE COURT: Okay. And were you accused or were you
19 the victim?

20 JUROR: Accused.

21 THE COURT: Accused. And what was the offense that
22 you were accused of?

23 JUROR: Strong arm robbery.

24 THE COURT: Okay. Strong arm robbery. How long ago
25 we talking about?

1 JUROR: '09.

2 THE COURT: '09. Now, do you believe that you can set
3 that experience aside, and make up your mind based on what
4 you hear in court while court is in session?

5 JUROR: Huh?

6 THE COURT: Do you believe -- now, that, no doubt, was
7 a very unpleasant situation, right?

8 JUROR: (No audible response.)

9 THE COURT: Yeah. Do you think that you can set that
10 unpleasant situation aside, and if you're a juror, make up
11 your mind based on what you hear in court while court is in
12 session?

13 JUROR: (No audible response.)

14 THE COURT: In other words, can you make up your mind
15 based on the evidence presented?

16 JUROR: Yes.

17 THE COURT: Yes? Okay. And can you be fair and
18 impartial both to the State as well as to Mr. Portillo?

19 JUROR: (No audible response.)

20 THE COURT: Yes? All right. Thank you.

21 (Juror returns to the audience.)

22 MR. HILTON: I'll just put on the record, Bonnie, now,
23 he has pending charges at this time.

24 THE COURT: Oh.

25 MR. HILTON: And the charges he's talking about, I

1 believe, are still pending. I know he has a gun charge
2 that's still pending.

3 THE COURT: Okay. All right. With your office.
4 Well, I'm not gonna put him on this jury. He's out.

5 MR. FARLEY: For his record?

6 THE COURT: No.

7 MR. FARLEY: We'd object.

8 THE COURT: I understand. And -- and you're right,
9 and let me be a little bit more specific.

10 I think that if you had a case pending and your own
11 prosecution pending, and pending with the solicitor's
12 office that is prosecuting the case before the bar, the
13 problem as I see it is two-fold: I believe that the -- the
14 likelihood of either feeling more compassion towards the
15 defendant, because you are, in fact, yourself a defendant
16 with this particular prosecutorial office; or -- or siding
17 with the prosecutorial office, with the hope that somehow
18 that's going to help you in your own case is -- is a very,
19 very strong possibility.

20 I think that the ability to remain completely fair and
21 impartial, without those considerations becoming a part of
22 your deliberations, would ask too much of any individual.

23 And on that basis, I'm going to excuse this gentleman.

24 He was extraordinarily -- I should say, he was
25 extraordinarily reluctant to answer my questions, act --

1 acted as though he did not understand what I was asking
2 him, and I think I had to repeat every question to him.
3 And his demeanor also was such that causes me great
4 concern. Okay.

5 MR. HILTON: Further, he is represented by the public
6 defender's office, this one.

7 THE COURT: And he did not disclose that. Okay. Very
8 well. That's an -- thank you. That's an additional
9 reason. Okay.

10 COURT SECURITY: Juror No. 6.

11 (Juror approaches.)

12 THE COURT: Hi.

13 JUROR: Hey, how are you?

14 THE COURT: Fine. Tell me which one you're responding
15 to.

16 JUROR: (Indicates.)

17 THE COURT: The -- the -- number 3.

18 JUROR: Number one.

19 THE COURT: Victim --

20 JUROR: Yeah.

21 THE COURT: -- or an accused.

22 JUROR: My older brother was killed by his son in
23 1996.

24 THE COURT: Okay.

25 JUROR: In the trial it came out that my nephew was

1 molested by somebody on his ---

2 THE COURT: Okay. I understand. And that was in
3 1996.

4 JUROR: Yeah.

5 THE COURT: As a result of that occurrence, do you
6 believe that that could or might affect your ability to be
7 completely fair and impartial both to the State as well as
8 -- as well as Mr. Portillo?

9 JUROR: I don't think so.

10 THE COURT: Can you set that very painful experience
11 aside and make up your mind based upon what you hear in
12 court while court is in session?

13 JUROR: Yes.

14 THE COURT: Thank you.

15 (Juror returns to the audience.)

16 THE COURT: (To the attorneys) Did y'all get all of
17 that?

18 (Attorneys nod.)

19 COURT SECURITY: Juror No. 91.

20 THE COURT: Hi.. Yes, sir. Which one are you
21 responding to?

22 JUROR: I have a son that's been convicted.

23 THE COURT: Of...?

24 JUROR: Burglary.

25 THE COURT: All right. How long ago?

1 JUROR: In '07.

2 THE COURT: '07. By -- by -- where -- I should say
3 where?

4 JUROR: Dorchester County.

5 THE COURT: In Dorchester County? All right. As a
6 result of that experience, do you believe that that might
7 or could interfere with your ability to be completely fair
8 and impartial both to the State as well as to Mr. Portillo?

9 JUROR: No.

10 THE COURT: I -- I must ask you this question, if you
11 will, straight on: I -- I gather that your son was
12 prosecuted by this office, by the Dorchester County
13 Solicitor's Office.

14 JUROR: Yes, ma'am.

15 THE COURT: Do you remember the name of the
16 prosecutor?

17 JUROR: Not right off hand. I know Ms. -- I can't
18 even remember either one of them now.

19 THE COURT: Okay. Okay. And do you know who
20 represented your -- your son? Was it the Public Defender's
21 Office or private counsel? Private -- private --

22 JUROR: Yes, ma'am.

23 THE COURT: Private counsel. Okay. Now, I -- so I
24 must ask you straight on: Do you believe that the fact
25 that this solicitor's office was the office that prosecuted

1 your son might have an affect?

2 JUROR: No, ma'am.

3 THE COURT: Okay. And I must ask why. Tell my why
4 you say that.

5 JUROR: Because, I mean, my son was guilty. So I
6 mean, I have -- I have to live with that. So I mean --

7 THE COURT: Okay. All right. In other words, you
8 understand consequences and responsibility.

9 JUROR: Yes, ma'am.

10 THE COURT: And you have no feeling regarding this --

11 JUROR: No, ma'am.

12 THE COURT: -- solicitor's office.

13 JUROR: No, ma'am.

14 THE COURT: Okay. And -- and can you set that, no
15 doubt, very painful experience aside and make up your mind
16 based on what you hear in court while court is in session?

17 JUROR: Yes, ma'am.

18 THE COURT: All right. Very well. Yes, sir. Thank
19 you.

20 COURT SECURITY: Juror 108.

21 THE COURT: Yes, sir. Tell me which of these you're
22 responding to: 3, 4, or 5.

23 JUROR: I thought it was --

24 THE COURT: The victim of a crime and --

25 JUROR: No. I've had a DUI --

1 THE COURT: Oh. Okay.

2 JUROR: -- about 30 years ago.

3 THE COURT: Might that have an affect on your ability
4 to be fair and impartial?

5 JUROR: No, ma'am.

6 THE COURT: Thank you. Thank you so much.

7 COURT SECURITY: Juror 18.

8 THE COURT: Hi. Good morning. Which of these three
9 are you responding to? Is it you or a member of your
10 family?

11 JUROR: Member of my family.

12 THE COURT: Member of your family. And is it child?
13 niece? nephew? What -- what --

14 JUROR: A nephew and brother.

15 THE COURT: Your nephew and your brother. What --
16 both were victims or was one the victim, one the
17 perpetrator -- alleged perpetrator?

18 JUROR: Yeah. One was the alleged.

19 THE COURT: Alleged perpetrator.

20 JUROR: Yeah.

21 THE COURT: And how long ago are we talking about?

22 JUROR: About four years.

23 THE COURT: Four years ago. And where are we -- where
24 did these events allegedly occur?

25 JUROR: At the home -- my mother home.

1 THE COURT: And where is that?

2 JUROR: Dorchester.

3 THE COURT: In Dorchester County. And was -- was your
4 brother the alleged perpetrator?

5 JUROR: Yes.

6 THE COURT: Okay. And was the matter prosecuted?

7 JUROR: It was thrown out for lack of evidence.

8 THE COURT: It was thrown out for lack of evidence.

9 All right. Did you -- thrown out, like at what point? Do
10 you remember?

11 JUROR: It went to trial.

12 THE COURT: It went to trial. Okay. And do you
13 remember -- do you remember who represented your brother?

14 JUROR: No.

15 THE COURT: That's understandable. Do you remember
16 the -- the solicitor that prosecuted the case?

17 JUROR: No.

18 THE COURT: Okay. Okay. And does your brother live
19 with you?

20 JUROR: No.

21 THE COURT: Does the alleged victim live with you?

22 JUROR: No.

23 THE COURT: And do you believe that that occurrence
24 might or could in any regard interfere with your ability to
25 be completely fair and impartial both to the State as well

1 as to Mr. Portillo?

2 JUROR: No.

3 THE COURT: Can you set that experience -- no doubt
4 very painful for your family -- can you set that experience
5 aside and make up your mind based solely on what you hear
6 in court while court is in session?

7 JUROR: Yes.

8 THE COURT: Completely unaffected by that experience?

9 JUROR: Yes.

10 THE COURT: Please stay with us. Thank you so much.

11 COURT SECURITY: Juror 133.

12 THE COURT: Hi.

13 JUROR: How are you?

14 THE COURT: Fine. Tell me which one you're responding
15 to. This is the member of the organization ---

16 JUROR: I am also the member of "Darkness to Light."

17 THE COURT: Okay. You're a member of "Darkness to
18 Light."

19 JUROR: Yeah.

20 THE COURT: Okay.

21 JUROR: I'm also a victim.

22 THE COURT: You're a victim of -- of a crime?

23 JUROR: Yeah.

24 THE COURT: And what is the crime?

25 JUROR: Well, my -- I was molested by several members

1 of my family. And I was also raped when I was 11.

2 THE COURT: Okay. And that's a while ago, yes?

3 JUROR: Yeah.

4 THE COURT: All right.

5 JUROR: Thirty-five years.

6 THE COURT: Okay. And do you believe that that
7 experience might affect your ability to be fair and
8 impartial?

9 JUROR: Yes, ma'am.

10 THE COURT: Well, I can certainly understand that. Do
11 you -- let me ask this question of you: Do you believe
12 that it is appropriate and that you could remain on a
13 criminal jury panel in case -- it could be burglary. I
14 don't know what the next case is.

15 JUROR: Yeah.

16 THE COURT: But would that be ---

17 JUROR: Yes. That would be good.

18 THE COURT: I think so too. I think so too. Just
19 hang with us.

20 JUROR: Okay.

21 THE COURT: Sit this one out, okay?

22 JUROR: Okay.

23 THE COURT: Thank you.

24 JUROR: Do I need to pick a date ---

25 THE COURT: Just --

1 JUROR: --- next time?

2 THE COURT: Well, I hate for you to go through the
3 whole process --

4 JUROR: Okay.

5 THE COURT: -- of qualification. Just stay with me.
6 I'll give you some instruction on how to stay in touch with
7 each other over the rest of the week.

8 JUROR: Okay.

9 THE COURT: Is that good?

10 JUROR: Great.

11 THE COURT: Okay. (To the Clerk of Court) Just out of
12 this case.

13 COURT SECURITY: Juror 58.

14 THE COURT: Yes, sir. Which of these are you
15 responding to? Victim of a crime or accused, have a child
16 or --

17 JUROR: My nephew was accused ---

18 THE COURT: Accused.

19 JUROR: I got a nephew who was accused and went to
20 prison.

21 THE COURT: Okay. Of what?

22 JUROR: I think it was a fight.

23 THE COURT: Okay. All right. I understand. How long
24 ago we talking about?

25 JUROR: Year and a half/two years ago.

1 THE COURT: Year and a half. And where -- where was
2 your nephew at the time located? What county? Physically
3 located?

4 JUROR: Dorchester County

5 THE COURT: In Dorchester County? Dorchester?

6 JUROR: Yes. Dorchester.

7 THE COURT: Okay. Okay. And was he prosecuted by the
8 solicitor's office here?

9 JUROR: Yeah. Yeah.

10 THE COURT: Okay. Do you remember the solicitor?

11 JUROR: No.

12 THE COURT: Okay. And that's been a year and a half
13 ago.

14 JUROR: He's been to court a couple of times.

15 THE COURT: Okay.

16 JUROR: Walterboro and then I know it was here. I
17 think he was sentenced in St. George, in court in St.
18 George.

19 THE COURT: Uh-huh. Uh-huh.

20 JUROR: I think they had it in the old armory
21 building. They used to have some kind of court or a trial
22 or something over there. I know he went onto jail after he
23 got through with whatever they were doing over there.

24 THE COURT: I got you. That's -- that was almost like
25 -- was that a long time ago?

1 JUROR: I think it be --

2 THE COURT: When they were in the armory?

3 JUROR: I don't know.

4 THE COURT: A while ago. Okay. Okay. All right.

5 Let me -- let me ask it directly whether or not you
6 believe that that experience with your nephew, could
7 that/might that interfere with you ability to be completely
8 fair and impartial both to the State as well as Mr.
9 Portillo?

10 JUROR: No.

11 THE COURT: Can you set that experience aside and make
12 up your mind based on what you hear in court while court is
13 in session?

14 JUROR: Yeah.

15 THE COURT: I must ask this question of you directly:
16 This is your nephew, and he was prosecuted by this
17 solicitor's office; not another solicitor, this solicitor's
18 office. Do you believe that the fact that this same
19 solicitor's office that prosecuted your nephew that's
20 involved in this case, might have an affect on your ability
21 to be fair and impartial?

22 (No audible response.)

23 THE COURT: That's a "yes" or a "no"?

24 JUROR: Oh. No.

25 THE COURT: That's a "no"?

1 JUROR: It shouldn't have no affect.

2 THE COURT: It shouldn't have an affect. Tell me why,
3 why do you say no?

4 JUROR: I don't know. My nephew ...

5 THE COURT: I understand. Thank you very much. I got
6 you. Please stay with us.

7 COURT SECURITY: Juror 59.

8 THE COURT: Yes, ma'am. Which of these questions are
9 you responding to? This is victim or a crime or accused of
10 a crime. This is child -- child --

11 JUROR: First one.

12 THE COURT: Okay. Tell me, is it you or a member of
13 your family?

14 JUROR: Family member.

15 THE COURT: Family member. Okay. What member of your
16 family?

17 JUROR: First cousin.

18 THE COURT: First cousin. Okay. Does the first
19 cousin live with you?

20 JUROR: No.

21 THE COURT: No. Okay.

22 JUROR: Next door.

23 THE COURT: Okay. Next door. Victim or accused?

24 JUROR: Accused.

25 THE COURT: Accused. About how long ago we talking

1 about?

2 JUROR: I'm not sure.

3 THE COURT: Okay. So next door. Somebody in
4 Dorchester County?

5 JUROR: Uh-huh.

6 THE COURT: That's a "yes"?

7 JUROR: Yes.

8 THE COURT: What's the status of that case?

9 JUROR: I don't know.

10 THE COURT: You don't know what it is. You have no
11 idea. You don't know if it's gone to court, hasn't gone to
12 court. You don't know.

13 JUROR: I -- I don't know. I know he went on
14 probation, but other than that, I don't know.

15 THE COURT: You don't know.

16 JUROR: No, ma'am.

17 THE COURT: Okay. And do you know what his
18 involvement was, if any, with the solicitor's office here?

19 JUROR: No, I don't.

20 THE COURT: No. All right. As a result of that
21 occurrence, do you believe that that might or could
22 interfere with your ability to be completely fair and
23 impartial to the State as well as to Mr. Portillo?

24 JUROR: No, ma'am.

25 THE COURT: Can you set that experience with your

1 first cousin aside and make up your mind based on what you
2 hear in court while court is in session?

3 JUROR: (No response.)

4 THE COURT: Would you -- and I'll ask it directly:
5 Are you concerned about the next family reunion, and what
6 your cousin might or might say about your participation in
7 this trial?

8 JUROR: No, not at all.

9 THE COURT: Not at all. Thank you, ma'am. Please
10 stay with us.

11 (To the Clerk of Court) She's staying.

12 COURT SECURITY: Juror No. 76.

13 THE COURT: Yes, sir. Tell me which of these you're
14 responding to.

15 JUROR: Actually none of them, but I had -- it was
16 something with the thing before -- I wasn't really paying
17 attention. Sorry.

18 THE COURT: Sure. Sure.

19 JUROR: I have a friend, a really close friend, that
20 was accused of something with his daughter. She was like
21 15. It had something to do with Dorchester County.

22 THE COURT: Okay.

23 JUROR: And James Island, I believe. So I just wanted
24 to bring that up.

25 THE COURT: That's wonderful. Is it ongoing?

1 JUROR: It's recent, like the last month

2 THE COURT: Over the last month? And this is a dear
3 friend of yours.

4 JUROR: Right.

5 THE COURT: Okay. And -- and you think there's some
6 involvement both with James Island and Dorchester County.

7 JUROR: That's -- his daughter lives on James Island,
8 but Dorchester County got involved because he lived in
9 Dorchester County.

10 THE COURT: Okay. All right. Daughter's on James
11 Island.

12 JUROR: Right.

13 THE COURT: Dorchester County's -- all right. And
14 Dorchester County Sheriff's Department? Solicitor's Office?
15 You know?

16 JUROR: I have no idea.

17 THE COURT: Okay. I understand.

18 JUROR: He hasn't given me all the details.

19 THE COURT: I understand. I understand. Now, as a
20 result of -- of that upsetting from your friend, from your
21 close friend, do you believe that that might or could
22 interfere with your ability to be completely fair and
23 impartial both to the State as well as to Mr. Portillo?

24 JUROR: It's possible.

25 THE COURT: It's possible. Okay. Well, here's what

1 I'm gonna ask you to do is to sit this one out. Hang with
2 me, because we got more work to be done. Okay.

3 And please don't discuss this with -- and you're not
4 gonna do it ---

5 JUROR: Sure. Sure.

6 THE COURT: --- with the other jurors. Thank you.

7 (To the Clerk of Court) Out. Out.

8 COURT SECURITY: Juror 58.

9 THE COURT: Yes.

10 JUROR: You were asking my daughter some questions,
11 and she just doesn't know any of the details about what
12 happened with her cousin. And I was just wondering if you
13 needed me to answer some questions that you asked her.

14 THE COURT: Your daughter. What you talking about?
15 Help me.

16 JUROR: The juror -- the -- the black girl that just
17 came up.

18 THE COURT: That was your daughter?

19 JUROR: That's my daughter.

20 THE COURT: We have pulled a dad and a daughter on the
21 same jury panel?

22 JUROR: Yeah.

23 THE COURT: That's remarkable. That's amazing. No.
24 We've never had that. I've never had this happen in 13
25 years of doing this. She's just not -- I mean, she's okay

1 about it. She genuinely -- she's convinced me that it
2 happened -- I don't see it as having any impact on me at
3 all, is what she sort of communicated to me.

4 JUROR: Okay.

5 THE COURT: Now, tell me about you.

6 JUROR: I'm fine.

7 THE COURT: Okay.

8 JUROR: See I thought that you needed some details
9 that she didn't have.

10 THE COURT: Okay. No. The fact that she doesn't have
11 details is okay.

12 JUROR: Okay.

13 THE COURT: Okay. Would the details you have, you're
14 -- you can set that experience aside?

15 JUROR: Yeah. Like I say, I know him.

16 THE COURT: Okay. Very well. All right.

17 (To jury panel) Ladies and gentlemen, can you hear me
18 if I stay down here?

19 JURORS: (In unison) Yes.

20 THE COURT: Thank y'all. Thank you so much. All
21 right. I'm going to ask these two questions together: Has
22 any member of our jury panel ever contributed to the
23 campaigns of the solicitor -- Solicitor David Pascoe -- or
24 the Dorchester County Sheriff, L.C. Knight, and -- and
25 don't answer that yet. And has any member of our jury

1 panel or relative or close personal friend ever been
2 employed by, participated in fund raising, or volunteered
3 at the Lowcountry Children's Center, Children in Crisis --
4 which is another center -- or any other similar agency?

5 And is there any member of the jury panel who has
6 volunteered or worked specifically for any other type of
7 child advocacy group, any type of shelter, any group set up
8 for children who have been abused or violated in any way?

9 If you need to respond to either of those questions,
10 if you'd please stand and come forward.

11 (Several jurors come forward.)

12 THE COURT: Come on forward, Mr. McIntosh.

13 (The juror complies.)

14 THE COURT: I figured you -- I almost didn't ask the
15 campaign question, because I figured you might be the only
16 person that's contributed to both the solicitor and the
17 sheriff.

18 JUROR: I'm pretty sure I did both.

19 THE COURT: I'm pretty sure you did both, too. And
20 have you volunteered in any of those -- I know you've dealt
21 with them in your capacity as assistant solicitor, but --

22 JUROR: Never volunteered.

23 THE COURT: Cool. Thanks. Bye.

24 COURT SECURITY: Juror 106. Excuse me, 108.

25 THE COURT: Hi. Yes, sir.

1 JUROR: South Carolina Sheriff's Department
2 Association donation.

3 THE COURT: I love your accent. It's just so much
4 nicer than mine. Okay. Thank you so much.

5 COURT SECURITY: Juror 136.

6 THE COURT: Hi. Yeah.

7 JUROR: Many years ago, and I don't even know when, my
8 wife worked for the Sheriff's Department.

9 THE COURT: Thank you.

10 JUROR: That's all I --

11 THE COURT: Can remember. Thank you so much.

12 Now, does any member of our jury panel have any formal
13 training -- formal training, in the medical field;
14 including, but not limited to, as a doctor, nurse,
15 physician assistant, or licensed practical nurse? If so,
16 please stand.

17 (A juror stands.)

18 THE COURT: And your number is?

19 JUROR: Number 2.

20 THE COURT: Thank you so much. Does any member of our
21 jury panel have any formal training or employment in the
22 areas of psychiatry, psychology, therapy, counseling,
23 mental health; or any experience relating to the mental
24 health field or social services?

25 And this is formal training for the psychiatry

1 therapy. This isn't like being a momma and a daddy
2 training.

3 Jury: (Laughter.)

4 THE COURT: But formal training in those fields. If
5 so, please stand.

6 (A juror stands.)

7 THE COURT: Your juror number?

8 JUROR: Sixty.

9 THE COURT: I should have had that memorized. Thank
10 you so much. Anyone else?

11 (No response.)

12 THE COURT: All right. Here is my last question, and
13 it is real general and I mean it to be real general, oh-by-
14 the-way: Do you know any reason why you ought not, should
15 not, could not be a juror in this case; being ready,
16 willing, and able to listen to the evidence and make up
17 your mind based solely on what you hear in court while
18 court is in session; being completely unaffected by matters
19 -- we call it "extraneous" -- by matters outside the court?

20 In other words, if these particular issues cause you
21 particular concern on -- and -- or -- or -- if there was
22 something that, you know, you wanted to tell me earlier,
23 but you were shy. Y'all have been together for a while,
24 and you've warmed up. You weren't comfortable telling me
25 what you didn't want to tell me earlier.

1 Or during our break, during our break, you went to the
2 car, because I know none of you brought your cell phone in
3 the courthouse with those 45 signs that you got to pass by.

4 So you went out to use your cell phone and you had so
5 many calls and you returned a phone call. And the
6 Publishing Clearing House people are at your house.

7 JURY: (Laughter.)

8 THE COURT: You got balloons and the flowers and you
9 got, like, one of those 8-foot checks; and you can't think
10 about what we doing here. You got to get home and read
11 that check; get your picture taken and everything.

12 I mean really, is there anything that we need to talk
13 about that could or might, in any regard, affect your
14 ability to be a juror in this case; to be fair and
15 impartial to the State, and as well, to Mr. Portillo or
16 anything?

17 Let me give you an example. I love this example.
18 About three months ago, we reached this part in the jury
19 qualification; took about this long. And at this point,
20 this adorable young man stood up and said, "Well, Judge, I
21 got to tell you, my wife is in labor down at Trident
22 Hospital.

23 JURY: (Laughter.)

24 THE JUDGE: "And I'm thinking maybe I need to share
25 that with you."

1 At which point, I'm like about laid out on floor. All
2 right.

3 So does anybody have anybody in labor at the hospital,
4 for goodness sake, let us now. Is anybody in labor, let us
5 know.

6 (No audible response.)

7 THE COURT: All right. Very well. But really, that
8 really happened and it was remarkable. I -- you know, I
9 wanted -- not Major, because he freaks out at people,
10 frankly. George, we got to run this poor child down to the
11 hospital.

12 But in any event, ladies and gentlemen, if there's
13 really, seriously, anything that you can think of that's --
14 that little thing that you are thinking about in your head,
15 that's what you need to come on forward, and let's talk
16 about it. Anything at all, please come forward and let us
17 chat about it.

18 (No audible response.)

19 THE COURT: Very well. I find that our panel is now
20 qualified. Counsel, let me see you.

21 (Bench conference.)

22 THE COURT: Let me tell you what happens next. Here's
23 what happens next. And I'm so excited to tell you, Mr.
24 McIntosh, I sat in the -- sat in the old courthouse. I was
25 on a jury panel. I sat where you're sitting, but in the

1 old courthouse. My name was called. I walked to through
2 the gate, as you will do if your name's called. And then
3 you'll stand here.

4 You know what I remember about that? I'll tell you.
5 I remember that I didn't know what to do with my hands.
6 I'd have been fine if I could have left my hands at my
7 seat. It's all right, bring them with you. It's okay.

8 (Indicating) And you'll stand here. And yes, you're
9 going to feel a little goofy. I am sorry. This is an
10 ancient process. We've been doing this for hundreds of
11 years. So stand here, and you're going to feel a little
12 goofy.

13 But you're first going to hear from one of the
14 attorney's from the State, probably Ms. Hall. You're going
15 to hear her say one of two things: Either "present the
16 juror" -- and that means you just stand here -- or "excuse
17 the juror." If you hear "excuse the juror," just go take
18 your seat back in the audience.

19 And here's what I want you to know: I want you to
20 know that these lawyers mean you no embarrassment. I can
21 promise you that. I can assure you of that. This is a --
22 this -- this is -- again, as I say, an ancient process in
23 our country and in our state. And there are any number of
24 considerations that go into the selection of a juror.

25 And one of the things I can promise you doesn't go

1 into it is the intention to cause you any embarrassment at
2 all, not these lawyers. I can promise you that. So please
3 know that.

4 If you're excused, please take your seat out -- back
5 in -- in the audience.

6 Does anybody want to guess if I was on the jury or
7 excused?

8 JUROR: (Laughter.)

9 THE COURT: I was excused. Okay. Now -- so I know
10 they meant me no embarrassment. And I really mean that
11 genuinely.

12 Now, if you hear "present the juror," then you will
13 hear from -- from one of the attorneys for the defense for
14 Mr. Portillo. It will probably be Mr. Farley.

15 He's going to say one of two things. He's either
16 going to say "seat the juror," which means you're going to
17 take the seat over here; or "excuse the juror," at which
18 point you will, again, take your seat back in the audience,
19 knowing that these folks intend you no embarrassment at
20 all. Very well. And at this time, I'm going to turn
21 it over to you.

22 CLERK OF COURT: Thank you, Judge.

23 THE COURT: Our phenomenal Clerk of Court.

24 (Brief discussion between the Clerk and the Court.)

25 CLERK OF COURT: (To the jurors) As I call your name,

1 please come forward and turn around and face the back of
2 the courtroom.

3 Juror No. 58, Alvin Glen.

4 (Mr. Glen, a black male, comes forward.)

5 CLERK OF COURT: What saith the State?

6 MS. HALL: Please present the juror.

7 CLERK OF COURT: The Defense?

8 MR. FARLEY: Please excuse the juror.

9 CLERK OF COURT: Have a seat back in the audience.

10 (The juror complies.)

11 CLERK OF COURT: Juror No. 156, Charles Ulmer.

12 (Mr. Ulmer, a white male, comes forward.)

13 CLERK OF COURT: What saith the State?

14 MS. HALL: Please present the juror.

15 CLERK OF COURT: The Defense?

16 MR. FARLEY: Please excuse the juror.

17 CLERK OF COURT: Have a seat back in the audience.

18 (The juror complies.)

19 CLERK OF COURT: Juror No. 64, Vivian Green.

20 (Ms. Green, a black female, comes forward.)

21 CLERK OF COURT: What saith the State?

22 MS. HALL: Please present the juror.

23 CLERK OF COURT: The Defense?

24 MR. FARLEY: Please swear the juror.

25 CLERK OF COURT: Have a seat in the jury box to your

1 left, ma'am.

2 (The juror complies.)

3 CLERK OF COURT: Juror No. 118, Eusebio Rivera.

4 (Mr. Rivera, a Hispanic male, comes forward.)

5 CLERK OF COURT: What saith the State?

6 MS. HALL: The State requests just a moment, Your
7 Honor.

8 THE COURT: Sure.

9 MS. HALL: Please excuse the juror.

10 CLERK OF COURT: Have a seat back in the audience.

11 (The juror complies.)

12 CLERK OF COURT: Juror No. 6, Jonathan Ardis.

13 (Mr. Ardis, a white male, comes forward.)

14 CLERK OF COURT: What saith the State?

15 MS. HALL: Please present the juror.

16 CLERK OF COURT: The Defense?

17 MR. FARLEY: Please excuse the juror.

18 CLERK OF COURT: Have a seat back in the audience.

19 (The juror complies.)

20 CLERK OF COURT: Juror No. 95, Andreas Miarka.

21 (Mr. Miarka, a white male, comes forward.)

22 CLERK OF COURT: What saith the State?

23 MS. HALL: Please present the juror.

24 CLERK OF COURT: The Defense?

25 MR. FARLEY: May I have a moment, Your Honor?

1 THE COURT: Sure.

2 MR. FARLEY: Please excuse the juror.

3 CLERK OF COURT: Have a seat back in the audience.

4 (The juror complies.)

5 CLERK OF COURT: Juror No. 116, Ulfet Ralph.

6 (Ms. Ralph, a white female, comes forward.)

7 CLERK OF COURT: What saith the State?

8 MS. HALL: Please present the juror.

9 CLERK OF COURT: The Defense?

10 MR. FARLEY: Please swear the juror.

11 CLERK OF COURT: Have a seat in the jury box.

12 (The juror complies.)

13 CLERK OF COURT: Juror No. 30, Anna Coslovich.

14 (Ms. Coslovich, a white female, comes forward.)

15 CLERK OF COURT: What saith the State?

16 MS. HALL: Please present the juror.

17 CLERK OF COURT: The Defense?

18 MR. FARLEY: Please excuse the juror.

19 CLERK OF COURT: Please sit back in the audience.

20 (The juror complies.)

21 CLERK OF COURT: Juror No. 143, Sean Taylor.

22 (Mr. Taylor, a white male, comes forward.)

23 CLERK OF COURT: What saith the State?

24 MS. HALL: Please present the juror.

25 CLERK OF COURT: The Defense?

1 MR. FARLEY: Please swear the juror.
2 CLERK OF COURT: Have a seat in the jury box.
3 (The juror complies.)
4 CLERK OF COURT: Juror No. 8, David Baird.
5 (Mr. Baird, a white male, comes forward.)
6 CLERK OF COURT: What saith the State?
7 MS. HALL: Please present the juror.
8 CLERK OF COURT: The Defense?
9 MR. FARLEY: Please excuse the juror.
10 CLERK OF COURT: Have a seat back in the audience.
11 (The juror complies.)
12 CLERK OF COURT: Juror No. 77, Marquise Jones.
13 (Mr. Jones, a black male, comes forward.)
14 CLERK OF COURT: What saith the State?
15 MS. HALL: Please excuse the juror.
16 CLERK OF COURT: Have a seat back in the audience.
17 (The juror complies.)
18 CLERK OF COURT: Juror No. 21, David Brownlee.
19 (Mr. Brownlee, a white male, comes forward.)
20 CLERK OF COURT: What saith the State?
21 MS. HALL: Please present the juror.
22 CLERK OF COURT: The Defense?
23 MR. FARLEY: Please swear the juror.
24 CLERK OF COURT: Have a seat in the jury box.
25 (The juror complies.)

1 CLERK OF COURT: Juror No. 106, Matthew Murdaugh.
2 (Mr. Murdaugh, a white male, comes forward.)
3 CLERK OF COURT: What saith the State?
4 MS. HALL: Please present the juror.
5 CLERK OF COURT: The Defense?
6 MR. FARLEY: Please swear the juror.
7 CLERK OF COURT: Have a seat in the jury box.
8 (The juror complies.)
9 CLERK OF COURT: Juror No. 16, Robert Bowes.
10 (Mr. Bowes, a white male, comes forward.)
11 CLERK OF COURT: What saith the State?
12 MS. HALL: Please present the juror.
13 CLERK OF COURT: The Defense?
14 MR. FARLEY: Please excuse the juror.
15 CLERK OF COURT: Have a seat back in the audience.
16 (The juror complies.)
17 CLERK OF COURT: Juror Number 125, Allison Sigwald.
18 (Ms. Sigwald, a white female, comes forward.)
19 CLERK OF COURT: What saith the State?
20 MS. HALL: Please present the juror.
21 CLERK OF COURT: The Defense?
22 MR. FARLEY: Please excuse the juror.
23 CLERK OF COURT: Have a seat back in the audience.
24 (The juror complies.)
25 CLERK OF COURT: Juror No. 47, Keith Eggers.

1 (Mr. Eggers, a white male, comes forward.)
2 CLERK OF COURT: What saith the State?
3 MS. HALL: Please excuse the juror.
4 CLERK OF COURT: Have a seat back in the audience.
5 (The juror complies.)
6 CLERK OF COURT: Juror No. 127, Joseph Simmons.
7 (Mr. Simmons, a black male, comes forward.)
8 CLERK OF COURT: What saith the State?
9 MS. HALL: Judge, could we approach?
10 THE COURT: You may.
11 (Bench conference.)
12 THE COURT: (To the juror) Mr. Simmons?
13 JUROR: Yes.
14 THE COURT: If you'll just stay with us. There's a
15 matter -- I -- I'll discuss it with you in a moment. If
16 you'd be so kind as to take your seat. Thank you, sir.
17 We'll discuss it in just a little bit.
18 (The juror returns to the audience.)
19 CLERK OF COURT: Juror 138, Douglas Stenson.
20 (Mr. Douglas, a white male, comes forward.)
21 CLERK OF COURT: What saith the State?
22 MS. HALL: Please present the juror.
23 CLERK OF COURT: The Defense?
24 MR. FARLEY: Please swear the juror.
25 CLERK OF COURT: Have a seat in the jury box.

1 (The juror complies.)
2 CLERK OF COURT: Juror No. 79, Ann Kelley.
3 (Ms. Kelley, a white female, comes forward.)
4 CLERK OF COURT: What saith the State?
5 MS. HALL: Please present the juror..
6 CLERK OF COURT: The Defense?
7 MR. FARLEY: Please excuse the juror.
8 CLERK OF COURT: Have a seat back in the audience.
9 (The juror complies.)
10 CLERK OF COURT: Juror 91, Jeffery McAlhany.
11 (Mr. McAlhany, a white male, comes forward.)
12 CLERK OF COURT: What saith the State?
13 MS. HALL: Please present the juror.
14 CLERK OF COURT: The Defense?
15 MR. FARLEY: Please swear the juror.
16 CLERK OF COURT: Have a seat in the jury box.
17 (The juror complies.)
18 CLERK OF COURT: Juror No. 163, Susan Wilson.
19 (Ms. Wilson, a white female, comes forward.)
20 CLERK OF COURT: What saith the State?
21 MS. HALL: Please present the juror.
22 CLERK OF COURT: The Defense?
23 MR. FARLEY: Please swear the juror.
24 CLERK OF COURT: Have a seat in the jury box.
25 (The juror complies.)

1 CLERK OF COURT: Juror No. 92, Mary McCarthy.
2 (Ms. McCarthy, a white female, comes forward.)
3 CLERK OF COURT: What saith the State?
4 MS. HALL: Please present the juror.
5 CLERK OF COURT: The Defense?
6 MR. FARLEY: Please excuse the juror.
7 CLERK OF COURT: Have a seat back in the audience.
8 (The juror complies.)
9 CLERK OF COURT: Juror No. 34, Kevin Crenshaw.
10 (Mr. Crenshaw, a black male, comes forward.)
11 CLERK OF COURT: What saith the State?
12 MS. HALL: Please present the juror.
13 CLERK OF COURT: The Defense?
14 MR. FARLEY: Please swear the juror.
15 CLERK OF COURT: Have a seat in the jury box.
16 (The juror complies.)
17 CLERK OF COURT: Juror No. 23, Gail Bunch.
18 (Ms. Bunch, a white female, comes forward.)
19 CLERK OF COURT: What saith the State?
20 MS. HALL: Please present the juror.
21 CLERK OF COURT: The Defense?
22 MR. FARLEY: Please swear the juror.
23 CLERK OF COURT: Have a seat in the jury box.
24 (The juror complies.)
25 CLERK OF COURT: Juror No. 135, Christina Southward.

1 (Ms. Southward, a white female, comes forward.)
2 CLERK OF COURT: What saith the State?
3 MS. HALL: Please present the juror.
4 CLERK OF COURT: The Defense?
5 MR FARLEY: Please swear the juror.
6 CLERK OF COURT: Have a seat in the jury box.
7 (The juror complies.)
8 CLERK OF COURT: Juror No. 110, Steven Penley.
9 (Mr. Penley, a white male, comes forward.)
10 CLERK OF COURT: What saith the State?
11 MS. HALL: Please present the juror.
12 CLERK OF COURT: The Defense?
13 MR. FARLEY: Please swear the juror.
14 CLERK OF COURT: Have a seat in the jury box.
15 (The juror complies.)
16 CLERK OF COURT: Juror No. 55, Spencer Fuss.
17 (Mr. Fuss, a white male, comes forward.)
18 CLERK OF COURT: What saith the State?
19 MS. HALL: Beg the Court's indulgence for just a
20 minute, Judge.
21 THE COURT: Sure.
22 MS. HALL: Please present the juror.
23 CLERK OF COURT: The Defense?
24 MR. FARLEY: Please swear the juror.
25 CLERK OF COURT: Have a seat in the jury box.

1 (The juror complies.)
2 CLERK OF COURT: Juror No. 43, Zansha [phonetic]
3 Delesline.
4 (Mr. Delesline, a black male, comes forward.)
5 CLERK OF COURT: What saith the State?
6 MS. HALL: Please excuse the juror.
7 CLERK OF COURT: Have a seat back in the audience.
8 (The juror complies.)
9 CLERK OF COURT: Juror No. 153, Sandra Tucker.
10 (Ms. Tucker, a black female, comes forward.)
11 CLERK OF COURT: What saith the State?
12 MS. HALL: Please present the juror.
13 CLERK OF COURT: The Defense?
14 MR. FARLEY: Please excuse the juror.
15 CLERK OF COURT: Have a seat back in the audience.
16 (The juror complies.)
17 CLERK OF COURT: Juror No. 93, William McIntosh.
18 (Mr. McIntosh, a white male, comes forward.)
19 CLERK OF COURT: What saith the State?
20 MS. Hall: Please present the juror.
21 CLERK OF COURT: The Defense?
22 MR. FARLEY: Let's excuse the juror.
23 CLERK OF COURT: All right.
24 Jury: (Laughter.)
25 (The juror returns to the audience.)

1 CLERK OF COURT: Juror No. 69, Robert Horne, Jr.

2 (Mr. Horne, a white male, comes forward.)

3 CLERK OF COURT: What saith the State?

4 MS. HALL: Please present the juror.

5 CLERK OF COURT: The Defense?

6 MR. FARLEY: Please swear the juror.

7 CLERK OF COURT: Have a seat in our jury box.

8 (The juror complies.)

9 CLERK OF COURT: Thank you, Judge.

10 THE COURT: Thank you. Now, are there any matters
11 regarding the qualification of the jury or the selection of
12 the jury from the State?

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

14 THE COURT: From the Defense?

15 MR. FARLEY: May we have just a moment, Your Honor?

16 THE COURT: Absolutely.

17 MR. FARLEY: Just a second.

18 THE COURT: Sure.

19 (Brief pause.)

20 MR. FARLEY: We have none -- we have nothing at this
21 time, Your Honor.

22 THE COURT: Very well. All right. Ladies and
23 gentlemen, those of you who are in our audience are now
24 known as our "remaining jurors." I do need to give you
25 some information about how we're going to stay in contact

1 with each other over the balance of the week -- the week.

2 This is South Carolina; this is not California. We're
3 not going to be together for four years.

4 JURORS: (Laughter.)

5 THE COURT: We're going to be together this week.

6 Now, in your packet of information, there are these
7 cards that are being held up by Ms. Graham. And those
8 cards have on them the juror information number for the
9 juror information line so that we can stay in contact.

10 If you are like me, you don't have a clue where that
11 thing is. So Marvin is standing and George is standing in
12 the back of the courtroom and they have cards. Feel free
13 to take a couple, because I really do need you to be able
14 to keep up with the number.

15 And I'm going to ask you to please call the juror
16 information line after six o'clock tonight -- after six
17 o'clock tonight. You will either be asked to call back at
18 another time, or to return to the courthouse in the court
19 -- the jury assembly room, at a particular time.

20 I don't know what it's going to be at this point. But
21 if you'll please call the juror information line after six
22 o'clock this evening, that will give us time to know what
23 our schedule is going to be tomorrow and be able to relay
24 that to you.

25 Now, ladies and gentlemen, do not call before six

1 o'clock, because if you do, the -- the message will
2 absolutely make no sense to you at all. Having said that,
3 you can call at 6:01, 7:20. If you're up walking the floor
4 tomorrow morning, feel free to call the juror information
5 line and talk to them. Nobody will answer, but the
6 recording will be there for you. And I just ask that
7 whatever the message is that you please follow it.

8 Now, I know that many of you are dashing off to work.
9 And your employer may want to have something from you about
10 where you've been this morning, what you've been up to.
11 And if -- if you're one of those folks who needs something
12 for your employer, be delighted to get that for you in the
13 Clerk's Office.

14 The Clerk's Office is directly below where we are. So
15 if you are a stair descender -- because you're a stair
16 climber, now you're gonna be a stair descender -- when you
17 reach the bottom of the steps, please turn right and go all
18 the way down into the Clerk's Office. Let them know that
19 you need something for your employer, and they'll be happy
20 to get that for you promptly.

21 If you're an elevator rider, when you exit the
22 elevator, turn left and go all the way down. And again,
23 the Clerk's Office will be delighted to get something for -
24 - for your employer.

25 Ladies and gentlemen, I want you to know that your

1 time here today has been vital. It has been vital to our
2 system of justice, to our democracy, to our way of life.
3 And for every tick of the clock, I am grateful to you for
4 being here; and know that I can't wait to see you later in
5 the week. If you -- if -- you're welcome to stay, but you
6 are also free to go. If you would do so for us, though,
7 quietly.

8 (The remaining jurors exit the courtroom at 12:48 p.m.)

9 THE COURT: (To the jurors) You know, I bet y'all's
10 din-din bell's going off, because I know mine went off
11 about 15 minutes ago strong.

12 Now, I -- I need to just give you a little bit of
13 instruction, and then I'm gonna cut you guys loose to go
14 get some lunch. And then, we're going reconvene this
15 afternoon.

16 Now, let me -- I always like asking this question:
17 Who's from below the swamp, meaning Summerville?

18 (Some jurors raise their hands.)

19 THE COURT: Who's from the above of the swamp, meaning
20 St. George, Harleyville, Rosenville?

21 JUROR: Ridgeville.

22 THE COURT: Thank you. Ridgeville. That's about the
23 way we get the split. Normally it's about like that, one
24 or two people from above the swamp. So y'all can follow me
25 now, make sure I'm not giving your fellow jurors bad

1 information.

2 Lunch: We're gonna talk about your dining
3 opportunities in St. George. Well, they're all lie along
4 Highway 78. When you go out of the courthouse and you go
5 to Highway 70 -- 78, go to the right and you will see every
6 dining opportunity for you.

7 And there's an assortment: There's Grady's; there's
8 Hardees; there's McDonald's; there's Georgio's of Beverly
9 Hills; there's - wait a minute now -- Pizza Hut; Kentucky
10 Fried Chicken.

11 However, if you come to where I-95 goes over 78,
12 there's only one more dining opportunity, and that's right
13 under the bridge. The Taco Bell is on the left. If you
14 have come to the Taco Bell and you yet want another dining
15 opportunity, you out of luck til you get to Orangeburg. So
16 the end of the road is the Taco Bell on the left.

17 Now, there actually is pretty -- pretty good food in -
18 - in St. George. So those are your dining opportunities.

19 Ladies and gentlemen, I have some work that -- that I
20 must do prior to our beginning the trial, and I would whole
21 lots rather you be about your business than waiting on me.
22 So we are going to convene this case at three o'clock.
23 That's -- that's bout enough time to get back to
24 Summerville and get a quick sandwich and come back if -- if
25 you'd rather. But we are going to begin this case at three

1 o'clock.

2 Now, let me share with you that when you return at
3 three o'clock, I have some preliminary remarks that I'm
4 going to make to you. And then we're going to get right
5 into the trial of this case. To that end, I do need to
6 give you some additional instructions and it's this --
7 every time that we leave each other, I'm going to give you
8 this instruction: "Do not discuss this matter. Do not
9 allow anyone to discuss it with you."

10 Now, why would I give you that instruction other than
11 just a desire to be bossy? Well, let me -- let me explain
12 it to you. In short -- in -- after lunch, around three
13 o'clock, you're going to be sworn in as the jury in this
14 case. And when you are sworn in as the jury in this case,
15 there will be no one else that will be allowed to be the
16 judges of the facts, make the findings of facts in this
17 case but you. We'll talk more about that when I give you
18 the preliminary instructions.

19 Because that is your role, because that would be your
20 duty, it is essential, it is critical, that you are able to
21 listen open mindedly and not make up your mind about any
22 matter until you have heard all the evidence, the arguments
23 of the attorneys, and of course, my instruction or my
24 charge on the law.

25 In order to support your ability to listen open

1 mindedly to all the evidence, I will give you that
2 instruction for this reason. We know, from over 200 years
3 of trying cases, that the way that we are made as people,
4 if we begin to talk about something, we begin to form
5 opinions about it. Apparently it's just the way we're
6 made. So that's the reason for the instruction.

7 And in this day of technology, I also am going to give
8 you this instruction: Don't blog, don't tweet, don't go to
9 Facebook, don't go -- there's a new one that's a business
10 oriented social network.

11 Juror: LinkedIn.

12 THE COURT: That one. What was it, Linked -- Linked,
13 something.

14 JUROR: LinkedIn.

15 THE COURT: Linked -- see, you geek you. LinkedIn --
16 it comes from that shirt. LinkedIn.

17 You know, all those social networking sites. I have
18 to tell you, don't go on any of those sites and discuss, of
19 course, this matter. Don't talk to your family or your
20 friends or anyone about this case.

21 And the reason for that is to be sure that you receive
22 all of the information from which you'll make up your mind,
23 here in court while court is in session -- while court is
24 in session. And that is the information from which you
25 will make up your mind.

1 Now, I'm going to ask you to please be mindful and
2 leave your cell phone in your car or somewhere away from
3 the courthouse. You must not have a cell phone or other
4 communication device with you while you're serving on this
5 jury.

6 Let me tell you why. About five years ago, in
7 Charleston, the jury was deliberating, and they really hit
8 a point during the deliberations where they really had to
9 struggle a little bit to determine what the -- the true
10 facts were in the case.

11 One of the jurors said, "Ah, let's don't struggle with
12 this. I got a buddy. He's a doctor. He'll answer all our
13 questions."

14 Popped up the cell phone, called the buddy, got the
15 answers, and of course, the trial had to be completely
16 scrapped and had to start all over again. And I think
17 they'd been in trial for a week or two.

18 So again, that's the reason that we ask you to --
19 please, not to bring your cell phones with you. You cannot
20 have a cell phone with you while you're serving on jury.

21 Having said that, y'all may have noticed that we are
22 all tethered to these things. They are a part of us. I
23 keep waiting for there to be, like, some surgical procedure
24 that's going to embed them in our bodies at some point.

25 But in any event, if you forget and you bring it with you,

1 please don't think you're going to be able to turn it off.
2 and put it in your pocket, or turn it off and put it in
3 your pocketbook, because you know it's going to go off.
4 You know it's -- on it's own, it's going to come back to
5 life and ring at the most awful time.

6 So if you happened to just forget and bring it back
7 with you, please give it to Ms. Salisbury. She will give
8 it to Ms. Graham for safe keeping until our afternoon
9 break; or if you bring it on the afternoon break, until the
10 end of the day. Please just don't keep it with you. That
11 would be a problem.

12 (To the Clerk of Court) And you know -- you don't know
13 anybody in Europe now, right?

14 CLERK OF COURT: Not right now.

15 THE COURT: Okay. Well it's safe. She'll take --
16 take good care of it, and will make no calls to Europe.
17 She doesn't know anybody over there right now. So it will
18 be in great hands.

19 Now, ladies and gentlemen, I need to -- and -- and I
20 think I intimated it, but I know that Peter Falk, who was
21 Columbo, has passed recently. And I used to tell jurors,
22 "No Columbo," for -- for those that are my contemporaries.
23 But there should be no investigation. Don't go to any
24 dictionaries; don't go to the internet. Don't go anywhere
25 to try to do any sort of investigations during this trial,

1 because that -- that would cause you to receive information
2 outside the -- the court proceedings. So please be mindful
3 of that as well.

4 Let me also mention to you that -- you know -- and --
5 and let me tell you the reason why I'm going to tell you
6 this: Lawyers are very gregarious creatures. They are.
7 And because they're so gregarious, it is uncanny for
8 lawyers not to speak to folks, particularly if they
9 recognize your face or if they -- or if you're an
10 acquaintance or -- or whatever.

11 And to that end I tell jurors, if you happen to see
12 these attorneys or if you happen to see anyone that has
13 anything to do with this trial and they don't even say
14 hello to you, if they seem to -- to shy away from you,
15 please, understand that they know that they are not to have
16 any interaction with you whatsoever.

17 In fact, should anyone tried to talk to you about this
18 case, I would ask that you please get that person's name,
19 if not, a description; and just report that to me upon your
20 return to the courthouse and I'll deal with that
21 individual. Obviously, that's not going to happen with
22 these lawyers. They want me to tell you the exact
23 opposite, that if they happen to see you, they don't even
24 want to make eye contact. That's because they know they're
25 not supposed to interact with you. Please understand

1 they're not being rude, because they truly are not.

2 Now, I think that that concludes what I wanted to tell
3 you now. When you return from your lunch, then -- then I
4 have a -- some more preliminary remarks that I want to make
5 to you. Let me talk, though, before you leave about your -
6 - about your seating.

7 And let's see, Mr. Fuss -- Mr. Fuss and -- and Mr
8 Horne, you guys are my alternates. I'm going to ask you
9 guys to keep those two seats throughout this trial for me,
10 so I can keep up with you as my alternates. And if y'all
11 want to swap your seats, y'all can swap those two seats.
12 But keep those two seats for me simply so that I can keep
13 up with you as our alternate.

14 And hold on one second for me.

15 (Brief pause.)

16 THE COURT: All right. Ladies and gentlemen, I may
17 have mentioned -- let me mention this to you, too. There
18 should be one of your member who is your presiding juror.
19 The presiding juror of your jury has three additional tasks
20 of the jury.

21 First of all, the presiding juror literally, actually
22 writes the verdict of the jury on the verdict form once the
23 jury's deliberations are concluded. The presiding juror
24 presides in the jury room during deliberations just so
25 everybody has a chance to participate.

1 And then, finally, the presiding juror is the jury
2 spokesperson here in court, which means that should the
3 jury need to communicate with me for whatever reason, the
4 presiding juror would take that down in writing, probably
5 give it to Ms. Salisbury, who will in turn give that to me.

6 I'm going to ask that you all select your own
7 presiding juror. And that must come from the -- the 12 of
8 you. And when your presiding juror has been selected, they
9 will take this seat (indicates.) Beware: Sometimes jury
10 panels think that's the No. 1 qualification for the
11 presiding juror to have this seat, so beware.

12 I don't think it's a real hot political, you know,
13 time right now. It's coming, but I don't know that now is
14 such a hot political climate, so keep your speeches at a
15 minimum, those of you who want to run for your presiding
16 juror.

17 But in any -- any event, when you have been selected,
18 if you'll take this seat and keep this seat throughout the
19 trial. I need to be able to keep up with our presiding
20 juror.

21 When you've been selected, you can either tell me when
22 you come into the courtroom, "I am selected." Or you can
23 give me a note, "I've been selected. This is who I am."
24 Or you can just keep the seat, and see if I'm smart enough
25 to figure it out. Any one of those is perfectly fine, just

1 so long as you have selected your presiding juror by the
2 time that it -- it's time to deliberate, that -- anytime
3 before then will be perfectly fine.

4 Now, I think that's enough instruction. Y'all --
5 blood sugar's got to be plummeting for sure at this point.
6 I think Ms. Salisbury's going to want you, after your lunch
7 at three o'clock, to gather back in the jury assembly room;
8 is that right?

9 MS. SALISBURY: Yes, ma'am.

10 THE COURT: But meanwhile, if you will follow Ms.
11 Salisbury, she'll show you your jury room, and then she'll
12 escort you out and then to your fine dining opportunities.
13 Have a wonderful lunch. I'll see you at three o'clock.

14 (Jury exits at 1:01 p.m.)

15 THE COURT: All right. Now, I -- I know it's one
16 o'clock, and we've talked about it. But don't -- don't
17 y'all want to go get some lunch pretty quick?

18 (No audible response.)

19 THE COURT: Yeah. I think you do.

20 MS. HALL: I would ---

21 THE COURT: I certainly ---

22 MR. FARLEY: Absolutely.

23 THE COURT: -- want a little break myself. Do you
24 think you can accomplish that and be back by quarter til --
25 that gives us bout 45 minutes -- by quarter til two? Can

1 you accomplish that, guys? Yes and yes?

2 MR. FARLEY: Yes, Your Honor.

3 MS. HALL: I do.

4 THE COURT: Very well. Thank you. We'll -- we'll
5 reconvene at 1:45 -- 1:45. Thank you so much.

6 MR. FARLEY: Thank you, Judge.

7 THE COURT: Uh-huh.

8 (Off the record at 1:02 p.m.)

9 (Back on the record at 2:02 p.m.)

10 THE COURT: It is my understanding, based on our
11 conversations yesterday, that in furtherance of the request
12 of the State to utilize the videotape, that the State
13 wishes to call one or more witness; is that right?

14 MS. HALL: That's correct, Your Honor.

15 THE COURT: Okay. And -- but before we get into that,
16 yesterday when the Defense expressed concerned about
17 receiving notice yesterday the intention to -- to go
18 forward and use the video, we talked in terms of postponing
19 the hearing until today; and I'd hear from the Defense if
20 there were any new concerns with regards to the notice or
21 lack there of.

22 And so Mr. Farley, are there any additional concerns
23 with regards to the notice?

24 MR. FARLEY: No, Your Honor.

25 THE COURT: All right. Very well. Then with that in

1 mind, you want to call your witness or witnesses?

2 MS. HALL: Judge, I think we'd just like to clarify
3 that there is the issue that we discussed yesterday as
4 well, that you would like some testimony elicited from the
5 expert, with regards to the connection of potential
6 grooming ---

7 THE COURT: Yes.

8 MS. HALL: --- in connection with this. And we'd like
9 to address that through Dr. Elsey's testimony as well.

10 THE COURT: Okay. Sure.

11 MS. HALL: And the State would call Dr. Don Elsey.

12 (The witness comes forward.)

13 THE COURT: Hi. If you would just come on around
14 here, please.

15 (The witness complies.)

16 THE COURT: Yes. If you would raise your right hand
17 for me and state your full name.

18 DR. ELSEY: Donald Edward Elsey.

19 DONALD EDWARD ELSEY, having been
20 first duly sworn, testifies as follows:

21 THE COURT: Very well. And I know that my court
22 reporter's gonna want you to spell your name. I think
23 we've got "Donald" and "Edward," right?

24 DR. ELSEY: Correct.

25 THE COURT: Got that.

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1 DR. ELSEY: Elsey, E-l-s-e-y.

2 THE COURT: Your witness.

3 MS. HALL: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MS. HALL:

5 Q Dr. Elsey, what do you do for a living?

6 A I'm the director of clinical services of the Dee
7 Norton Lowcountry Children's Center in Charleston.

8 Q And what is the Dee Norton Lowcountry Children Center.

9 A A child advocacy center.

10 Q And what exactly do you do there?

11 A I am the clinical director. I supervise all the
12 clinical staff, as well as carry a caseload myself, doing
13 forensic interviews, providing treatment; and do
14 presentations, trainings around the state and local area.

15 Q Where exactly is the Dee Norton Lowcountry Children's
16 Center?

17 A 1061 Kings Street, in downtown Charleston.

18 Q And you stated, I believe, that you -- you have all
19 these other responsibilities within your -- your job. Did
20 you get any special training for your work?

21 A Yes. I have -- my bachelor's degree is in psychology;
22 I have a graduate degree in clinical counseling; I have a
23 doctorate in childhood development. I am a licensed
24 professional counselor and a licensed professional
25 counselor in South Carolina. I supervise other LPCs to get

1 their license.

2 To do forensic interviewing, we -- there are training
3 statewide, the training -- it was called "Finding Words"
4 back when I did that a few years back. I've also been
5 trained by the American Professional Society on Abusive
6 Children in forensic interviewing. That was actually in
7 Michigan some years back.

8 Q Okay. When did you start your educational training?

9 A Back in the 70s.

10 Q And -- and that doctorate that you received, when did
11 you receive that?

12 A 1988.

13 Q And -- and you had stated that you did extensive
14 training. Did you do that by yourself or the help of
15 someone else or -- or how did that work?

16 A Well, the training now -- we have ongoing training.
17 We do supervision where I work. We have a national peer
18 review where we -- around the country -- actually across
19 the seas and Hawaii. We -- once a month we review
20 different agencies, the way they do forensic interviewing,
21 and give feedback. It's - it's pretty interesting concept.

22 And every week we do supervision at our own place,
23 review -- peer review of our own individual forensic
24 interviews, as well as the national I mentioned earlier.

25 Q Okay. Have you ever taught in this field?

1 A I have.

2 Q And what have you taught?

3 A Child abuse, forensic interviewing. I'm on the
4 adjunct faculty of the Citadel. We have Citadel interns
5 that come to our place, and I'm part of their training
6 process.

7 MR. FARLEY: Your Honor, may we approach?

8 THE COURT: Sure.

9 (Bench conference.)

10 THE COURT: Thank you. If you need to -- if you need
11 to speak to anyone, that's fine. I just don't know who
12 your witnesses are.

13 MS. HALL: Give us a second.

14 (Mr. Hilton speaks to an audience member briefly.)

15 DIRECT EXAMINATION BY MS. HALL (Continues):

16 Q Thank you for your patience. We'll -- I think we'll
17 resume at this point. What exactly, again, is your
18 specialization in your field?

19 A Forensic interviewing, child abuse. Childhood
20 development's also been something I've been deemed an
21 expert in.

22 Q And when you say "child abuse," does that include
23 child sexual abuse?

24 A Yes, ma'am.

25 Q Can you describe -- or define for us what a forensic

1 interview is?

2 A It's a process where an interview is conducted with a
3 child in order to gather information in an accurate and
4 reasonable manner.

5 Q And did you get specialized training in conducting a
6 forensic interview?

7 A Yes, I have. That's the "Finding Words," and it's
8 also the American Professional Society on Abusive Children
9 training.

10 Q How many training courses do you think you've done on
11 -- on giving forensic interviews?

12 A Well, those are two, week-long training courses there.

13 Q And there are multiples of those or just one time on
14 each one?

15 A One time on each one.

16 Q How many forensic interviews have you conducted in
17 your -- in your scope of work?

18 A Approximately 4500.

19 Q And how many do you do, approximately, a week?

20 A I don't do as many now as I used to in the last six
21 months because of my job change. But approximately about
22 six or seven a week.

23 Q And when you say your "job change," what was that --
24 that change with?

25 A The clinical director. We kind of shift --

1 shuffled around some our departments at where I work. And
2 I still carry a caseload, I still do forensic interviews.
3 But we have a few more staff that I'm able to help
4 supervise them, and they do more of that work.

5 Q In your hay day, how many were you doing a week?

6 A Ten/fifteen.

7 Q Explain to -- to me what a normal forensic
8 interview process is. What do you -- what do you do first?

9 A The first part, we meet with the caregiver and get
10 some history from them, some of their background history;
11 how the child's doing in school; any particular areas of
12 concern, such as speech issues or anything like that.

13 And then we would introduce ourself to the child, and
14 then perform the forensic interview; which depending on the
15 age of the child, is about 20 to maybe 45 minutes worth of
16 the interview.

17 After that -- at our place, the child generally would
18 have had a medical exam, if -- if deemed necessary. Then
19 we'd give feedback to the caregiver, and we'd setup usually
20 some sort of follow-up to determine any type of treatment
21 needs.

22 Q And what are the combinations that you typically
23 confront in forensic interviews?

24 A We -- at our facility, we request -- we ask about
25 all sorts of typologies. If someone comes in for concerns

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1 of -- of physical abuse, for example, we still ask about
2 neglect, domestic violence, exposure to substance abuse,
3 sexual abuse, the whole gamut. Because unfortunately, a
4 lot of times those are common with each other.

5 Q And how does the person come normally to you to a
6 forensic interview? What other sources of referral, or --
7 or how do they end up with you?

8 A They're referred by agencies, such as law enforcement,
9 such as DSS; attorneys refer to us, physicians, therapist.
10 And some people just because we've been around a long time,
11 and they just know what we do and refer to us on their own.

12

13 Q And -- and you -- I think you stated how long. How
14 long does a forensic interview typically take?

15 A About 20 to maybe 45 minutes, depending on the age of
16 the child.

17 Q And do you particular -- do you do a particular age
18 group or is there a kind of cutoff for you guys or ---

19 A Our age -- it'-- it's 2 to 18; however, there've
20 been times -- in particular, law enforcement's asked us to
21 interview an adult that has significant cognitive delays,
22 and they -- they present more as a -- a child.

23 Q Okay. Do you use a particular method in -- in
24 conducting your forensic interviews?

25 A The "Finding Words" has a protocol called "RATAC."

1 What that means -- the "R" stands for "rapport." The first
2 part of the interview is asking -- it can seem like
3 chitchat, but it's really not.

4 For example, if you ask a child, "Tell me where you go
5 to school," and they give a long narrative answer, it lets
6 you know how they're going to answer questions. If they
7 kind of shrug, it let's you know that you may have a more
8 difficult interview. So that's the rapport part.

9 The "A" stands for "anatomy identification." Using
10 some sort of medium, we use a drawing. The child
11 identifies parts of the body head-to-toe. The next part
12 would be a touch inquiry. You may ask a child: Who gives
13 you hugs? Who gives you kisses? Are there parts of the
14 body people shouldn't touch?

15 And depending on what the child says, you would to the
16 next scenario, which is abuse scenario. And if they give
17 information about touching an inappropriate part of the
18 body, we would -- tell me about that; and try to gather
19 information about whatever that was.

20 The -- the "C" stands for "closure." That's at the
21 end where you'd say, "Thanks for answering my questions.
22 I'm glad to know you can tell your mommy or daddy about
23 anybody doing anything that you don't like."

24 It's a -- it gives a little bit of closure to the
25 interview.

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1 Q And where did you learn that particular method?

2 A That was at "Finding Words" in -- in Columbia. The
3 training is in Columbia for that.

4 Q Columbia, South Carolina?

5 A Yes.

6 Q And is that a widely-used method?

7 A It is.

8 Q Explain to me who else uses that method.

9 A Again, doing national peer review, I'd probably say at
10 least half the other CACs in other states-- of the states
11 we get involved in -- use that same protocol. There some
12 other -- there are other protocols, I mentioned -- the
13 ABSAC that I mentioned earlier, it's similar. It may not
14 have the RATAC, those abbreviations, those letters, but it
15 doesn't -- basically, they all carry that same type of
16 method.

17 Q Okay. You just used a couple acronyms for things that
18 ---

19 A I ---

20 Q --- we may not all be familiar with. What is CAT and
21 -- and I --

22 A I'm sorry.

23 Q -- I think "CAC" is what you said?

24 A CAC is "Child Advocacy Center."

25 Q Okay.

1 A And that's where -- around the country they've been
2 deemed

3 the places to -- these interviews to happen. The APSAC is
4 the "American Professional Society on Abusive Children"
5 that I mentioned a couple times.

6 Q And -- and you got training with that facility ---

7 A Yes.

8 Q --- as well.

9 A Well, it's -- it's a national organization.

10 Q My apologies, sir.

11 A Sorry.

12 Q I'm -- I'm learning here as well. How long have you
13 practiced this particular method?

14 A Approximately ten years.

15 Q And how long have you been doing forensic interviews?

16 A Fifteen.

17 Q And what method did you use before?

18 A I was trained by the American Professional Society on
19 Abusive Children.

20 Q Are these forensic interviews recorded?

21 A Yes.

22 Q And what is the purpose of that?

23 A There are multi-purposes. One, we can be held
24 accountable for our work. The other is to prevent the
25 number of child -- times a child has to tell their story,

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1 because that, in and of itself, could be traumatizing to a
2 child.

3 So it's -- for example, quite often law enforcement,
4 in lieu of an interview, will watch the -- will watch the
5 tape. Maybe even a therapist can do that. They've been
6 used in certain levels of court before. And it can be used
7 as a training tool, also.

8 Q And do you write a report or how does that work to
9 document the interview?

10 A Yes, ma'am. After we finish the -- the interview and
11 finish with the caregivers, we write a report. In -- in --
12 in our place, it's called a "childhood family trauma
13 assessment," and it provides the information about what the
14 child says, our opinion about that, and recommendations.

15 Q And do you preserve that report as well for any
16 purpose?

17 A Yes.

18 Q What purpose would that be?

19 A Part of the child's record to -- can be used in -- in
20 therapy; it can be used as part of the investigation.
21 Those are the primary reasons for it.

22 Q Do you record every forensic interview you do?

23 A Yes. Now, there certainly have been human error over
24 the years where a tape got erased or it wasn't started.
25 But yes, 90-plus percent are recorded.

1 Q And do you write a report for every forensic
2 interview?

3 A Yes, ma'am.

4 Q Do you make any conclusions in that report or
5 suggestions or anything else like that?

6 A We certainly make conclusions about treatment
7 recommendation. As far as what the child said, that's left
8 up to the trier of facts; however, we will put whether a
9 child discloses something, whether they don't, or it's
10 problematic.

11 Q Who is that report usually distributed to?

12 A It's distributed to the -- if the -- whatever agencies
13 are involved, law enforcement, and DSS, most notably.
14 Sometimes it's -- it's sent to the child's therapist, if
15 they request it. Sometime it certainly seen by the courts.

16 We -- we try to keep a fairly tight rein on that,
17 because it's very confidential information. But with
18 proper release, various parties can get -- receive it.

19 COURT REPORTER: I'm sorry.

20 DR. ELSEY: Various parties can receive it. I'm
21 sorry.

22 Q Let's go just a little bit about the questions
23 that you would ask during the interview. What, if
24 anything, can you tell us about how you ask those
25 questions?

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1 A Our goal is to (a) ask them on an age-appropriate
2 level. For example, if you have a very young child, 3, 4,
3 or 5, you don't ask them how many times something happened.
4 They may say a million, because they're just -- they feel
5 like they have to answer you. So we try to ask
6 developmentally appropriate questions.

7 We also want to start off asking open-ended questions.
8 You don't want to ask a leading question, which assumes the
9 answer. But we have -- we'd have open-ended questions,
10 then would have sometime more focused questions. Again,
11 based on the age, you have to ask more focus questions,
12 more specific questions.

13 Sometimes, you may ask a yes/no question. But
14 generally, you try to -- your best to ask very open-ended
15 questions such as, "Tell me about that."

16 Q And what is the purpose of those non-leading or open-
17 ended questions for you to ask?

18 A There's been a number of research that show that
19 enables a child to provide more information to help decide
20 whether something did or didn't happen.

21 Q What are you looking for when you're questioning a
22 child? What -- what things are you trying to elicit and --
23 and what are you looking to -- to find?

24 A What they've experienced, if anything.

25 Q And what kinds of things do you look for in a child's

1 presentation, or do you?

2 A That's also important. For example, if you have
3 a child who asks -- who answers some of those initial
4 questions -- questions in a very open manner, that can give
5 you good information about how that child presents.

6 When you move into the more trauma-based question, if
7 all of a sudden they hang their head and just shrug their
8 shoulders, it -- it tells you something. You can't assume
9 what it means, but it means something. So how they
10 present, I think, is very important.

11 Q Do you tailor your questions for the age or maturity
12 of the child or how does that work?

13 A Yes, ma'am. You certainly -- because -- as I
14 I mentioned, developmentally, you don't ask a 3, 4, or 5
15 year old what you ask even a 9 or 10 old. And then, if you
16 have a 14/15 year old, that interview's -- often can be
17 very different.

18 For example, you wouldn't use the drawings with a
19 teenager, because they would think that's silly. And they
20 know those parts of the body usually, so you wouldn't do
21 that.

22 Q Okay. Did you ask non-leading questions in your
23 interview with Complainant on January 20th of 2010?

24 A No.

25 Q Okay.

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1 A I'm sorry. Did you ask ---

2 Q I asked if you -- if you asked non ---

3 A I'm sorry ---

4 Q --- leading questions?

5 A I thought you meant "leading." I did not ask leading
6 questions; I asked non-leading questions.

7 Q Okay.

8 A I'm sorry.

9 Q That's okay. Have you ever testified in -- in a court
10 of record before?

11 A I have.

12 Q And how many times have you testified in a court of
13 record?

14 A When you say "court of record, what does that
15 term mean?

16 Q A court like this court, where there's a court
17 reporter who's taking down everything you say.

18 A Approximately 100 times.

19 Q And in South Carolina?

20 A Yes.

21 Q And in what area of expertise, if any, where you
22 qualified as an expert?

23 A Child abuse, forensic interviewing, childhood
24 development, and treatment of childhood trauma.

25 Q And I think you mentioned before, but could you tell

1 me exactly what your degrees were in the order that you
2 received them?

3 A I have a bachelors degree in child psychology, in --
4 in psychology, and sociology. I have a masters in clinical
5 counseling. I have a doctorate in childhood development,
6 and I'm a licensed professional counselor supervisor in
7 South Carolina.

8 Q And where did you receive those degrees?

9 A Undergraduate at Jacksonville University,
10 graduate of the Citadel, and my doctorate at Nova
11 University out of Florida.

12 COURT REPORTER: I'm sorry?

13 DR. ELSEY: Nova University.

14 MS. HALL: Just a minute, Your Honor.

15 THE COURT: Okay.

16 (Ms. Hall confers briefly with Mr. Hilton.)

17 MS. HALL: Your Honor, at this time The State would
18 move to have Dr. Elsey qualified as an expert in the area
19 of forensic interviewing and child abuse forensic
20 interviewing.

21 THE COURT: All right. Is there any voir dire?

22 MR. FARLEY: Not with regards to the expert. I'm
23 just -- can the State clarify what he's going to be an
24 expert in or -- I heard "and."

25 THE COURT: It -- it's my understanding in -- he's an

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1 -- he's -- she seeks to qualify him as an expert in the
2 field or science of forensic interviewing and in the field
3 of child abuse forensic interviewing.

4 MR. FARLEY: Okay. Thank you, Judge. We do have some
5 questions.

6 THE COURT: All right. Did I misstate that, Ms. Hall?

7 MS. HALL: I -- I might need to clarify: Child sexual
8 assault cases and child sexual assault forensic
9 interviewing.

10 THE COURT: Child sexual assault cases and child
11 sexual assault forensic interviewing.

12 MS. HALL: Yes.

13 THE COURT: Okay.

14 MR. FARLEY: Thank you, Judge.

15 THE COURT: Yeah. All right. Now, voir dire?

16 MR. FARLEY: Yes, Your Honor.

17 THE COURT: Yes.

18 VOIR DIRE EXAMINATION BY MR. FARLEY:

19 Q Thank you for being here today, Dr. Elsey. I
20 appreciate it. I know it's a long drive from Charleston.
21 I just have a few questions.

22 You said that you didn't use leading questions. Are
23 you absolutely certain about that or do sometime it's -- is
24 -- sometimes is it necessary in your field to use a leading
25 question?

1 A I believe the question was "do I use it in this
2 interview"?

3 Q Yes. That was a very convoluted question, but yes.

4 A Right. A leading question would assume the answer to
5 the question. We don't ask those kinds of questions;
6 however, once a child has given you information, you can
7 use that information in another question.

8 So if you look at that question in an isolated a
9 situation, you may say, wow, that assumes the answer. But
10 when you look at it in context, it would not.

11 Q Okay. So once you get a answer that has not come
12 from
13 a leading question, it is sometimes your practice to use
14 that so that it appears like a leading question.

15 A It could look like -- if you look at just that
16 question, it could look like that. I can give you an
17 example if you'd like.

18 Q Sure.

19 A For example, if a child's already told you that, you
20 know, "Daddy beat me and hurt me," you may ask a
21 later question: You told me that Daddy beat you -- beat
22 you and hurt you. What did he beat you with?

23 See, in and of itself, it may sound leading, but
24 they've already established that that happened.

25 Q Thank you. You don't know whether or not the

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1 statements that these child victims/witnesses make, you
2 don't know if that's a complete statement of the facts,
3 right?

4 A That's correct.

5 Q You -- you have no idea what actually happened.
6 You're just there to talk with the child and discuss --

7 A Well, to gather information.

8 Q And in that -- to that end, would you say that you --
9 wouldn't you say you work with law enforcement, or that law
10 enforcement is very involved with your center?

11 A Absolutely.

12 Q You're not an independent agency in that you -- your --
13 -- you get your referrals from law enforcement.

14 A We get some, yes, sir.

15 Q And from DSS.

16 A Yes, sir.

17 Q Agencies that are associated with the State; is that
18 correct?

19 A We get some from those, yes, sir.

20 Q Also, was -- was Complainant put under oath when she made
21 the -- when -- when this video was made?

22 A No, sir. We don't do that.

23 Q Was -- was there anybody there that could cross-
24 examine her or ask other questions besides you?

25 A No, sir.

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1 Q I have no further questions.

2 THE COURT: All right. Is there any -- any objection
3 to Dr. Elsey being deemed to be an expert in the field of
4 sexual abuse and sexual abuse forensic interviews?

5 MR. FARLEY: No, Your Honor.

6 THE COURT: Okay. Did I cast that in terms of the --
7 the offer?

8 MS. HALL: That is correct, Your Honor. I would just
9 put the word "child" ahead of that, "child" sexual abuse.

10 THE COURT: Thank you. "Child." Yes. I think that
11 is appropriate as well. All right.

12 So qualified, Ms. Hall. You may proceed.

13 MS. HALL: Thank you, Your Honor.

14 DIRECT EXAMINATION BY MS. HALL (Continues):

15 Q Dr. Elsey, I'd like to direct your attention
16 to a forensic interview that you conducted on January 20th
17 of 2010, involving the victim, Complainant , in this
18 case. Do you remember that interview?

19 A You said on January the 20th?

20 Q I could be incorrect on the date, or maybe it's the
21 22nd.

22 A 22nd. Yes, I did.

23 Q The 22nd. I apologize. Do you remember that
24 interview?

25 A Yes, ma'am.

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1 Q And where did that interview take place?

2 A At the Dee Norton Lowcountry Children's Center.

3 Q What steps did you take before you conducted that
4 interview?

5 A I reviewed the intake -- which is whoever had called
6 it in had provided some information. Then I -- I met with
7 the caregiver, and asked them questions and get some
8 information from them. Then I met with the child. Then
9 after that -- I talked with the parents after that.

10 Q Who was in the room when you conducted the
11 interview?

12 A Just me.

13 Q And -- and how was Complainant's presentation? How did she
14 seem?

15 A Verbal, bright; very likable young lady.

16 Q How long did the forensic interview take?

17 A Approximately 20/25 minutes.

18 Q And was that length of time the normal period of time
19 to do a forensic interview?

20 A Yes, ma'am.

21 Q Was a tape made of that forensic interview?

22 A Yes, ma'am.

23 Q And have you had the opportunity to view that
24 recording of that tape recently?

25 A Yes, ma'am.

1 Q When did you review it?

2 A Last week sometime.

3 Q Was the forensic interview recorded the day you
4 conducted it?

5 A Yes.

6 Q And does the recording that you have viewed recently,
7 fairly -- fairly and accurate depict the forensic interview
8 that was done with Complainant on January 22, 2010?

9 A Yes, ma'am.

10 Q Just for your edification, we previously played the -
11 - the video in court for the -- for the benefit of the
12 Court. So I'm not going to play that again for you at this
13 point.

14 Within your expertise, are you able to develop and
15 form opinions as to forensic interviews and come to
16 conclusions?

17 A Yes, ma'am.

18 Q And within your field of expertise, in your opinion,
19 did Complainant understand the difference between the
20 truth and a lie when you asked her those questions on that
21 forensic interview?

22 A Yes, ma'am, she appeared to.

23 Q And in your opinion as an expert in child sexual
24 abuse, did she give a detailed count -- account of the
25 alleged offense?

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1 A Yes, ma'am.

2 Q Additionally, in your expert opinion within your
3 specialized field, did her statement have what you would
4 consider "internal coherence"?

5 A Yes, ma'am.

6 Q Dr. Elsey, there's a part of the video where Complainant
7 describes an event for which the defendant is charged. And
8 then she also describes an event in which her uncle had
9 touched her at a previous time. And I believe they were --
10 they were watching television at that point. Can you, in
11 your expert opinion, tell us about what that means to you
12 as an expert in child abuse -- child sexual abuse?

13 A I would see that process as grooming. In many of the
14 cases I've seen, many of the cases my staff has seen, there
15 is a -- there is a grooming part of it; which means it
16 doesn't go from nothing to something bad. There is a
17 process of maybe getting that -- that child alone, spending
18 special time with that child, which in and of itself, is
19 not necessarily grooming. You know it's grooming based on
20 what happens -- what you find out later.

21 Some grooming is not abuse whatsoever. A very common
22 scenario we all know about is the coach who spends special
23 time with -- with his athlete: takes him out to eat, takes
24 him to his house, takes him to camp. In and of itself, an
25 invested coach.

1 But if you find out later there was some sort of abuse
2 going on, that could have been part of the grooming
3 process, getting that child comfortable with that person,
4 preparing them for something more.

5 Q So would that in -- in an essence, be the purpose of
6 grooming, preparing a child for further contact or explain
7 that to me.

8 A Grooming is preparing -- preparing a child for -- for
9 what more can happen. Again, as I mentioned, grooming in
10 and of itself, can be abusive. We -- situations where
11 children are shown child pornography, for example, that's
12 abusive to do that. But what happens later gives you
13 information that that was only the beginning of a -- of a
14 deeper process.

15 Q Can you give me some examples of -- of grooming?

16 A As I mentioned earlier, spending special time -- time
17 with the child, forming a relationship with them that may
18 be seen as inappropriate. For example: Taking them out to
19 eat; I'm your special friend; we're going to take a nap
20 together; we're going to give each other massages.

21 You kind of see how it slowly goes to different --
22 different ways: We're going to bathe together; we're going
23 to go to the swimming hole together; you help me pick out
24 these clothes, I'll help you pick out this bathing suit.

25 That massage, which -- which may go a little bit too

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1 far, a little bit under the underwear, until it touches
2 private areas. But again, it's part of a process to the
3 point that it could become inappropriate.

4 Q And do you see grooming in -- in most of your cases?
5 Or tell me what you see in -- in your cases.

6 A The majority of the cases have some sort of grooming,
7 because as we clearly know, the people who hurt kids are
8 someone they know and trust. It's rare that it's a
9 stranger. People don't always want to hear that, and the
10 strangers make the news. But in our cases -- and I've seen
11 roughly 4500, two were by strangers. It's always -- almost
12 always by someone the child knows and trust. And so the
13 child already has that relationship.

14 Generally, the children care about this person. They
15 don't want the person to get in trouble necessarily. They
16 just want the abuse to stop.

17 That's what makes the grooming process important,
18 because it's important in treatment also. The child can
19 feel duped, fooled, tricked. How -- how come I didn't see
20 this coming? When again, the -- the whole point of the
21 process is to get that child's trust so they can move
22 further.

23 Q Is there any sort of set timeline that, you know,
24 an offender would use or is there a set procedure or -- or
25 how -- how does this grooming vary?

1 A There's not. And again, I've certainly read research
2 about that, and I don't know of any particular timeline.
3 It just depends on the child and how things are going. If
4 this child puts up no resistance, no resistance, it
5 certainly may move faster. If there is some resistance,
6 maybe it may slower. But I don't know of a particular
7 timeline.

8 Q Do all children recognize the -- the beginnings of
9 grooming?

10 A Most children and most adults don't recognize that.

11 Q And -- and how does that become relevant to you in --
12 in your final assessment?

13 A Well, in my final assessment, it could be -- as I
14 mentioned earlier, it could be part of the treatment when a
15 child feels like they were duped; also, for a parent, who
16 understandably doesn't want to believe this. Who wants to
17 believe their child was abused?

18 But if they're -- and they feel like it's their fault,
19 they didn't see this coming. But in and of itself, that
20 grooming, as I mentioned early, could see -- be seen as a
21 positive thing. Hey, they're spending more time with this
22 child. That's great. Gives me a little bit of a break.
23 Or they seem like such a nice guy or he's becoming a better
24 athlete. So in and of itself, not necessarily bad.

25 Q And just so I can clarify, what -- what exactly did you

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1 see on that video that you thought, or if you thought at
2 all, would be grooming?

3 A Well, clearly, the child disclosed to me --

4 MR. FARLEY: Objection, Your Honor. A legal
5 conclusion.

6 THE JUDGE: Which -- which part?

7 MR. FARLEY: The part there ---

8 THE JUDGE: The question?

9 MR. FARLEY: Yes, Your Honor.

10 THE JUDGE: I'll sustain the objection. Just ask the
11 question in -- in a different way, please.

12 DIRECT EXAMINATION BY MS. HALL (Continues):

13 Q What, in your opinion as an expert in child sexual
14 abuse, do you make of -- well, let me rephrase that.
15 Explain to me any parts of that forensic interview, in your
16 expert opinion, that you have determined to be grooming.

17 MR. FARLEY: Your Honor, that -- that's the same
18 question.

19 THE JUDGE: Overruled.

20 DIRECT EXAMINATION BY MS. HALL (Continues):

21 Q You can answer the question, if you can remember it.

22 A There was a part she talked about when the person
23 was laying with her in bed and then touching her on her
24 private areas.

25 Q Just a moment.

1 (Brief pause.)

2 Q Dr. Elsey, how would you connect that event, with
3 what ultimately she disclosed as the -- or to the larger
4 issue, within your forensic interview?

5 A Well, I would say several things to that. One is,
6 for example, laying with a child on their bed may or may
7 not be seen as abusive. Certainly, may be seen as
8 inappropriate, may be a boundary violation, maybe not.
9 Certainly a touching of a child's private area would be
10 seen as inappropriate by -- by most people.

11 A key part of that is that the child -- she told me
12 she didn't tell anybody or I found out she did not tell
13 anybody about that. So that may have provided the
14 information that this happened. I didn't get in trouble,
15 move on.

16 Q You mean that the defendant didn't -- didn't get in
17 trouble?

18 A Correct.

19 Q Okay. And why is it important to you that she hadn't
20 told on that person?

21 A Because again, based on my experience and the
22 research, kids don't tell right away. It normally takes a
23 while for kids to tell, because they don't understand,
24 they're confused, they think it's their fault, all sorts of
25 reason why kids don't tell.

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1 And knowing what she told me later happened, I thought
2 it was important, because if someone would have found out
3 about that, maybe the next would not have happened.

4 A When do children normally tell then?

5 Q It could be a long period of time. There's research
6 done at the Medical University in 2000, that -- this was
7 grown adults that they interviewed, and it had been five
8 years between something happening and them telling. That
9 was strictly females.

10 I do a group for men who were abused as children.
11 They don't tell for 27 years. So men have a much more
12 difficult time telling.

13 But most research is pretty good. Kids don't tell
14 right away. When I say "right -- right away," it happens
15 and they tell. And this child, based on what she told me,
16 when that happened, the initial thing, she did not tell.

17 Q What prompts people then -- what -- what point do
18 they
19 hit that they normally tell?

20 A Sometimes it's education. Kids don't understand that
21 it's wrong. They don't understand it's not okay for
22 someone to do this to them. Sometimes when a child is
23 hurt, if they feel pain, they're like, wait a minute,
24 that's -- that's different.

25 Sometime it's when they fear for somebody else's

1 safety. We've had many children tell when they didn't want
2 their little sister to be the next person hurt. So it --
3 it's a -- a range of why kids choose to tell.

4 Q And in your expert opinion, could you tell why Complainant
5 came forward with this particular allegation?

6 A Well, I can't tell exactly. I -- I don't know
7 exactly why she chose to tell, but some of those scenarios
8 I just mentioned were prevalent in this -- in this case.

9 Q Which of those scenarios were prevalent then?

10 A Well, she disclosed to me that something that he did
11 hurt her. And certainly what she disclosed were things she
12 didn't understand, but they felt very uncomfortable for
13 her. And at that point, according what she told me, she
14 told right away.

15 Q In your opinion as an expert in the field of child
16 sexual abuse, do you feel that Complainant was ever confused
17 during the interview as to what happened to her that night?

18 A I'm not sure if I'd use the word "confused," but she
19 certainly didn't seem to understand it. The language that
20 she gave, she could describe what happened, but I don't
21 think she knew what was happening.

22 It's like a child describing a zebra. They can
23 describe it -- it's white with black stripes -- but they
24 couldn't say it's a zebra. They don't know what a zebra
25 is, but they can describe it.

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1 She could describe what we as adults have names for,
2 but she didn't really have names for it. She did that
3 several times in the interview.

4 MS. HALL: All right. Just a minute, please.

5 THE COURT: Okay.

6 MS. HALL: Thank you, Dr. Elsey. I don't think I have
7 any further questions for you. Appreciate it.

8 THE COURT: Cross-examination?

9 MR. FARLEY: Thank you, Judge. May I have just a
10 moment.

11 THE COURT: Of course.

12 CROSS-EXAMINATION BY MR. FARLEY:

13 Q Dr. -- Dr. Elsey, when was the last time you saw this
14 video?

15 A Last week sometime.

16 Q And where were you when you viewed it?

17 A Dee Norton Lowcountry Children's Center.

18 Q And right now, I'd like to talk about the two
19 separate incidents, the one that you referred to as
20 grooming, and then the one that is the subject of this
21 case.

22 A Yes, sir.

23 Q The grooming episode, the -- the touching episode,
24 how long between the two episodes was that? How -- what
25 was the distance in time between the two episodes?

1 A I don't remember.

2 Q Did you ask?

3 A I don't remember.

4 Q So you -- you -- you're not prepared here today to
5 say -- to give a definite time.

6 A Correct.

7 Q Distance between.

8 A Correct.

9 Q And -- and wouldn't you agree that the two incidences
10 are different? And I mean, one is oral sex, and the other
11 is a touching?

12 A Well, the one that you described as oral sex involved
13 more than just oral sex, based on what the child told me.
14 It wasn't -- it did involve touching.

15 Q And from your discussions with the child, that is the
16 only other incident that she has told you about. There --
17 there weren't a series or continuing series of events of
18 sexual abuse.

19 A Correct. That's all she told me about. Yes, sir.

20 Q Did she tell you where that -- I'm going to refer to
21 it as "grooming" -- where the grooming took place?

22 A I would have to look back at the video to know
23 exactly. I don't remember specifically.

24 Q You didn't ask how many times she had been to the
25 house, did you?

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1 A Not that I recall, no, sir.

2 Q Did you ask how many times this had happened?

3 A When you say "this," which incident ---

4 Q The grooming that we were discussing.

5 A Again, I'd -- I'd have to refresh my memory back with
6 the tape.

7 MR. FARLEY: May I have one more moment, Your Honor?

8 THE COURT: Sure.

9 MR. FARLEY: I have no further questions.

10 THE COURT: Very well. Redirect?

11 MS. HALL: Judge, just very quickly.

12 RE-DIRECT EXAMINATION BY MS. HALL:

13 Q Is it possible, in -- in your expert opinion as an
14 expert in child sexual abuse, that Complainant might not have
15 been aware of all of the acts of potential grooming, in
16 order for her to tell you about them during this forensic
17 interview or during that forensic interview?

18 A Yes, ma'am. As I mentioned earlier, grooming is not
19 necessarily ---

20 MR. FARLEY: Objection. Asking an opinion. That's
21 beyond his -- he has no knowledge of -- of this. I don't
22 know how he can testify. She -- she's asking him to
23 speculate about events that may or may not have occurred.
24 He has no knowledge about that, and I've not seen anywhere
25 in the video where it -- it was asked.

1 THE COURT: I -- I do understand the objection. I do.

2 (To Ms. Hall) And tell me why you're asking this line
3 of questioning, because I wouldn't allow -- my -- I -- I
4 think you're calling for him to speculate. I mean, he
5 doesn't know what he doesn't know. And -- and why isn't
6 this calling for speculation?

7 MS. HALL: What I'm trying to elicit is that such
8 children are not aware of the fact that certain activities
9 occur that could be potential grooming, that they don't
10 know to bring to his attention during the forensic
11 interview.

12 THE COURT: And -- and I would say he's -- this
13 witness has testified that oft times, adults -- no one
14 realizes what -- ultimately what conduct means. And -- and
15 I think he's established that.

16 I think to ask him could things have happened that we
17 don't know about is -- is really calling -- if that's not
18 speculative, than I don't know what is. But -- but I think
19 you have established that sometimes there are those events
20 that nobody realizes and -- if you will, until the -- until
21 the abuse occurs, you -- you -- you can't understand the
22 prior conduct for being grooming until you realize what the
23 result was. And -- and I think they established that. So
24 I would -- I would sustain the objection.

25 MR. FARLEY: Thank you, Judge.

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1 RE-DIRECT EXAMINATION BY MS. HALL (Continues):

2 Q Let's see if I can give you this question the right
3 way. Did Complainant give you a timeline as to when this act
4 occurred and -- and any sort of progression?

5 A I don't remember. He asked me that same question. I
6 don't recall. I'd have to look at the tape to see if I
7 asked that question.

8 Q Okay. Thank you. No further questions.

9 THE COURT: Very well. Redirect?

10 MR. FARLEY: No, Your Honor.

11 THE COURT: All right. Thank you so much and you may
12 come down.

13 All right. Any additional witnesses?

14 MS. HALL: No, Your Honor.

15 THE COURT: Very well. Very well. Okay. And -- and
16 this is one of those rulings that -- that we will do -- I
17 guess you guys, to a certain extent, can watch the -- watch
18 the process. Because at this point, I certainly find that
19 the -- the State has satisfied 17-23-1754. At this point,
20 I do believe that there are particularized guarantees of
21 trustworthiness in so far as the questioning is concerned.

22 Of course now, the -- the alleged victim has not
23 testified, has not been subject to cross-examination. But
24 this is an investigative interview of the alleged victim.
25 It -- it was preserved on film or other electronic means,

1 because I've seen it. And the statement was elicited by
2 non-leading questions, "tell me about that" sorts of
3 questions. The -- the doctor's testified that it is
4 his goal to ask age-appropriate questions; to ask open-
5 ended questions; to ask not leading questions, but -- but
6 questions which can focus the alleged victim towards
7 providing perhaps more complete information. And in doing
8 so, you can certainly use as a part of the more focus
9 question, information that the child has previously
10 provided.

11 The -- clearly the doctor has been trained and -- in
12 conducting investigative interviews of children. And he
13 talked about the RATAC and the -- the -- the other training
14 that he has had. And I'm scared to use the anachronism,
15 but it was the American protocol. The American -- I don't
16 remember the other parts of the -- I had -- wrote ADSAC,
17 and I know that's not right, but that's close to the
18 anachronym -- the anachronym.

19 The statement that I heard yesterday certainly gives a
20 detailed account of the alleged events. It does have in --
21 internal coherence. And -- and the doctor has been here
22 today to share with me both his training as well as his
23 methodology. And I'm somewhat familiar with the RATAC, and
24 as I understand it, that isn't -- is a well-recognized
25 protocol for forensic interviewing of abused children.

1 So I think that at this point, it does appear that 17-
2 23-1754 has -- has been satisfied as contemplated by that
3 particular section.

4 Now, let me -- let me share with you that my concern
5 regarding the -- the evidence, not of -- what I've already
6 deemed to be *res gestae* in the event -- events covered by
7 the indictment. I am not inclined to allow evidence of the
8 unindicted conduct, which is the second part of the conduct
9 talked about in the interview. And I believe that it is in
10 the nature of propensity evidence. I do not think that it
11 is -- it survives the evidentiary challenge. I cannot find
12 that it is -- it is evidence of a common scheme or plan.
13 And I understand that -- I understand the testimony of the
14 doctor with regards to -- he believes that it is most
15 probably a part of a grooming process.

16 My concern is that typically when you do hear of
17 common scheme and plan testimony, that has been admissible
18 under our law, it is just that; it is a common scheme or
19 plan, and not a one episode event that is unindicted. So I
20 am inclined to exclude that as being a bad act, as being
21 propensity evidence in that it is unindicted.

22 Now, let me be clear: When the alleged victim is
23 describing the events of this occurrence, beginning with
24 when he -- when she awakens -- as I understand it from the
25 -- from the tape yesterday, she awakens when he moves her

1 hand and he is lying down beside her. Those events from
2 beginning to end, are not excluded, they are *res gestae*. I
3 am satisfied that they are *res gestae*.

4 My concern is -- is the -- is the later -- the
5 responses to the later questioning, in that that is
6 unindicted conduct. And I believe, therefore, propensity
7 evidence and excluded under the rules.

8 That would be the order of and the ruling of the Court
9 for your preparation purposes. Okay. Anything else?

10 MS. HALL: Judge, may I -- I just -- having done this
11 out of order yesterday and having played the video for the
12 Court yesterday, I'd just like to mark this ---

13 THE COURT: Oh, yes.

14 MS. HALL: --- particular video of Complainant s
15 forensic interview ---

16 THE COURT: Sure.

17 MS. HALL: --- for the -- as a Court's exhibit.

18 THE COURT: Great. One of the things I think is very
19 important, and I'm beginning to have a little bit of
20 concern, and I will leave it -- Counsel, actually, let me
21 see y'all at the sidebar, please.

22 (Bench conference.)

23 (Marked Court's Exhibit No. 1, DVD.)

24 THE COURT: Okay. All right. So just to recap, what
25 we're going to do on the tape is that, before it's played,

1 y'all just going to find your ending point and you will
2 just stop playing it, because that portion comes at the
3 end. So that will work perfectly well.

4 MR. HILTON: And I anticipate that to be after lunch
5 tomorrow.

6 THE COURT: Okay.

7 MR. HILTON: So we'll -- we'll have time to get that
8 all situated.

9 THE COURT: That sounds excellent. Okay. Very
10 Good. Very Good. Anything further from the State?

11 (No response.)

12 THE COURT: I can't think of anything. I can't think
13 of anything else, because I know we -- we touched on many,
14 many issues yesterday.

15 MS. HALL: Not on this matter, Your Honor.

16 THE COURT: Okay. How about from the --

17 MR. FARLEY: Not right now, Your Honor.

18 THE COURT: -- from the defense? Very well.

19 All right. Now, if you all would just address with
20 your families, just to be sure everybody's comfortable and
21 understands that they can come and go as they need to. And
22 maybe just review that with security in the back. We'll do
23 that real, real fast and then I think our jury ought to be
24 -- be here.

25 I'm going to gather -- we're gonna be at ease, because

1 I've got to gather my preliminary remarks to the jury.

2 MR. HILTON: All right.

3 THE COURT: All right. Thanks.

4 (Off the record at 2:58 p.m.)

5 (On the record at 3:12 p.m.)

6 THE COURT: All right. Ms. Salisbury, yes, ma'am, let
7 me please have the jury.

8 (The jury enters at 3:13 p.m.)

9 THE COURT: (To juror) It was the shirt. Had to be
10 the shirt. And Mr. Stenson, thank you so much for serving
11 in the capacity as the presiding juror, and thank you so
12 much for the note. And -- and for the shirt. It's very
13 happy, wonderful.

14 All right. Ladies and gentlemen, I hope you enjoyed
15 your lunch and your fine tour of St. George and its
16 surrounding area. At this time, I'm going to ask you to
17 please stand and raise your right hand and be sworn in as
18 the jury in this case.

19 (The jury complies.)

20 THE COURT: Do you solemnly swear or affirm that you
21 will well and truly try the issues in this case, and a true
22 deliverance make between the State of South Carolina and
23 the defendant at the bar, whom you shall have the charge
24 and a true verdict rendered according to the law and
25 evidence? If you except the oath, please indicate by

1 saying, "I do," and by being seated.

2 Jury: (Responds and complies in unison) I do.

3 THE COURT: Thank you, ladies and gentlemen. Before
4 we begin this trial, I want to tell you that this trial
5 probably will be different from what you might expect.
6 Many people do not have the chance to attend actual court
7 sessions as you are doing now. And they may think,
8 reasonably, from watching television or movies or reading
9 books, that trials are always full of high drama, intense
10 action, and riveting circumstances.

11 While all of these things may be and are true at
12 times, this trial is not for entertainment. It is a
13 fundamental part of our democracy, it may be the
14 fundamental part of our democracy: A search for the truth
15 in an effort to make sure that justice is done between the
16 parties before the Court.

17 Searching for the truth and making sure that justice
18 is done is often slow, deliberant, and repetitive; the
19 opposite of what you may have seen on television or in
20 movies or read in books. This courtroom is a place of
21 honor, dedicated to the protection and the preservation of
22 citizens' rights, to what many have called the greatest
23 system of justice ever created.

24 The attorneys appearing before you are advocates for
25 the parties they represent. But first and foremost, they

1 are officers of the Court, sworn to uphold the integrity
2 and the fairness of our judicial system; and to help you in
3 the search for the truth.

4 You should expect them to be professional, competent, and
5 ethical in the presentation of their client's interest.

6 Remember, you have taken an oath to try the issues in this
7 case, and to reach a fair and just verdict. And you are
8 also expected to be professional, ethical, and reasonable.

9 I want to thank each and everyone of you for excepting
10 this responsibility, this important responsibility of jury
11 service, and for your contribution today to our system of
12 justice.

13 Ladies and gentlemen, what I will now say is intended
14 to serve as an introduction to the trial of this case.
15 These remarks are not a charge on the law applicable to
16 this case. I will instruct you on the law applicable to
17 this case at the end of the trial, before you retire to
18 consider your verdict. This is merely an explanation of
19 the procedure that we will follow in the trial of this
20 case, so that you may better understand what may be
21 happening.

22 Before you are notepads. They are there, ladies and
23 gentlemen, to allow those of you in your midst, who happen
24 to be note takers, that ability. Those of you who are not
25 note takers, do not be concerned with -- with the notepad

1 at all. I have just learned over time that for those folks
2 who are note takers, having the ability to jot a few notes
3 helps them in their ability to focus and pay attention.
4 That's the reason for the notes.

5 I will tell you that you must not allow your taking of
6 notes to allow you to miss something as it's coming from
7 the witness stand. Ladies and gentlemen, you -- listening
8 to these witnesses, observing them, is much more important
9 for you to do than take a note. But for those of you who
10 are note takers, those pads are there for that purpose.

11 Also, your notes are for your eyes only; they're not
12 to be shared with anyone. And they're certainly not to be
13 used during deliberation to advance your position only
14 because you have a note. Your notes are there to allow you
15 the ability to refresh your collection -- your recollection
16 to allow you to more effectively remember.

17 Now, with regards to your notes on your first page, I
18 want you write either your name or your juror number,
19 whichever is your preference. Do that for me, please, now.

20 (Jurors comply.)

21 THE COURT: And then just turn that page over. And
22 you have a -- remember, what was it, middle school we
23 started? And you now have a cover sheet.

24 When you leave the courtroom, just leave your notes in
25 your chair, and we will secure them each time that you

1 leave -- leave us here in the courtroom, and we will secure
2 them over the evening. And we will put them back in your
3 seats in the morning. So please, just know that we will
4 secure them.

5 For those of you who choose to take notes, when your
6 deliberations are concluded, you are welcome to take your
7 notes with you. For those of you who do not take your
8 notes with you, I want you to know that my procedure is
9 that your notepads are brought to my chambers from your
10 jury room, and then I remove and shred your notes. They
11 don't fall into anyone else's hands or to anyone else's
12 eyes. They come to me in my chambers and they are shredded
13 in my chambers. So for those of you that may wonder what
14 happens to your notes, that -- that is what would happen to
15 your notes in the event that you left them.

16 Now, ladies and gentlemen, the defendant is charged by
17 an indictment filed with this Court of criminal sexual
18 conduct with a minor in the first degree. Ladies and
19 gentlemen, the defendant in this case is Cesar Orlando
20 Portillo. And if I refer to the defendant in the course of
21 these proceedings, I am referring to Cesar Orlando
22 Portillo. Ladies and gentlemen, the elements of this
23 offense I will explain to you later.

24 Ladies and gentlemen, as I spoke to you earlier, an
25 indictment is simply the charge. It's just a piece of

1 paper. It is the charge by which the case is brought into
2 court. And it is not, in any sense, evidence of any of the
3 allegations it contains.

4 Mr. Portillo has pled not guilty to this indictment.
5 The State, therefore, has the burden of proving each of the
6 elements of the indictment beyond a reasonable doubt. And
7 it will be your duty, ladies and gentlemen, to decide
8 whether the State has met that burden.

9 Your purpose as jurors is to find and to determine the
10 facts. You are the sole judges of the facts. If at
11 anytime I make any comment regarding the facts, you must
12 disregard it. I have no opinion regarding the facts,
13 ladies and gentlemen. That is a matter solely for you to
14 determine.

15 And you are to determine the facts from the testimony
16 that you hear and the other evidence introduced into court.
17 It is up to you to determine the inferences which you feel
18 may properly be drawn from the evidence.

19 It is especially important that you perform your duty
20 of determining the facts diligently and contentiously,
21 because ordinarily, there is no way under our system to
22 correct an erroneous determination of the facts by a trial
23 jury.

24 On the other hand, and with equal emphasis, the same
25 law that makes you the judges of the facts, makes me the

1 judge of the law. The law as given by the Court is the
2 only law you may consider. You must except and follow it
3 even though you may disagree with it.

4 I cannot tell you what the facts are, and you cannot
5 disagree with me about what the law is or should be. Your
6 job is to take the law as I give it to you, and to apply it
7 to the facts as you find them to be from the testimony of
8 the witnesses and from other evidence that is introduced.
9 After doing that, you will render your verdict, a true and
10 just verdict under the oath that you just took as jurors.

11 Until I advise you to begin your deliberations, you
12 must not discuss this case with anyone, including your
13 fellow jurors, friends, family members, or anyone involved
14 in the case. This includes discussions face-to-face, and
15 those by telephone, e-mail, texts, blogs, or any other
16 method of communication. You may not use a computer, cell
17 phone, or other electronic device with communication
18 capabilities at any time, while in the courtroom or during
19 deliberations.

20 During your breaks, for meals, or overnight, if
21 necessary, you may use these devices; however, you may not
22 at anytime use these devices to send or get information
23 about the case. This includes information about a party, a
24 witness, an attorney, or a court officer; news accounts
25 about the case, research on any topics raised, any topics

1 you think would be helpful in deciding the case, or any
2 testimony presented by any witness.

3 During the trial, do not read, listen to, or watch any
4 news reports about this case. This includes anything that
5 may be in the newspapers, on the television, radio, or
6 internet. You must not consider anything you may have read
7 or heard about the case outside the courtroom, whether
8 before or during the trial.

9 After the case is submitted to you, you must discuss
10 it only in the jury room, with your fellow jurors. The
11 attorneys and the parties in this case have been advised
12 that they are not to talk to you at all. So if you see
13 anyone involved in the case and they don't even say hello,
14 please understand they're not being unfriendly. They are
15 just following my instructions.

16 It is important that you keep an open mind, and that
17 you not decide any issue in the case until all of the
18 evidence has been presented, the parties have made their
19 closing arguments, and I have instructed you on the law
20 applicable to this case.

21 It is your solemn responsibility to determine whether
22 the defendant is guilty or not guilty, and your verdict
23 must be based solely on the evidence as it is presented to
24 you in this trial, and on the law as I instruct you during
25 and at the close of the trial.

1 In a moment, the solicitor will -- will make what is
2 called an "opening statement" to you, in which the
3 solicitor will explain to you what the solicitor maintains
4 are the issues in this case. The attorney -- one of the
5 attorneys for the defendant will also make an opening
6 statement, and likewise tell you what he or she maintains
7 are the issues in this case.

8 Now, ladies and gentlemen, I want you to keep in mind
9 that what the attorneys say is certainly important. I urge
10 you, give them your undivided attention, but please be
11 mindful that what the attorneys say is not evidence. The
12 evidence in this case will be presented to you by the
13 testimony of sworn witnesses from this witness stand, and
14 from any exhibits which may be introduced into evidence.

15 Now, ladies and gentlemen, no doubt from time to time
16 during the trial, you may hear one -- or most probably all
17 at some point -- of these attorneys say, "Objection," or
18 "Your Honor, we have a matter of law to discuss with you,"
19 or "May we approach," or something in that neighborhood,
20 something like that.

21 Sometimes I may even find it necessary to ask you to
22 please step to your jury room while I discuss a matter with
23 the attorneys in private. The reason that I do this and
24 the reason that they approach is because you are the judges
25 of the facts in this case. And sometimes, when I am

1 discussing matters of law with the attorneys, it may be
2 necessary for me to make some comment regarding the facts
3 in connection with ruling on whether or not a particular
4 laws applies.

5 I am not supposed to tell you what I think the facts
6 are in the case, so I will excuse you from the courtroom
7 while these discussions take place, so that in no way will
8 you be influenced by anything that I might say or do in
9 connection with the facts.

10 In determining what the true facts are in this case,
11 you must decide whether or not the testimony of the witness
12 or witnesses, rather, is believable. It will be my
13 responsibility to rule as a matter of law as to whether
14 certain testimony is admissible at all or not. But once
15 the testimony is admitted, whether or not you believe it,
16 those are matters solely for you to determine.

17 In deciding whether to believe a witness, you have the
18 right to consider the interest of any witness, the bias of
19 any witness, the prejudice of any witness, the opportunity
20 for the witness to have seen the matters and things about
21 which the witness may testify, and the way the witness acts
22 on the witness stand.

23 You have a right to consider anything that is in the
24 record that will help you evaluate the testimony of the
25 witnesses. And this means that it is your duty to pay

1 close attention to these witnesses, observe them, listen to
2 them, and pay close attention to the attorneys and to the
3 Court.

4 Please do not let your thoughts wander, but give the
5 strictest attention to the testimony in this case; so that
6 at the end of all the testimony, after the arguments of
7 counsel, and the charge on the law by the Court, you will
8 then be in a position to determine what the true facts are
9 and to apply the law to those facts. And thus render a
10 true and just verdict.

11 (To the foreperson) As we've talked about your
12 additional duties, Mr. Stenson, you will be the jury
13 spokesperson here in court. You will preside in the jury
14 room during deliberations to be sure that each and every
15 juror has an opportunity to participate. And of course
16 finally, it will be your duty to write the verdict of the
17 jury on the verdict form when that time comes.

18 Ladies and gentlemen, in order to preserve everyone's
19 rights, I will give the parties an opportunity to object to
20 anything that I have said to you in these preliminary
21 remarks -- or opening remarks.

22 (To counsel) Any exceptions or additions from the
23 State?

24 MS. HALL: None from the State, Your Honor.

25 THE COURT: From the Defense?

1 MR. FARLEY: No, Your Honor.

2 THE COURT: Ladies and gentlemen, I ask that you
3 please draw close as we listen to the opening statements of
4 our attorneys. Ms. Hall.

5 MS. HALL: Thank you, Your Honor. May it please The
6 Court.

7 THE COURT: Yes, ma'am.

8 MS. HALL: Counsel, ladies and gentlemen of the jury,
9 this is a case about a nine-year-old little girl who was
10 sexually abused by her uncle.

11 On the night of January 16, 2010, little Complainant
12 , who is seated here in the front with the curls,
13 went to spend the night with her cousin, E.B. , at her aunt
14 and uncle's house. Both the girls fell asleep in E.B. 's
15 bed that night. But Complainant was awoken somewhere around
16 1:00 a.m. that night by her uncle, placing her hand on his
17 exposed penis as she lay -- as he lay next to her in that
18 bed.

19 Complainant pretended to remain asleep through what would
20 follow. He subsequently used Complainant's hand to manually
21 arouse himself; he pulled down her little pajama bottoms,
22 and performed oral sex on her. And then he finished
23 masturbating in her presence, until he climaxed. He then
24 wiped the saliva off of Complainant's vagina with a towel, threw
25 the covers back over her, and then briefly exited the room.

1 He almost immediately re-entered the room though, at
2 which point Complainant pretended to be waking up or kind of
3 coming to at that point, to which the defendant told her in
4 essence, "Go back to bed. I was just coming in here to get
5 a towel."

6 When Complainant heard him leave the room and then for the
7 -- the door to the hallway bathroom shut, she immediately
8 got out of the bed, ran directly to her aunt's room, and
9 told her what her uncle had just done to her.

10 The man that entered her room that night, the man who
11 did those unthinkable things to a nine-year-old child, is
12 seated right over there at the defense table, Cesar Orlando
13 Portillo.

14 My name is Meghan Hall, and along with Russell Hilton,
15 my co-counsel, we represent the State of South Carolina on
16 behalf of the Solicitor's Office. Also seated at our table
17 is the detective in this case, Detective Ann Reese, with
18 the Dorchester County Sheriff's Office.

19 And it's our job today and the coming days to prove to
20 you, beyond a reasonable doubt, that Cesar Orlando Portillo
21 is guilty of the crime of criminal sexual conduct with a
22 minor, in the first degree. And that's one indictment.
23 It's one charge; it's fairly simple.

24 And I know that the judge has already read it to you,
25 but I figured I'd just go ahead and from the outset read to

1 you what the indictment is. She just told you it's a --
2 it's a charging document that puts the defendant on notice
3 for what he's been charged with. But also, in a way,
4 provides a roadmap for me to prove to you each and every
5 element of this case.

6 And I got it in one of these fancy things, so that I
7 don't spill my coffee or spaghetti I had for lunch on it.
8 But it says (as read): "That in Dorchester County, South
9 Carolina, on or about January 16, 2010, the defendant Cesar
10 Orlando Portillo did engage in sexual battery upon a minor,
11 who was less than 11 years of age; and that the defendant
12 did perform cunnilingus upon the victim Complainant ."
13 And then it says (as read): "This offense is in violation
14 of section 16-3-655 of the South Carolina Code of Laws."

15 Now, I told you that the burden rests solely upon the
16 State to prove each and every element of this offense. So
17 having just listened to the indictment, what is it that I
18 need to prove to you? What's -- basically, we can break it
19 down to three things: First of all, that Cesar Orlando
20 Portillo, performed a sexual battery. In this case it was
21 oral sex on his niece Complainant .

22 The second thing I need to prove to you is that the
23 sexual battery occurred on or about January 16, 2010, in
24 this county, in Dorchester County.

25 And the third thing that I need to prove is that

1 Complainant was under the age of 11 at the time that
2 sexual battery happened.

3 Now, Her Honor is going to tell you some definitions
4 at the end -- close of this case in her charge or
5 instructions to the jury. And she's going to explain to
6 you what the definition of sexual battery is. But suffice
7 it to say it's what you think it is.

8 The statute says that a sexual battery can be a number
9 of things. But it's mainly vaginal intercourse, anal
10 intercourse, cunnilingus -- which is a long and complicated
11 word for oral sex on a female; fellatio, which is oral sex
12 on a male. And then it also says any intrusion, however
13 slight, into any part of a person's body, or any of their
14 genital or anal cavities.

15 So to prove this case, we're going to put up
16 witnesses, the most important of which is little Complainant

17 . She's now a brave little 11-year-old, and she's
18 going to sit right there in that witness stand, and tell
19 you the likely most embarrassing and extremely
20 uncomfortable details of what Uncle Cesar did to her on the
21 night of January 16th.

22 And you'll hear from other witnesses and other
23 individuals throughout the course of this trial who are
24 going to testify as to what they saw and what they did.
25 And the State contends that these witnesses will

1 corroborate little Complainant's version of the events.

2 Now, there's something I kind of want to address just
3 from the outset, and that's that this is a very complicated
4 situation, as I'm sure you can understand. This is a child
5 and her uncle; a niece and -- and an uncle. And -- and
6 Complainant's disclosure of what Uncle Cesar did to her, it's
7 torn apart a family. It's torn her cousin E.B. away from
8 the only father she's really known. And it's torn her --
9 torn her Aunt Jessica away from her husband Cesar.

10 Now, as I told you before, Mr. Hilton and I have a job
11 to do here today and that's to seek justice. Justice in
12 this case is to find Mr. Portillo guilty of criminal sexual
13 conduct with a minor, in the first degree.

14 But we're not the only ones with a job to do here
15 today. Everyone else in the courtroom has a job to do
16 today. It's Mr. Farley and Ms. LeMatty's job to represent
17 and defend Mr. Portillo. It's the Judge's job to rule on
18 matters of law that will come up during the course of this
19 trial. And it's y'all's job to be the judge of the facts.

20 You and only you can determine what the facts of this
21 case are. And to do that, you're going to need to use your
22 common sense. You're going to need to look at all the
23 evidence that comes into this case. But most importantly,
24 you're going to need to listen carefully to what comes out
25 of that witness stand.

1 So I encourage you all to listen closely and -- and
2 really think hard about what you hear. I know that this
3 material is graphic. I know that this material is
4 uncomfortable. And it's not a topic that people
5 necessarily like discussing or hearing about, certainly not
6 content that's suitable for a nine year old, or even now an
7 eleven year old.

8 And I know that it could be sad or upsetting to you at
9 times, but that's where the case -- and the truth of this
10 case lies. And that really is the ultimate goal here today
11 and in the coming days, to find out what the truth is and
12 to set that truth forth in your verdict.

13 I'm confident, by the close of this trial, after
14 you've received all the evidence in this case and after
15 you've heard all the testimony that's going to come out of
16 that witness stand, that you'll deliver justice for little
17 Complainant , by finding the defendant Cesar Orlando
18 Portillo guilty of criminal sexual conduct with a minor, in
19 the first degree. Thank you.

20 THE COURT: Thank you. Yes, sir, Mr. Farley.

21 MR. FARLEY: Thank you, Judge.

22 THE COURT: Yes.

23 MR. FARLEY: May it please the Court.

24 THE COURT: Yeah.

25 MR. FARLEY: Ms. Hall. Ladies and gentlemen of the

1 jury, I -- I thank you for being here today. I know that
2 you didn't have much of a choice, but I really do
3 appreciate what you're doing. Mr. Portillo appreciates
4 what you're doing. Without y'all being here, we could not
5 have this trial. We couldn't go forward, and we couldn't
6 get to the truth that the State talks about.

7 Mr. Portillo, Cesar, has told you that he is not
8 guilty of this crime. He's done so by pleading not guilty.
9 And the way that our law works is that you have to believe
10 him. You have to leave here today thinking Mr. Portillo,
11 Cesar, he's not guilty. I know he's not guilty.

12 The only way that you can find him guilty is when the
13 State puts up their witnesses and prove to you, beyond a
14 reasonable doubt, pretty -- pretty high standard, that he
15 is guilty. "Reasonable doubt" means that if you would
16 hesitate at all to convict this man, you must let him go.
17 The defendant is the default winner in this criminal case.

18 The solicitor is right about the -- this case being
19 horrible. These facts, these things, these -- these are
20 things that -- that no child should have to deal with, no
21 jury should have to sit through. Some of you are parents.
22 You don't want to think about this.

23 But the State has made these accusations, and we are
24 here today to force the State to prove Mr. Portillo guilty.

25 There's been some high profile cases lately in the

1 media. You read about the critics and pundits, they
2 badmouth juries. But juries are privy to information that
3 the media doesn't get to see. All right.

4 The jury has a really, really important
5 responsibility, and that's not to do what other people say
6 to do. That's not to do anything except to deliver
7 justice. You have to listen to what goes on in this
8 courtroom and nothing else. If you don't, there is no
9 justice.

10 The facts of this case are pretty straight forward.
11 Obviously, we disagree with some of them. I'm not going to
12 go too much into detail about those. You'll hear more than
13 enough about it from the witness stand. But I will ask you
14 to look for inconsistencies. There are serious
15 inconsistencies. There are serious things that don't add
16 up. There are problems with the law enforcement
17 investigation. You'll see those. They'll be abundantly
18 clear. If you don't, I'm sure I'll point them out at the
19 close of the trial.

20 But just listen. Give Mr. Portillo a chance. When
21 you go home today, you have to believe that he is innocent.
22 And I'm sure, at the conclusion of this trial, you will
23 find that the State has not proven their case, and you will
24 have to return a verdict of not guilty. Thank you.

25 THE COURT: Thank you. All right. Ladies and

1 gentlemen, that's going to conclude the work that we're
2 going to do today. You've been hard at it all day, and
3 we're going to begin in the morning at 9:30.

4 I do need to give you some instruction before you go
5 home this evening, because no doubt, there's going to be
6 someone curious about what you have been up to today and
7 where you've been. Perfectly fine to say that you went to
8 St. George, you reported for your jury duty, and that you
9 were chosen to serve on a trial jury. And perfectly fine
10 to say that this is criminal matter as opposed to a civil
11 matter.

12 But beyond that, you must not discuss this matter or
13 allow anyone to discuss it with you. But I don't want
14 anybody's love one getting upset with you. You put it on
15 the judge, and you just tell whomever's curious that judge
16 has told you that you must not discuss this matter.

17 Now, when you have been discharged from your service
18 on this jury, and I promise you there will be no question
19 in your mind when that time has come, you will be at
20 liberty to talk about this case if you wish. But until
21 that time has come, you must not discuss this matter or
22 allow anyone to discuss it with you.

23 Now, again, I -- the same admonition that we went
24 over with my opening remarks, I don't know whether they'll
25 be any sort of publicity, news about this particular case.

1 I have no way of knowing that; however, be on the look out
2 for that, because you must not listen to anything or read
3 anything about this matter. Of course that -- today I have
4 to say the radio, the television, newspaper, and the
5 internet. So please be -- be mindful.

6 And again, no investigation, no blogging, no chatting,
7 no tweeting about this case at all. No investigation
8 whatsoever. You must receive all of the information from
9 which you will make up your mind, here in court while court
10 is in session.

11 I need to ask this question of you: Does anybody work
12 at night? Anybody go in --

13 (Juror responds.)

14 THE COURT: Ah, my presiding juror. Come on, you
15 going to be Exhibit A. Tell me what time you typically go
16 in?

17 JUROR: I go in at two in the afternoon.

18 THE COURT: Two in the afternoon. Well, that's sort
19 of goes by the wayside.

20 JUROR: Til ten at night.

21 THE COURT: Until ten at night? Not during the course
22 of this trial; however, let me just share with you if --
23 once you -- you share that with your folks at your
24 business, if they have any questions or concerns at all,
25 if you'll get me a phone number, I will be real excited to

1 talk to them about that. Okay. Because I need you rested.

2 JUROR: Okay.

3 THE COURT: Thank you. Anyone else?

4 (No response)

5 THE COURT: All right. Very well. Everybody --
6 everybody works during the day, so that works out very,
7 very well.

8 Ladies and gentlemen, we are going to begin this
9 matter in the morning at 9:30. I do need to tell you
10 though, those who are breakfast eaters, you might want to
11 just have a half a bowl of Wheaties in the morning, because
12 I know the bailiffs are going to have something for you.
13 Don't know what it's going to be, but it's going to be
14 biscuits or waffles or something fattening and wonderful.
15 They are -- I've been trying to reduce, because all of the
16 goodies that they -- that they have up here. They spoil
17 you rotten. So just be mindful, ladies and gentlemen, that
18 you just might want to limit your -- your first breakfast
19 in the morning, in anticipation of your second one.

20 In any event, ladies and gentlemen, have a wonderful,
21 wonderful evening, and we'll see you in the morning at
22 9:30.

23 (To the Court Clerk) You want them to gather in the
24 jury assembly room, right?

25 COURT CLERK: Yes, ma'am.

1 THE COURT: If you all will gather in the jury
2 assembly room, we'll bring you right up. If you'll leave
3 your notes in your seats, we will secure them over the
4 evening; and I'll see you in the morning. Thanks so much.

5 (Jury exits at 3:48 p.m.)

6 THE COURT: Thank you. Anything further before we
7 adjourn for this evening from the State?

8 MS. HALL: Nothing from the State, Your Honor.

9 THE COURT: From the defense?

10 MR. FARLEY: No, Your Honor.

11 THE COURT: All right. Mr. Portillo will remain on
12 bond.

13 (To Mr. Portillo) And again, I just share with you,
14 the trial, obviously will go forward if you are not with us
15 tomorrow. Just so -- I -- I just wanted you to be
16 apprised. If you're not here, we simply must continue to
17 go forward. Very well. Thank you.

18 MR. PORTILLO: Thank you, Your Honor.

19 THE COURT: Y'all have a good evening.

20 MR. FARLEY: Thank you, Judge.

21 THE COURT: Uh-huh. And if you all -- I'm working on
22 my charge. And if you all happen to have any -- I -- I
23 don't need regular requests, but if you've got anything
24 unusual or different, you might want to pass that forward,
25 in that I'm doing this on my own. But if it's basic and

1 normal, I've got that put together; need not worry about
2 that.

3 Y'all have a good evening.

4 (Off the record at 3:49 p.m.)

5 DAY TWO

6 (On the record at 10:32 a.m.)

7 THE COURT: All right. Anything before we bring the
8 jury out from the State?

9 MS. HALL: Nothing from the State, Your Honor.

10 THE COURT: And from the defense?

11 MS. LEMATTY: Your Honor, we're going to deal with the
12 matters we were discussing in chambers ---

13 THE COURT: Yes.

14 MS. LEMATTY: --- at this point in time?

15 THE COURT: Yes.

16 MS. LEMATTY: Very well. Your Honor, with regard to
17 the -- the videotape ---

18 THE COURT: Yes.

19 MS. LEMATTY: --- that the Court has reviewed and made
20 the determinations under 17-23-175, we would move to redact
21 those portions after the child's completion of the
22 disclosure of the event. And I believe that that ends at
23 15:45:58 on the videotape. That is the completion of her
24 dialogue and interchange with the forensic interviewer with
25 regard to what actually she said occurred that night.

1 The items and issues after that fall into a -- a realm
2 of things: hearsay, hearsay involving other people. Also,
3 there are other matters completely irrelevant to anything
4 in this trial, such as her drawing a cat and things of that
5 nature, which we believe are not relevant, not probative of
6 any fact in this case. And we would ask that the tape be
7 cut off at that point.

8 THE COURT: Very well. All right. And you will
9 handle it, Mr. Hilton?

10 MR. HILTON: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. HILTON: We do believe that that -- those portions
13 of the tape, up until where indicated on the tape -- the
14 time on the tape is 15:48 and 39 seconds. We would agree
15 that anything after that would not be played, at least in,
16 you know, this portion of the trial with -- have it with
17 what we know at this point. 15:48:39 is where we would
18 agree on that.

19 Prior to that there is a segment where Complainant talks
20 about going and reporting to Aunt Jessica. We believe that
21 all of that reporting and the subsequent aftermath, if you
22 will, in the -- in the minutes that followed, which she's
23 talking about it on the tape here is -- is relevant and
24 admissible through -- through different -- different areas
25 of -- of the rules of evidence. And we would ask that that

1 portion of the tape be admitted.

2 In addition to the statute, this 17 ---

3 THE COURT: --- 23 ---

4 MR. HILTON: --- 23-175 ---

5 THE COURT: --- 175. Yes.

6 MR. HILTON: --- I believe it is ---

7 THE COURT: Yes.

8 MR. HILTON: --- discusses the -- those videotapes and
9 really makes no distinction about what should come out and
10 what -- you know, what should stay in. And so in that
11 fashion, we do think it's admissible; it's relevant. It is
12 part of the forensic interview, which, up until this point
13 and up until -- with the exception of the child testifying,
14 is -- has been deemed admissible so far. And so we -- we
15 do ask that -- that up until 15:48:39, we'd ask to play
16 that portion of the tape; again, agreed that is admissible
17 evidence.

18 THE COURT: All right. Now, of course, (A) says: "In
19 a general sessions court proceeding . . . an out-of-court
20 statement of child is admissible if . . ." And what you
21 are referring to is the -- the statement of the alleged
22 victim throughout. And even -- as I understand your
23 position, even if, at a later time, it is considered that
24 the -- the investigative review should terminate after she
25 has disclosed the events that occurred or the actual

1 alleged abuse and that the remainder would be admissible,
2 number one, because it's still her statement, yes?

3 MR. HILTON: That's correct.

4 THE COURT: Secondly, because the -- she makes some
5 references to Jess's statements. And I -- it -- with
6 regards to Jess's statements, as I understand your
7 position, that's relevant as to the report?

8 MR. HILTON: That's correct.

9 THE COURT: And -- and would not be -- Jess's
10 statements that she talks about would not be admitted for
11 the truth of the matter asserted, but only for the purposes
12 of showing that there was a report that was made?

13 MR. HILTON: That's correct.

14 THE COURT: And then, her statements, with regards to
15 the statements of the defendant, that those would be
16 admitted as being admissions by a party opponent?

17 MR. HILTON: That's correct.

18 THE COURT: And so those would be the basis, even if
19 it is at some point -- because this is a statute for which
20 we have no -- no case law directly dealing with the
21 statute. But if it is determined that it ought -- and
22 after the -- after she has relayed the -- the events of the
23 alleged assault, then the -- they're other hearsay
24 exceptions that would allow for the admissibility of the
25 remainder -- remaining part.

1 MR. HILTON: Yes, Your Honor.

2 THE COURT: And -- and then, finally, I think that you
3 mentioned state -- state of mind. She talks about crying
4 with her aunt, with Jess. And that would be her relating
5 her state of mind at that time.

6 MR. HILTON: That's correct.

7 THE COURT: All right. Very well.

8 You know, this is -- of course, this is a new statute.
9 And I -- i believe that -- and this would be a
10 determination of the Court for the -- for the hearsay
11 reasons that I've just talked about, along with the
12 definition of 17-25-175. I do believe that the portions
13 are admissible up to -- and what's the point? I'm sorry.
14 You've got that point on the tape.

15 MR. HILTON: It's 15:48:39.

16 THE COURT: And that's -- it concludes with the report
17 and then her -- her initial interaction -- alleged
18 interaction, as she relays it with the defendant, and it
19 terminates after that; is that right?

20 MR. HILTON: That's correct. And we have -- it -- it
21 stops right before the point where Dr. Elsey asks Complainant,
22 "Has Cesar ever done this to you before?"

23 THE COURT: I understand.

24 MR. HILTON: And then, in another hearing we decided
25 that that portion wouldn't be read.

1 THE COURT: Yes. Very well.

2 You know, I believe that it's still part of the
3 investigative interview. Obviously, it is statements of
4 the child. But if I am incorrect in making that
5 determination pursuant to 17-23-175, I believe that if you
6 remove this statute -- just plain-old, garden-variety
7 hearsay -- very well may have those parts -- and I would
8 believe that they would have those parts be admissible
9 under the hearsay exceptions that you have discussed.

10 So -- and really for the reasons that we've already
11 talked about, so the portions would come up -- come in up
12 to the -- the sections that you have talked about, Mr. --
13 Mr. Hilton. But the -- the defense is correct in those
14 other portions after that would certainly -- I've ruled on
15 the -- her -- I've ruled on what I ruled on yesterday. And
16 then, the remaining portions I think, would be -- would be
17 irrelevant. They'd have no relevancy on these issues. So
18 it will stop at that -- at that point.

19 MR. HILTON: And, Judge, I just have one thing -- just
20 ---

21 THE COURT: Sure.

22 MR. HILTON: --- to make clear: The times on the tape
23 -- there's actually two times. There's the time of your
24 media player, whatever that may be. And then, there's the
25 time that's actually a part of the video ---

1 THE COURT: Yes.

2 MR. HILTON: --- that displays on the Children's
3 Center camera. And -- and the -- and the Children's Center
4 time is the time that we're referring to and the time that
5 -- that -- any times that we're talking about on the record
6 ---

7 THE COURT: Good.

8 MR. HILTON: --- that's what we're talking about.

9 THE COURT: Thank you for that, because that's -- I
10 think that's so appropriate, because you never know, in the
11 future if it's needed to be reviewed, that -- we need -- we
12 need those times to be able to go with that tape. So I
13 think that's absolutely appropriate. And thank you for
14 that clarification.

15 All right. Anything further before we bring the jury
16 out?

17 MS. LEMATTY: Yes, Your Honor.

18 THE COURT: Okay.

19 MS. LEMATTY: With -- I believe we've also agreed,
20 with regard to the tape, to start the tape and -- and I
21 think Mr. Hilton might have the actual time -- when the
22 participants walk into the room. There is a portion of the
23 tape that it's just blank video of a room. And I think
24 we've agreed to start it when they walk in.

25 THE COURT: Yes.

1 MS. LEMATTY: Also, we would object to the state
2 qualifying Dr. Elsey as an expert with regard to his
3 interview of the child and his interview of the tape
4 pursuant to *State v. Douglas*. The Supreme Court held it
5 was unnecessary for the forensic interview to --
6 interviewer to have been qualified as an expert.

7 In this situation Dr. Elsey did not make any
8 recommendations for the child of which we're aware. There
9 was already a medical exam scheduled for her afterwards,
10 which he references, you know, at the end of the tape, the
11 -- the portion that's been excluded. His contact with her
12 -- it is what it is, in terms of what he does and -- and
13 talking to her and doing the interviews. And I believe he
14 can testify to all of those things without being qualified
15 as an expert.

16 THE COURT: Very well. Thank you. Yes, sir?

17 MR. HILTON: Just in response, Your Honor: There may
18 be some things that he testifies to that are necessary to
19 qualify him as an expert. And I think that it might be a
20 little premature at this stage to -- to make that
21 determination.

22 We agree that Dr. Elsey would -- would not be called
23 as an expert to testify in his expert opinion that Complainant
24 is truthful or Complainant is not truthful. I -- we agree
25 that's inappropriate testimony. However, there may be

1 other areas Dr. Elsey is required to testify to that would
2 necessitate him being qualified as an expert.

3 THE COURT: Okay. Very well. Well, we'll make that
4 determination before he's qualified as an expert, yes?

5 MR. HILTON: Yes. Thank you.

6 THE COURT: Very well.

7 MS. LEMATTY: Thank you ---

8 THE COURT: All right.

9 MS. LEMATTY: --- Your Honor.

10 THE COURT: All right. Anything further?

11 MS. LEMATTY: No, Your Honor.

12 THE COURT: Thank you. All right. Let us have our
13 jury.

14 (The jury enters at 10:44 a.m.)

15 THE COURT: (To the jury) Good morning, ladies and
16 gentlemen. And I apologize for keeping you in your jury
17 room. I can promise you we were not out here telling
18 stories and goofing it up. We were working, and we were
19 working towards just clarifying some issues and to
20 hopefully be very, very efficient with your time.

21 And I can assure you every tick of the clock that you
22 were in your jury room, I am aware of that. And again, we
23 were out here working to limit, to clarify, and to
24 illuminate perhaps some of the issues with the purpose in
25 mind of -- of continuing to -- to be sure that -- that the

1 work that we do is crisp and that your time here is as
2 limited as possible, so please do understand that.

3 Now -- what -- did y'all have biscuits this morning?

4 Oh, my gosh. Hot biscuits, yum. Wonderful.

5 Well, ladies and gentlemen, at this time I'm going to
6 ask that you please draw close, because I'm going to call
7 upon the state to please call their first witness. Yes,
8 ma'am.

9 MS. HALL: Thank you, Your Honor. The State would
10 call Complainant to the stand.

11 THE COURT: Very well. Good morning.

12 THE WITNESS: Good morning.

13 THE COURT: Can you raise your right hand for me,
14 please.

15 THE WITNESS: (Complies.)

16 THE COURT: And can you state your full name.

17 THE WITNESS: My full name is Complainant

18 .

19 THE COURT: And how do you spell Complainant?

20 THE WITNESS: Complainant .

21 THE COURT: And how do you spell Complainant?

22 THE WITNESS: Complainant .

23 THE COURT: And how do you spell Complainant?

24 THE WITNESS: Complainant .

25 THE COURT: Thank you so much.

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 Complainant , having

2 been first duly sworn, testifies as follows:

3 THE COURT: Very well. If you'd please be seated.

4 THE WITNESS: (Complies.)

5 THE COURT: All right.

6 DIRECT EXAMINATION BY MS. HALL:

7 Q All right. Let's see if we need to adjust that
8 microphone. Can you say something in there for me?

9 A That's okay.

10 Q It's okay? Okay.

11 THE COURT: Just back up. All right. I'm going to --

12 -

13 MS. HALL: All right.

14 THE COURT: --- do that for me one more time. Let me
15 see if I can adjust it.

16 Q And you don't have to get right up on top of it. It's
17 actually a pretty strong microphone. So you can sit back
18 just a little bit, but not -- yeah. We don't want you all
19 cocked back in your chair, of course.

20 THE COURT: And state your full name for me one more
21 time.

22 THE WITNESS: My full name is Complainant

23 .

24 THE COURT: Good.

25 Q Perfect volume. Perfect volume.

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 Do you feel comfortable up there?

2 A (Nods head up and down.)

3 Q You're ready to roll?

4 A (Nods head up and down.)

5 Q You're going to ---

6 THE COURT: And you ---

7 Q --- have to ---

8 THE COURT: --- know what ---

9 Q --- answer with ---

10 THE COURT: --- I'm going to ---

11 Q --- your voice.

12 THE COURT: --- ask you to do for me? And let me
13 explain to you why. This lady right here, Ms. Kelly, she
14 is our court reporter. And Ms. Kelly must take down
15 everything that you are saying. And so if you nod or you
16 say "uh-huh" or "unh-unh," we're all going to know probably
17 what you mean. But because Ms. Kelly has to take down your
18 responses, she even has to interpret what this means.

19 Well, for our record, for Ms. Kelly's purposes, if you
20 could answer with your voice with a "yes" or a "no" or --
21 or respond with a -- with a verbal response, rather than a
22 nod of the head or an "uh-huh" or an "unh-unh," that would
23 help us with our record. Again, we will probably know what
24 you mean, but it would just help us a whole lot if you
25 could do that for us. That -- let me give an explanation

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 to you -- but I bet everybody here was listening, so maybe
2 that'll help in general, okay?

3 THE WITNESS: Okay.

4 THE COURT: All right. Thank you.

5 DIRECT EXAMINATION BY MS. HALL (Continues):

6 Q All right. Complainant [sic], what do you
7 go by?

8 A "Complainant."

9 Q You go by "Complainant"?

10 And, Complainant, how old are you?

11 A I'm 11.

12 Q Okay. And -- and Complainant, can you tell me the
13 difference -- in your own words, the difference between a
14 truth and a lie?

15 A A truth is telling what really happened or what --
16 what -- what it is. A lie is lying about something about
17 something that did not happen, that never happened, and
18 will never -- does not exist -- exist -- existent.

19 Q Okay. And what does it mean to tell the truth?

20 A To me, to tell the truth is to tell what you very --
21 what you really know; and no matter what, it's okay to tell
22 the truth.

23 Q Okay. And what does it mean to tell a lie?

24 A A lie is when you lie about something and you -- not --
25 -- when you don't tell the truth. Like, if something

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 happened, but you don't tell somebody, that's what -- it's
2 -- that's lying.

3 Q Okay. And -- and I think the Judge just asked you a
4 question about "do you swear or affirm to tell the whole
5 truth." Did you understand that question?

6 A Yes, I did.

7 Q Okay. Complainant, where do you -- where do you live?

8 A I live Walterboro, SC.

9 Q Walterboro, SC?

10 A Uh-huh.

11 Q All right. And how long have you lived in Walterboro?

12 A I've lived -- until I was born.

13 Q Until you were born?

14 Okay. And how long -- or do you live in a particular
15 neighborhood?

16 A Yes. I live in Forest Hills.

17 Q And do you have any friends in your neighborhood?

18 A Yes.

19 Q Where do you go to school?

20 A I go to -- I go to -- I go to school at Forest Hills
21 Elementary.

22 Q And what -- what grade are you in?

23 A Fifth.

24 Q You're in fifth grade?

25 Does that mean you're going into fifth grade ---

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 A I'm going ---

2 Q --- in August?

3 A --- into -- I'm going into sixth grade. I'm going
4 into middle school.

5 Q Oh, okay. So where will you go then?

6 A I will go to the old high school ---

7 Q Do you ---

8 A --- in Walterboro.

9 Q Do you know the name of it?

10 A They're going to name it a new name -- name. I -- I --
11 -- they didn't tell -- I don't think they told us the new
12 name.

13 Q Okay. That's all right. And do you like school?

14 A Yes.

15 Q And do you have a favorite class?

16 A Uh-huh.

17 Q What is it?

18 A My favorite class is activity art. And if it was out
19 of the subjects, it would be math.

20 Q All right. So you like art a lot?

21 A (Nods head up and down.)

22 Q Can you -- can you answer with your voice?

23 A Yes.

24 Q Okay. Well, I may have you draw some art for us here
25 in a little while.

1 A Okay.

2 Q Complainant, who's in your -- who's in your immediate
3 family?

4 A In my family, like, who lives with me?

5 Q Yeah. Who lives in your house?

6 A My mom; my dad; my little sister; and my little
7 brother; and my cousin, Matt.

8 Q Okay. And what are your -- what are the names and
9 ages of your brothers and sisters?

10 A Sister is 6 years old, and Brother is 4.

11 Q So that makes you the oldest, huh?

12 A Yes.

13 Q Do you like that?

14 A Sometimes.

15 Q All right. And -- and who's in -- in -- who's in your
16 extended family? Who do you see from your family, outside
17 of the people that live in your house?

18 A My grandparents and my other -- my grandmother, and I
19 see -- I see my cousin, E.B. . And that -- that is about
20 it, really.

21 Q Okay. Who is -- who is E.B. 's mother?

22 A Jess, Jessica.

23 Q And who is Jessica to you?

24 A She's my aunt.

25 Q All right. Do you remember a time back last winter

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 sometime when you went to go spend the night with E.B. ?

2 A Yes, I do.

3 Q Do you remember about, you know, what date that was?

4 A I think it was in -- I don't know. It's hard to
5 remember.

6 Q Okay. And do you remember what you were doing that
7 day?

8 A My mom and my dad took me over to E.B. 's house so we
9 could play. And I was going to spend the night at E.B. 's
10 house.

11 Q All right. Who all was there with you?

12 A My aunt, E.B. , and -- and Cesar.

13 Q And where did you guys go, or what did you do while
14 you were there?

15 A We stayed at E.B. 's house all day. And me and E.B. ,
16 like, we played all day. And we -- we just -- we didn't --
17 we just played all day, basically.

18 Q Okay. And how old is E.B. ?

19 A Now E.B. is 11.

20 Q Oh, so she's your same age?

21 A Yes.

22 Q Well, that's pretty cool you have a cousin your same
23 age, huh?

24 A Yeah.

25 Q And did anything usual happen during -- during the day

1 that -- you know, while you were playing?

2 A During the day? No.

3 Q What did you do that night with -- with her?

4 A Me and E.B. watched a movie, and then we, like, fell
5 asleep.

6 Q Do you remember what movie you watched?

7 A No.

8 Q Okay. And where did you go to sleep?

9 A In E.B. 's bed.

10 Q And -- and I may ask for you to draw something for me.
11 And I'm going to see if we can get the annotation program -
12 --

13 THE COURT: Sure.

14 Q --- up for you. You think you could draw on that
15 screen for me?

16 A Yes.

17 THE COURT: (To the witness) Y'all got to ---

18 Q Good artist.

19 THE COURT: --- give me a minute to get it going.

20 (Off the record briefly to address technology issues.)

21 DIRECT EXAMINATION BY MS. HALL (Continues):

22 Q All right. Well, since you're such a -- a fan of
23 drawing, can you maybe draw for me what -- what Aunt Jess
24 and Uncle Cesar's house looks like?

25 A Their whole ---

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 Q You know ---

2 A --- house?

3 Q --- from the -- where the rooms are laid out.

4 A Uh-huh. Well, this right here is the living room;
5 it's the door.

6 Q Okay.

7 A And then, here's a hallway right around here. And
8 then, this over here is E.B. 's room. Put an "E" on it
9 over on the left. And then, this ---

10 THE COURT: (To the witness) You know what we're
11 losing? We're losing your voice. Hold on ---

12 THE WITNESS: Oh.

13 THE COURT: --- though. Y'all just come help her with
14 her microphone.

15 MS. HALL: Yeah. I'll do it.

16 THE COURT: But she ought ---

17 MS. HALL: Here you go.

18 THE COURT: --- not ---

19 MS. HALL: That's okay. While you're drawing, I'm ---

20 THE COURT: You're --

21 MS. HALL: --- just going to ---

22 THE COURT: You're ---

23 MS. HALL: --- move that over there.

24 THE COURT: There ---

25 MS. HALL: Okay?

1 THE COURT: --- we go.

2 A And this is my Aunt Jess's room. And down here is
3 where this -- a little room is just, you know -- just where
4 we kept some of her toys and stuff. And over here was a
5 room where it was going to be E.B. 's room that -- that
6 they were still working on.

7 Q Okay. So there were a couple bedrooms; is that
8 correct?

9 A Yes. And -- oh, wait. And the kitchen would be right
10 around, you know, here and would go to, like, over here by
11 E.B. 's room. And then, there was a back room around
12 there. It's hard -- there's no room to draw.

13 Q Okay. Well, where is the -- where, if any, are there
14 bathrooms?

15 A Oh. One in her room; there's one in the back room.
16 It's back there. And I think those are the only bathroom -
17 - oh, yeah. And then, there was one more bathroom on the
18 hallway.

19 Q Right about there?

20 A Uh-huh.

21 Q Can you put a -- maybe a "B" on where the bathrooms
22 are, just so I can remember?

23 A It's hard to draw.

24 Q I know.

25 A Here.

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 Q All right. Thank you so much. Where you guys were
2 playing that night, what rooms was -- were everyone in?

3 A Well, he was over here, working during the day
4 sometimes. And ---

5 Q When you say "here," where do you mean?

6 A Like, back where E.B. 's room -- he -- where E.B. 's
7 room was going to be.

8 Q All right. So that -- that room all the way down on
9 the left?

10 A Here.

11 Q Okay.

12 A That room.

13 Q And when you say "he," who is he?

14 A Cesar.

15 Q All right. And -- and where was Aunt Jess?

16 A She was sometimes in her room. But she might go out
17 to the kitchen to get something, but mostly in her room.

18 Q And where were you and E.B. ?

19 A We would play in the living room, like -- because
20 there's a window right here and it had a little platform.
21 We would play -- play right there sometimes. And we would
22 run across the living room, or we would go play in E.B. 's
23 room, mostly.

24 Q All right. And you said you went to sleep that night
25 in which room?

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 A E.B. 's room.

2 Q All right. Let me see if we can erase that for you.

3 And maybe we can -- I'll ask you to draw E.B. 's room for
4 me, then. Can ---

5 A Okay.

6 Q --- you do that?

7 A What it look like -- what ---

8 Q Uh-huh.

9 A --- it looks like?

10 Q Uh-huh.

11 A Okay. Well, right here is her bed, and -- right
12 around here. This is where the door is. And then, there
13 is a TV in the corner.

14 THE COURT REPORTER: (To the witness) I'm sorry?
15 There's a what?

16 THE WITNESS: TV in the corner.

17 A And then, there's some boxes around here. And then --
18 and then, like, there was a dresser right in here and still
19 some boxes over here, right around there. And here's her
20 dresser. And here was her closet. And she had -- she had
21 a nightstand right here. But they were still trying to get
22 one for over here, so she just but a lamp on the floor.

23 Q All right. That's an awesome-looking lamp. And you
24 said that there were boxes in the room. Why were there
25 boxes in the room?

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 A Because they were just moving in.

2 Q How long had they lived there?

3 A Maybe like a month or two. I really don't remember.

4 It's hard to. She was still unpacking her stuff.

5 Q And what was the condition of the house, in general?

6 A Like, the house was -- the condition of the house was
7 being worked on.

8 Q All right. Were they doing the work themselves, or
9 was somebody else doing the work?

10 A Doing the work theirselves. They were remodeling.

11 Q Okay. And was E.B. 's room clean or dirty?

12 A It was, like ---

13 MR. FARLEY: Objection: relevance.

14 THE COURT: Let me just see you. (To the witness)

15 It's okay. It's okay. I just need to ask a question of
16 the attorneys.

17 (Bench conference.)

18 THE COURT: You're going to need to ask the question
19 again, because I'm -- I'm afraid she's not going to
20 remember the question.

21 MS. HALL: Fair enough.

22 THE COURT: Overruled.

23 Q Complainant, was the -- was E.B. 's room clean or dirty?

24 A It was -- it was -- the -- it was, like, clean, but
25 she was still organizing. So I think it was a little messy

1 at the time.

2 Q Okay. And I'm going to -- if you don't mind, I'm
3 going to move your microphone back, since I think think
4 we're about done drawing. Does that work?

5 A Uh-huh.

6 Q Okay.

7 A Yes.

8 Q I think you stated earlier that you guys went to bed.
9 Do you remember what time Aunt Jess and Uncle Cesar went to
10 bed?

11 A She laid in her bed, watching TV, and fell asleep, so
12 I'm not really sure what time she fell asleep.

13 Q What about Uncle Cesar?

14 A I'm not sure.

15 Q The last time that you saw Uncle Cesar, do you know
16 what he was wearing ---

17 A Yes.

18 Q --- that day?

19 A He was wearing a green polo and jeans and some tan
20 working boots.

21 Q Okay. In -- in E.B. 's room where did you go to sleep
22 that night?

23 A Right here, and E.B. was over here.

24 Q Does that make E.B. closer to the door?

25 A Yes.

DIRECT EXAMINATION BY MS. HALL - Complainant

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1 Q How big was the bed?

2 A Queen-sized.

3 Q And how many points of entry are there into that --
4 into that room?

5 A I don't really understand you.

6 Q Okay. Is there more than one door to that room, or is
7 there a window or anything?

8 A Yes. There's one window. It is right here.

9 Q Okay. And what side of the house does that face?

10 A Towards the porch.

11 Q All right. Were there any lights on the porch?

12 A I don't think so.

13 Q And were there -- can you tell me about any sources of
14 light there were in that room ---

15 A In her room?

16 Q --- in E.B. 's room?

17 A The lamp.

18 Q Uh-huh.

19 A I think there was another one on her lamp side over
20 here; the closet light; her TV. And I think she had a
21 dolphin light, like, that glowed right on top of her
22 dresser.

23 Q Okay. And can you tell me: Were any of those lights
24 on that night when you went to bed?

25 A One.

1 Q Which one?

2 A The closet light.

3 Q Okay. And -- and is there any reason the closet light
4 was on why -- when you went to bed?

5 A I don't know why it would be on. I think maybe E.B.
6 left it on.

7 Q Okay. You said there was a closet in that room. Was
8 there anything in particular they kept in that closet?

9 A E.B. 's clothes and her shoes.

10 Q Okay.

11 A And the towels.

12 Q You said "the towels." What do you mean?

13 A Like, for -- like, a towel to dry off with after you
14 take a shower or a bath.

15 Q Were they just E.B. 's towels, or were they the whole
16 family's towels, or what ---

17 A Like, the whole family towels. There was -- there was
18 things -- see, they didn't have anywhere to put the towels,
19 so they just -- they put some in her mom's closet and in
20 E.B. 's closet.

21 Q Okay. What were you wearing when you fell asleep that
22 night?

23 A I was wearing my pajamas. They were long-sleeved;
24 they were blue. And they had -- I think it was, like,
25 "love" on it. And it had -- they were some pajama pants

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1 that had, like, "love" and "peace" and -- on -- on the
2 bottom -- on them.

3 Q Okay. Did -- do you remember if you were wearing
4 panties when you went to bed that night?

5 A Yes, I was.

6 Q Okay. And what time did you fall asleep, to the best
7 of your memory?

8 A I didn't ---

9 MR. FARLEY: Your Honor ---

10 A --- really ---

11 MR. FARLEY: --- asked and answered.

12 THE COURT: I'll -- I'll allow it. Thank you.

13 Overruled.

14 Q Do you remember what time you fell asleep that night?

15 A I wasn't really paying attention to time, but when the
16 -- when -- when the movie was about -- about over.

17 Q Okay. And after you fell asleep, what's the next
18 thing you remember?

19 A I remember being woken up.

20 Q And how were you awoken?

21 A I was woken by a slight -- by, like, the touching my
22 hand.

23 Q Okay. And explain to me what happened after that.

24 A I remember my hand being pulled from me and putting --
25 putting on -- on -- putting on his -- on his private parts.

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1 Q Okay. How were you laying in the bed? Were you
2 laying on your back or your stomach or your side or, you
3 know -- do you remember?

4 A I think I was either laying on my stomach or my side.

5 Q Okay. And how did you know that your hand was on his
6 privates?

7 A Because I could -- I could -- I could feel it. And I
8 was awoken, but I acted like I was asleep.

9 Q Why'd you do that?

10 A Because I was scared.

11 Q Okay. Where was he?

12 A Right beside me.

13 Q Was he standing up or sitting down, or what was he
14 doing?

15 A Laying down, I think.

16 Q And what side of the bed was he laying?

17 A Right -- on that side.

18 Q Okay. Did you move your hand over to his privates, or
19 did he move his hand ---

20 A He ---

21 Q --- your hand?

22 A He moved my hand.

23 Q Okay. And you said you could feel it. How -- how did
24 that feel?

25 A Soft, like, not hard. Soft texture.

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1 Q Okay. And would you describe it as the texture of
2 clothing or the texture of skin?

3 MR. FARLEY: Objection, Your Honor: leading.

4 THE COURT: Sustained.

5 A Texture of skin.

6 THE COURT: Move that that be stricken. (To the
7 witness) I have just -- I -- you don't know that I just
8 sustained an objection. And don't you worry about that.
9 Don't you worry about that. But Ms. Hall's going to ask
10 you another question.

11 THE WITNESS: Oh, okay.

12 THE COURT: All right? All right. (To Ms. Hall) You
13 need to just help her, because she's not going to know what
14 that means.

15 MS. HALL: I understand.

16 THE COURT: Yes.

17 Q Complainant, did you ever see Uncle Cesar's privates at
18 that time?

19 A Yes.

20 Q All right. And -- and what did you see?

21 A At that time?

22 Q Uh-huh.

23 A I -- I saw -- I saw his privates, like you asked me.
24 I said yes, I did.

25 Q Okay. And was your hand still on his privates or

1 moving or some -- something else?

2 A It -- moving.

3 Q Can you show me what that movement looked like?

4 A Back and forth.

5 Q Can you show me with your own hand?

6 A Like that.

7 Q Okay. How long do you -- would you estimate that your
8 hand was on his privates?

9 A Estimate?

10 Q Uh-huh.

11 A Not that long, but a long time.

12 Q And could you tell what Uncle -- Uncle Cesar was
13 wearing at that point?

14 A Yes. The same thing: polo shirts, jeans, and the
15 boots.

16 Q And were his pants on or off?

17 A They were on.

18 Q Did Uncle Cesar say anything to you when your hand was
19 on his privates?

20 A No.

21 Q Did he make any noises when his hand was on your
22 privates?

23 A No.

24 Q When he had your hand on his privates, did he touch
25 you anywhere else on your body?

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1 MR. FARLEY: Objection, Your Honor.

2 THE COURT: All right. Rephrase your question.

3 Q During that time period, did he have your -- or his
4 hands anywhere else on your body?

5 A In that time period? No.

6 Q And during that same time period, did he have your
7 hands anywhere else on his body?

8 A No.

9 Q Okay. What did he do after he put his hands -- your
10 hand on his privates?

11 A He got up and he zipped his pants up and buckled them.

12 THE COURT REPORTER: (To the witness) I'm sorry. Say
13 that one more time.

14 THE WITNESS: He got up and zipped his pants and
15 buckled them.

16 Q Did he ever remove any piece of your clothing?

17 A He didn't, like, remove them, but just, say, in a way,
18 yes.

19 Q What do you mean by that?

20 A Pulled down, but not removed.

21 Q Okay. And what did he pull down?

22 A He pulled down my pajama pants.

23 Q And what did he do after that?

24 A He pulled down my underwear.

25 Q Okay. And you said "not removed." What do you mean

1 by that? Where -- where were they, then?

2 A On my ankles.

3 Q And -- and what did he do at that point?

4 A Then he licked my private, a place where I shouldn't
5 have been touched.

6 Q Okay. How did -- how did that feel?

7 A Not so nice.

8 Q And was there anything wet on your body at that time?

9 A Yes.

10 Q What was wet?

11 A Saliva. Whatever it was, like saliva.

12 Q Okay. Was there -- what parts of his body were he --
13 was he using to touch you?

14 A His hands and his mouth.

15 Q Okay. When you say "his hands," what was he doing
16 with his hands?

17 A Like, he -- he wiped off the saliva with a towel with
18 his hands.

19 Q Okay. At that point were his privates -- were they
20 covered or were they -- were they out?

21 A They were covered.

22 Q And was he making any sounds at that point?

23 A No.

24 Q Was he saying anything at that point?

25 A No.

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1 Q Did you hear anything at all during the time when he
2 was licking your privates?

3 A Not at -- no.

4 Q And why did he stop licking your privates?

5 A Because ---

6 MR. FARLEY: Your Honor ---

7 A --- he ---

8 MR. FARLEY: --- Your Honor, objection: speculation.

9 THE COURT: Let me see you just a second.

10 (Bench conference.)

11 Q Complainant, how long do you think he was licking your
12 privates?

13 A Really -- I'm really -- I don't know. Like five/eight
14 minutes.

15 Q Okay. Was it longer a period of time when he was
16 licking your privates than when he had his hand on -- your
17 hand on his private?

18 A Longer when he had my hand on his privates.

19 Q And after he finished licking your privates, what did
20 he do?

21 A He threw the cover over me and went -- and then he --
22 he wiped my privates off and threw the covers over me and
23 went out of the room.

24 Q At any point was Uncle Cesar touching his own
25 privates?

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1 A Yes.

2 Q When was that?

3 A Right after he got up from the bed.

4 Q And -- and can you describe to me what he was doing?

5 A He -- something was -- some -- something was going
6 into -- something was coming out of him, going into E.B. 's
7 polka-dotted trash can.

8 Q Okay. Can you explain to me any sounds or any motions
9 that -- that he made in touching his own privates?

10 A Squeezing.

11 Q Okay. And how do you -- how do you know that he was
12 touching his own privates?

13 A Because I squinched my eyes where I could see.

14 Q And -- and how far away from the bed was he when he
15 was ---

16 A He ---

17 Q --- doing that?

18 A He was at -- like, at the end. But, like, on -- at --
19 at the end, but, like -- yeah -- at the end of the bed.

20 Q Close to the bed or far away from the bed?

21 A In the middle.

22 Q Okay. When you say that "something came out of his
23 privates," what do you mean?

24 A I don't know what it was, but it wasn't just, like, it
25 was liquid. It was a solid-like liquid, a thick liquid, it

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1 looked like ---

2 Q Okay.

3 A --- to me.

4 Q Could you compare it to anything else?

5 A Like, it was ---

6 Q Like what?

7 A Like, this -- they have this candy that's, like, a gel
8 candy that you can squish into your mouth.

9 Q Okay.

10 A And it kind -- it's -- it kind of sort of looked like
11 that. Not really, but I couldn't sort of compare it to
12 anything, really.

13 Q Okay. Do you -- can you describe -- I think you've
14 described its texture, but can you describe its color?

15 A A darkish-greenish.

16 Q Okay. Let me ask you: How did you know it was Uncle
17 Cesar in the room?

18 A Because I could see him. I could see his face.

19 Q How could you see his face?

20 A With my eyes. I could -- I know -- I know -- I know
21 his face.

22 Q Okay. I think you -- you stated that he wiped you
23 off. What did he wipe you off with?

24 A A towel.

25 Q Do you -- did you see where the towel went?

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1 A No, I did not.

2 Q And what did he do next?

3 A Then he threw the covers over me and left the room.

4 Q All right.

5 A And I heard the bathroom door shut.

6 Q Did he ever come back into the room?

7 A Yes. I -- when he left and -- he left -- he went out
8 of the room; then I pulled up my pants. I remember he was
9 coming back in, so I act like I was waking up.

10 Q All right.

11 A And I'm sorry. I made a mistake. Then he left the
12 room, and then I heard the bathroom door shut.

13 Q Okay. So he left the room. How long before he came
14 back into the room?

15 A Minute or so.

16 Q Okay. Was there a light in the hallway that was on,
17 that you could tell?

18 A No. Except for the bathroom light was on.

19 Q And I think I remember: The bathroom is in the
20 hallway?

21 A Yes.

22 Q Is it very far away from E.B. 's room?

23 A Not really. No.

24 Q When he reentered the room, you said that you were
25 doing something. What'd you do?

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1 A I was -- I was acting like I was really waking up.

2 Q Okay. And did -- did Cesar say anything at that
3 point?

4 A I woke up and I said, "What -- what's going on?"
5 And he said, "Go back to sleep."

6 Q Okay.

7 A He said he was just in there to get a towel because he
8 -- because he had to go take a shower or something.

9 Q Where did he go in the room when he came back into the
10 room?

11 A He went to the closet and got a towel out of the
12 closet.

13 Q And how long was he in the room that period of time?

14 A Couple seconds. He just came back in, in like a
15 minute or so and just went straight back out.

16 Q And what, if anything, did you hear after he exited
17 the room that second time?

18 A I heard the bathroom door close and I heard the -- the
19 shower start. And then I got up and I went to my aunt's
20 room.

21 Q And let me ask you this: Was -- where was E.B.
22 during all this?

23 A She was in the bed. And to me I -- she was asleep.

24 Q Did she ever roll over or anything during it?

25 A Like, did you mean, like, roll over and wake up?

1 Q Yes.

2 A No. She never waked up, but she moved a little on the
3 bed, just toss and turn.

4 Q Is she a heavy sleeper or a light sleeper or ---

5 A She's ---

6 MR. FARLEY: Objection ---

7 Q --- something else?

8 A --- light.

9 MR. FARLEY: --- Your Honor: asking for opinion.

10 THE COURT: Let me see you.

11 (Bench conference.)

12 Q All right. I'm going to rephrase that, Complainant. Have
13 you spent the night -- or how often had you spent the night
14 with E.B. before then?

15 A Couple times.

16 Q And when you guys spend the night together, did you
17 normally sleep in the same bed or in different areas or ---

18 A We usually just slept in the same bed.

19 Q And in your experience, having slept with her before,
20 was she a -- a hard sleeper or a light sleeper or something
21 else?

22 A I know E.B. , and she's always been a hard sleeper.

23 Q Okay. Did, at any point, you try to wake up E.B. ?

24 A Yes.

25 Q When did you try to wake up E.B. ?

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1 A After my -- when we were getting ready to leave.

2 Q Okay. And were you able to do that?

3 A Uh-huh. It was hard, but I had to get my aunt to help
4 me wake her up.

5 Q All right. Well, let's -- let's backtrack just a
6 little bit. You said that you jumped out bed and went to
7 go see Aunt Jessica. Where was Aunt Jessica?

8 A In her room.

9 Q All right. And what was she doing in her room?

10 A She was asleep.

11 Q Where was Uncle Cesar when you went in to go see Aunt
12 Jessica?

13 A He was in the bathroom.

14 Q And what did you tell Aunt Jessica?

15 A I told her -- I told my aunt what -- what just
16 happened.

17 Q Do you remember specifically what you told her?

18 A I told what -- what he did to me. I told her that --
19 I told her basically what he did to me.

20 Q When you say "basically what he did to you," do you
21 remember ---

22 A What -- yes. What -- what happened.

23 Q Okay. Can you explain to me the actual words that you
24 used to tell her?

25 A I said -- I said, "Jess, I -- I was in there and Cesar

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1 came in there and started doing very inappropriate stuff to
2 me and I did not like it. It was really gross and stuff."

3 Q Okay. Did you ever tell her any specifics?

4 A That -- that's what I told her.

5 Q Okay. And -- and what did Aunt Jess do at that point?

6 A He -- well, he walked in the room and she said, "Is
7 this true?" And ---

8 MR. FARLEY: Objection ---

9 A --- he ---

10 MR. FARLEY: --- Your Honor.

11 MS. HALL: Should we approach?

12 THE COURT: Yes.

13 (Bench conference.)

14 MS. HALL: All right, ^{Complainant}. I'm sorry to have to
15 keep stopping you.

16 MR. FARLEY: Your Honor, did you rule on the record?

17 THE COURT: Oh.

18 MR. FARLEY: Did you ---

19 THE COURT: Thank you. Yes. Yes. The objection is
20 sustained as to the statement of Jess.

21 (To Ms. Hall) All right. And you're going to lead
22 her around ---

23 MS. HALL: Right.

24 THE COURT: --- that? Sure.

25 DIRECT EXAMINATION BY MS. HALL (Continues):

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1 Q And -- and, Complainant, I'm not going to ask you any
2 questions about what Jess said at all. But what I want to
3 do is -- is ask you: What did Cesar do or say, if
4 anything, in response to whatever Jess said? But we're not
5 going to talk about what Jess said.

6 A Well, after what she said, he said that -- that -- he
7 said, "I can't" -- he was, like, "I did" -- he said, "I did
8 not do -- that's not true." And was just, like -- he was,
9 like -- he was, like, "Why don't you believe me?"

10 And then I got my stuff -- I -- it's hard to explain.
11 Well, I got up and got my stuff.

12 Q Okay.

13 A And I said, "Where is my shoes?" So -- but I can't
14 tell you what she said. So -- so I just got them, because
15 they were in her room. Because earlier we were jumping on
16 her bed, because she lets us jump on her bed.

17 Q Okay.

18 A And -- and then I -- she told -- oh. And then I tried
19 to wake her up.

20 Q You tried to wake who up?

21 A E.B. . And then she helped me wake her up, because I
22 couldn't wake her up.

23 Q Who is "she" that helped you wake E.B. up?

24 A Jess.

25 Q Okay. And did Uncle Cesar ever approach you at any

1 point?

2 A When we were walking out the door -- he knows that I
3 have asthma, and he blew his cigarette smoke in my face.

4 Q Did he ever try to touch you at any point after ---

5 A No.

6 Q What was he wearing at that point?

7 A Same thing.

8 Q Did he ---

9 A The whole night he wore a green polo with jeans and
10 those boots, the whole night that I was there.

11 Q Okay. And you said when he left -- when you left, he
12 was smoking a cigarette. Where was he?

13 A He was on the porch when we were walking off the front
14 porch. And he was sitting in one of the rocking chairs
15 that they have on the porch.

16 Q Who was with you?

17 A My -- my Aunt Jess and E.B. .

18 Q And where were you guys going?

19 A We were going to my nanny's house.

20 Q Whose car did you leave in?

21 A Hers. My Aunt Jess's car.

22 Q Okay. And you said you were going to Aunt Jess -- or
23 to Nanny's house. Before I move on, just so I'm certain:
24 When Uncle Cesar licked your privates, was that at Aunt
25 Jess and Cesar's house?

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1 A Yes.

2 Q Okay. And so you -- you went to your nana's house --
3 or nanny ---

4 A Nanny's.

5 Q What do you call her? Okay.

6 A Uh-huh.

7 Q Okay. And -- and who is your nanny?

8 A My nanny is my mom's mother.

9 Q Okay. And where does she live?

10 A She lived in Walterboro.

11 Q Who all was there when you got to Nanny's?

12 A Nanny, me, E.B. , Jess, and my mom.

13 Q And what time do you think that probably was that you
14 got there?

15 A Either like one in the morning or at -- in the --
16 like, maybe like three in the morning or something.

17 Q Okay.

18 A Not certain.

19 Q What did you do when you got to Nanny's?

20 A We talked about what happened. And we just -- we were
21 like -- they were asking me, you know, what happened, what
22 in particular -- like, my aunt asked me what in particular
23 did he do.

24 Any mom was, like, "What's going on? What happened?

25 Like, tell me what's going on." And ---

1 Q And did you tell them what was going on?

2 A Yes.

3 Q Who -- well, what happened after you went to your
4 nanny's house?

5 A We -- like I said, we talked. And my mom suggested
6 going to the -- I don't know what you called it -- just to
7 -- you know, see what happened. But ---

8 MR. FARLEY: Objection ---

9 A --- I didn't ---

10 MR. FARLEY: --- hearsay.

11 Q Okay. Where did you go next?

12 A We stayed there, because I didn't -- I didn't want to
13 go where she suggested. And so I remember I had to -- I --
14 I went to the bathroom and I wiped myself. She looked at
15 toilet paper and then she just -- she just checked my
16 underwear and see if anything was in there.

17 Q And did you stay the night at Nanny's house, or did
18 you go someplace else?

19 A I went to my house.

20 Q Okay. And do you remember about what time you went to
21 bed when you finally got back to your house?

22 A Well, the -- the things was: I never really got to
23 sleep. I never slept. But the time that I got back to my
24 house?

25 Q Uh-huh.

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1 A I'm not really certain. But we stayed at my nanny's
2 house for, like, a while. We were going to try to stay
3 there, but we -- we -- we didn't. We just went home.

4 Q Okay. Did you ever see a doctor at any point?

5 A Yes.

6 Q Who was that?

7 A I went to go see Dr. Elsey. Well, first -- I don't
8 know. I saw Dr. Elsey and Dr. -- Dr. DiMarco.

9 Q Okay.

10 A But I don't know which one I -- I can't remember which
11 one I saw first.

12 Q Do you know Dr. DiMarco?

13 A Yes.

14 Q How do you know her?

15 A Her -- her sons, Anthony and Michael, her twins, they
16 go to -- they were -- they went to school with me at that
17 time in third grade.

18 Q Okay. Had you talked to her or seen her before?

19 A Before that had happened?

20 Q Uh-huh.

21 A Yeah. I think it was last summer.

22 Q Okay. And -- and when you met with Dr. DiMarco, what
23 did do?

24 A She examined me.

25 Q Did you guys talk about what had occurred with Uncle

1 Cesar?

2 A I'm trying to remember. I think I -- I don't think I
3 did, but I think I told her just a little bit what
4 happened.

5 Q Okay. And who was the next person that you went to go
6 see about what happened with Uncle Cesar?

7 A Dr. Elsey.

8 Q And where was that?

9 A That was at the children's center in North Charleston.

10 Q Okay. And who did you talk to there?

11 A I talked to Dr. Elsey. And this lady was there; I
12 can't remember her name.

13 Q Okay. And do you remember if you were being recorded
14 when you talked to Dr. Elsey?

15 A Yes. There was a camera.

16 Q And -- do you see Uncle Cesar in the courtroom today?

17 A Yes, I do.

18 Q Is that the person who licked your privates?

19 A Yes.

20 Q Can you point him out for me?

21 A He is the man right over there at the end of that
22 table.

23 Q Okay.

24 MS. HALL: I would ask that the record reflect that
25 the victim has pointed out the defendant, Cesar Portillo.

1 THE COURT: Very well.

2 MS. HALL: Just a moment, Your Honor.

3 All right, Complainant. I think that is the amount of
4 questions I'm going to ask you for right now. But if you
5 would, please answer any questions that either Mr. Farley
6 or Ms. LeMatty may have to ask you right now, okay?

7 THE COURT: (To the witness) I can just tell you:
8 Before we do that, we're going to take a little break,
9 okay?

10 THE WITNESS: Okay.

11 THE COURT: All right. (To the jury) Ladies and
12 gentlemen, we're going to take our morning break. Please
13 leave your notes in your chair. We're going to take about
14 15 minutes. Be mindful not to discuss this matter or allow
15 anyone to discuss it with you. Again, we'll take about 15
16 minutes.

17 If we have any smokers, let them smoke. All right.
18 You'll step to your jury room.

19 (The jury exits the courtroom at 11:38 a.m.)

20 THE COURT: (To the witness) Here's what I need you
21 to do for me, is you take a break too. And ---

22 THE WITNESS: Yes.

23 THE COURT: --- enjoy your break. But I'm going to
24 ask you to do something for me.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Because you're still on the stand, we have
2 a rule. And the rule is that we ask witnesses to talk
3 about anything else in the whole wide world that they want
4 to talk about, but just don't talk about your testimony,
5 because you're still on the stand. Can you do that for me?
6 Ask me questions if you don't understand what I'm talking
7 about. Let me tell you why. Can I tell you why?

8 THE WITNESS: (No audible response.)

9 THE COURT: Because under our rules, Ms. LeMatty and
10 Mr. Farley have an opportunity just to ask some questions
11 too. So that's what going to happen next. And because --
12 because we're going to take a little break -- go get us --
13 get something to drink; maybe something -- a little snack;
14 and I've got to go to the little girls' room -- what we
15 could do is we could take a little break.

16 So that's why I'm going to ask you just during this
17 little break, just -- I'm going to ask you not to discuss
18 your testimony with anyone. Now, when you come back, then
19 it's okay. But just right now, can you do that for me?

20 THE WITNESS: (Nods head up and down.)

21 THE COURT: Yeah?

22 THE WITNESS: Uh-huh.

23 THE COURT: You're probably ready for a little break.

24 THE WITNESS: Uh-huh.

25 THE COURT: You may -- might it might be like me: You

1 need to go to the little girls' room. But that's where I'm
2 going. That's why we can take a little break. Okay?

3 THE WITNESS: Okay.

4 THE COURT: Very well. And you can come on right down
5 here with Ms. Hall and your family. That's fine. Okay?

6 THE WITNESS: Okay.

7 THE COURT: Come on back down, and we'll take a little
8 break.

9 MS. HALL: All right. You want to walk on down?

10 THE COURT: All right. We're going to take about 15
11 minutes.

12 (Off the record from 11:41 a.m. until 12:07 p.m.)

13 THE COURT: All right. Anything from the state before
14 we bring the jury out?

15 MS. HALL: Nothing for the state, Your Honor.

16 THE COURT: And from the defense?

17 MR. FARLEY: No, Your Honor.

18 THE COURT: Very well. All right. Let us have the
19 jury.

20 (To the witness) You still got some water here. You
21 do know that water's there for you, right? That cup of
22 water is yours? You know that?

23 THE WITNESS: Uh-huh.

24 (The jury enters at 12:07 p.m.)

25 THE COURT: (To the presiding juror) All right. You

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1 found them all, gathered them all, and got them all back?

2 You're getting good at this.

3 Ladies and gentlemen, at this time we will continue
4 with the state's case and the cross-examination. All
5 right. Yes? Yes, Mr. Farley?

6 MR. FARLEY: Thank you, Judge. May it ---

7 THE COURT: Yes.

8 MR. FARLEY: --- please the Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION BY MR. FARLEY:

11 Q Hello, Complainant. How are you?

12 A Good.

13 Q My name is Mitch Farley, and I represent Cesar. I've
14 -- I've got some questions to ask, okay? I'm not trying to
15 be mean or scary or confuse you at all, okay?

16 A Okay.

17 Q If you have any question, if you don't know what the
18 answer is, you can just say, "I don't know," okay?

19 A Okay.

20 Q All right. I want to go back to that night where this
21 incident occurred. Were you in the bed -- you and your
22 cousin in bed together when Cesar walked in? Were y'all
23 asleep and then Cesar walked in, or was Cesar in bed with
24 you?

25 A We were asleep, and he walked in.

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1 Q So y'all were both asleep, and Cesar walks in; is that
2 correct?

3 A Yes.

4 Q And did he immediately lay down in the bed with you?

5 A Well, that part is hard to tell, because he woke me up
6 when he was laying in the bed. So to that question, I
7 would answer yes.

8 Q And -- and you said that the light was on.

9 A Yes, it was.

10 Q Did he turn that light on?

11 A I'm not -- I'm not sure. I think he did.

12 Q You think he did?

13 A Yes.

14 Q So does that mean you're not sure, but you think he
15 did?

16 A Yes.

17 Q Okay. There were no other lights in the room, besides
18 the closet light?

19 A That were on. There was only one on, but the other
20 lights were off.

21 Q Can you tell me about the door to the closet? What
22 was the door to the closet like?

23 A It -- there was no door to the closet.

24 Q You said that when he came in there, he was fully
25 dressed; is that right?

1 A Yes.

2 Q And when he left, he was fully dressed?

3 A Yes.

4 Q I -- I think you said that you didn't see his private,
5 but you know what it looked like.. Can you tell me about
6 that?

7 A Well, I said I did -- I did see -- like, I did see his
8 private, because -- like, when he was standing up -- when
9 he was standing up, I did see his privates.

10 Q Was he getting in and out of the bed? You said he was
11 sitting down and then standing up and then getting back
12 down. Was he getting in and out of the bed? Is that ---

13 A He was -- he got in the bed. And then when he was
14 done, he got up and did something else.

15 Q Okay. You don't know where he got the towel that he
16 wiped you off with, do you?

17 A I do.

18 Q Where was that?

19 A In E.B. 's closet.

20 Q So he went into the closet and got the towel?

21 A Yes.

22 Q And this horrible thing happened, and then he wiped
23 you off, and then he threw it on the ground?

24 A I didn't say he threw it on the ground. I told you I
25 do not know where he put it.

CROSS-EXAMINATION BY MR. FARLEY - Complainant

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1 Q Okay. And then he leaves the room?

2 A Yes.

3 Q And then he comes back in?

4 A Yes.

5 Q And gets another towel?

6 A Yes.

7 Q Before any of this bad stuff happened, you told the
8 Court that you were awake the whole time, right?

9 A Yes.

10 Q So before all this bad stuff started to happen, why
11 didn't you say something to Cesar?

12 A Because I was scared, but I knew that I needed to tell
13 somebody, because that's not going to -- I'm not going to
14 let anybody do that to me, because that's very
15 inappropriate. And it's my -- that's -- that's my
16 decision.

17 Q Why did you decide to say something to him when he
18 came back into the room?

19 A Because I acted like I was waking up. And if it's --
20 that -- because I thought if -- I felt like that was the
21 thing to do.

22 Q How bright would you say it was in that room? Was it
23 as bright as it is in here today?

24 A No.

25 Q Was it -- was it a lot darker than this or, I mean ---

CROSS-EXAMINATION BY MR. FARLEY - Complainant

196

1 A Not a lot.

2 Q You were there. Can you try to describe how dark it
3 was?

4 A It was -- so the closet light was just on, but it was
5 a very bright -- so it lit up maybe, like, half the room.

6 Q Half the room?

7 A Yes.

8 Q And in this entire time that this went on, E.B. never
9 woke up?

10 A Yes, she never woke up.

11 Q Did you ever try to wake her up?

12 A After it happened. But after I went and go -- told --
13 told my aunt.

14 MR. FARLEY: Okay. Your Honor, may I have a moment of
15 the Court's time?

16 THE COURT: You may.

17 Q E.B. [sic], was it hot or cold outside that time --
18 that time of year? Do you remember?

19 A Yes. It was cold.

20 Q It was the winter?

21 A Yes.

22 Q Were there a lot of blankets and sheets and stuff on
23 the bed to keep y'all warm?

24 A Well, there was the sheet and her -- and we used the
25 big cover that goes over that.

CROSS-EXAMINATION BY MR. FARLEY - Complainant

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1 Q Okay. And you were wearing long pajama bottoms?

2 A Yes.

3 Q Okay. Okay.

4 MR. FARLEY: Your Honor, is it -- is it all right if I
5 walk up to this picture?

6 THE COURT: You may walk up to the picture. What
7 it'll do -- what you're going to have to be careful about,
8 though, it's not blocking the jury, because -- because they
9 got to be able to see what it is that you want to point to.

10 Q Can you -- can you see this? This is the door,
11 correct?

12 A Yes.

13 Q And Cesar had to come in through the door; is that
14 right?

15 A (Nods head up and down.)

16 Q Walk all the way around the bed, right?

17 A Yes.

18 Q And then come and stop about right here before any of
19 this stuff happened?

20 A Yes.

21 Q And who was sleeping in this spot?

22 A E.B.

23 Q And that's you, right?

24 A Yep.

25 Q So E.B. is right there just beside the door; is ---

1 A Yep.

2 Q --- that correct?

3 He comes around ---

4 A Uh-huh.

5 Q --- goes over between you and the closet; is that
6 right?

7 A Yes.

8 THE COURT REPORTER: (To the witness) Is that a
9 "yes"?

10 THE WITNESS: Yes.

11 MR. FARLEY: I don't have any further questions at
12 this time, Your Honor.

13 THE COURT: All right. Redirect?

14 MS. HALL: No redirect from the State, I believe.

15 THE COURT: Very well. You may come right back down,
16 okay?

17 (The witness exits the stand.)

18 THE COURT: And if you want to bring your water with
19 you to sip, that's fine too.

20 All right. Very well. Call your next witness,
21 please.

22 MS. HILTON: The State would call Jessica Atkinson.

23 THE COURT: (To the witness) Hi. Just come on
24 around, please, for me.

25 JESSICA ATKINSON, having been duly

1 sworn, testifies as follows:

2 THE COURT: Thank you. Please be seated. And when
3 you are seated, there are a couple of things I want to tell
4 you: First of all, there'll -- there'll be some water
5 that's going to come to you, because I didn't want that to
6 startle you. And then, I've got to adjust the microphones.
7 And by no means am I a techno geek; I am techno-challenged.
8 So I'm going to need you to work with me a little bit. So
9 what I'm going to ask you to do for me, please, ma'am, is
10 just state your full name for the record and spell your
11 last name. And that's going to be a sound check, too, for
12 me, okay?

13 THE WITNESS: Okay.

14 THE COURT: Thank you.

15 THE WITNESS: Jessica Atkinson Portillo.

16 THE COURT: And go ahead; raise that microphone. I
17 know -- go ahead. You can move it to where it's
18 comfortable for you.

19 THE WITNESS: (Complies.)

20 THE COURT: Thank you so much. Try it again, now.
21 Let me see how we're doing.

22 THE WITNESS: Jessica Atkinson Portillo.

23 THE COURT: Very good. Very well. And spell your
24 last name.

25 THE WITNESS: Both of them?

DIRECT EXAMINATION BY MR. HILTON - JESSICA PORTILLO 200

1 THE COURT: Sure.

2 THE WITNESS: A-t-k-i-n-s-o-n; and Portillo, P-o-r-t-
3 i-l-l-o.

4 THE COURT: All right. Your witness.

5 MR. HILTON: Thank you, Your Honor.

6 THE COURT: Yes.

7 DIRECT EXAMINATION BY MR. HILTON:

8 Q May I call you "Jessica"?

9 A Sure.

10 Q Jessica, where are you living now?

11 A With my mother in Walterboro.

12 Q That's in Walterboro. All right. And how -- little
13 Complainant that just testified, how -- how do you know Complainant?

14 A She's my niece, my sister's daughter.

15 Q All right. And the defendant in this case, Cesar
16 Portillo, how do you know him?

17 A He's my husband.

18 Q Okay. So this case kind of puts you in an awkward
19 family situation?

20 A Very much.

21 Q Where were you living back in January -- specifically,
22 January 16th, 2010?

23 A At our house in Summerville.

24 Q Do you remember the address?

25 A

DIRECT EXAMINATION BY MR. HILTON - JESSICA PORTILLO 201

1 Q That's in Dorchester County?

2 A Yes, it is.

3 Q And Drive, where is that?

4 A It's kind of a -- very close to the intersection of
5 Dorchester Road and -- and 17A.

6 Q Smitty Citgo, I think, is what that is over there? Or
7 Hess or something now?

8 A Yeah. It's a BP now.

9 Q Okay. Let me turn your attention to January 16th,
10 2010. Do you remember what was going on that day?

11 A I believe it was a Saturday, maybe. Complainant had come
12 to visit and spend the night. She occasionally did. And
13 the children played and watched movies.

14 Q Had y'all done any work at the house or anything?

15 A Some -- some work had been started, but never
16 completed.

17 Q And who all was there that day?

18 A E.B. , Complainant, myself, and Cesar.

19 Q You said Complainant came to spend the night?

20 A Yes.

21 Q And who is E.B. ?

22 A My daughter.

23 Q How old is E.B. ?

24 A She's 11 now.

25 Q And so it was your daughter. That would be, I guess,

1 Complainant's cousin?

2 A Yes.

3 Q After everybody was playing, do you remember when the
4 four of you went to bed?

5 A Cesar fell asleep first, which he would do a lot. He
6 worked a lot of hours. I -- I remember him falling asleep
7 even in his work clothes. And I was in the same room with
8 him, reading a book. And I went to bed maybe around eleven
9 o'clock or so. The girls were still awake, watching a
10 movie in E.B. 's room.

11 Q Okay. So you said Cesar was still in his clothes.
12 What -- do you remember what clothes he was wearing?

13 A Not exactly. Jeans and a -- a shirt of some sort.

14 Q You've described a couple rooms. Can you just tell us
15 a little bit about the house layout? Where was your room
16 in relation to E.B. 's room?

17 A My room was across a hallway that's about 8 or 10 foot
18 long to the right of her room.

19 Q And is there a bathroom ---

20 A There is ---

21 Q --- in the hall?

22 A There is a bathroom in the hallway.

23 Q Where is that situated in reference to the two rooms?

24 A It's across from E.B. 's room. There's, like -- it's
25 an L-shaped hallway. I could ---

DIRECT EXAMINATION BY MR. HILTON - JESSICA PORTILLO 203

1 Q Were there ---

2 A --- draw it.

3 Q --- any other bathrooms in the house?

4 A In the master bedroom, but it was nonfunctional at
5 that time.

6 Q So I guess -- is the bathroom in the hall -- was that
7 the one that y'all used on a regular basis?

8 A Yes.

9 Q Everybody in the house?

10 A Yes.

11 Q Where did y'all keep the towels in the house?

12 A In E.B. 's bedroom closet.

13 Q Why was that?

14 A It was a very large closet, and there was no, like,
15 hall linen closet.

16 Q And I think you said a second ago everyone went to
17 sleep. Who was sleeping in what room?

18 A E.B. and Complainant were sleeping in -- in her room, and
19 Cesar and I were sleeping in our room.

20 Q At some point that night, were you awakened?

21 A Yes.

22 Q And tell the jury what the circumstances surrounding
23 that was.

24 A I just remember Complainant coming into my room. And I
25 turned the lamp on. And she was like -- I sat up. I was

DIRECT EXAMINATION BY MR. HILTON - JESSICA PORTILLO 204

1 really, you know, groggy because I had been asleep. But
2 she said, "Cesar just did something really strange." And I
3 don't remember her exact terms of what she told me. It was
4 something of a sexual and inappropriate manner.

5 And I was just kind of sitting there, dazed, really in
6 shock, really. And not too long after that, he -- he came
7 -- he had been in the shower.

8 Q Let me stop you just a second.

9 A Okay.

10 Q About what time, would ---

11 A This ---

12 Q --- you say ---

13 A --- was -- I -- I guess around 1:30 in the morning --
14 1:30/2, something like that.

15 Q Now, when ^{Complainant} came in, where was Cesar at that
16 point?

17 A He was in the bathroom in the shower. The shower was
18 running.

19 Q What was ^{Complainant}'s demeanor at that time?

20 A She was just kind of like -- like, confused and, like,
21 startled. Like, she wasn't crying or anything. She just
22 kind of had a wide-eyed expression on her face. And -- and
23 that's why it really struck me that she was, like, "He just
24 did something really strange," like she was confused more
25 than anything.

DIRECT EXAMINATION BY MR. HILTON - JESSICA PORTILLO 205

1 Q And I think you had mentioned it a second ago: At
2 some point in time Cesar got out of the shower?

3 A Yes.

4 Q And tell us about that.

5 A Well, he came walking towards our room. He was drying
6 his face with a towel. And -- and he kind of stopped at
7 the doorway. And I looked up at him as -- and he was,
8 like, "What?" Because I was just, like, staring at him.
9 And here was Complainant

10 And I'm, like, "Complainant just told me that you did
11 something really horrible to her."

12 And he's like -- just kind of, like, you know, "What?
13 I didn't do anything."

14 I mean, and the next thing I really remember is he
15 came and sat down on the -- on the bed beside me. And
16 Complainant was there. I -- maybe I told her to go into the
17 other room. I mean, it -- there wasn't like a -- there was
18 kind of like an awkward silence. And the only -- the only
19 thing I could think to do was just -- just to get out. It
20 was just a -- a natural instinct for a mother: If there's
21 danger to your children, you leave.

22 Q What was Cesar's demeanor when you asked him about
23 that?

24 A He was very -- very upset, very shaky. And I could
25 see him kind of, like, trembling. That's all I really

1 remember.

2 Q Did he appear to be scared?

3 MR. FARLEY: Objection: leading, Your Honor.

4 THE COURT: Sustained.

5 Q After you got up and left Cesar in the room, what did
6 -- what did you do then?

7 A I went and woke E.B. up. And -- and then I tried to
8 -- to gather a few clothing items for the two of us. So I
9 was kind of back and forth between our bedrooms, getting
10 some things together.

11 Q Where was E.B. during all this time?

12 A E.B. was in her room, trying to get some stuff
13 together. I mean, she had just been woken up too. She was
14 kind of, like, "What's going on?" and like ---

15 Q Who woke up E.B. ?

16 A I did.

17 Q Is E.B. a hard sleeper?

18 A She's somewhere in between. I mean, she's not
19 necessarily a light sleeper, but she's -- it's not like I
20 have to throw a gallon of water on her to wake her up
21 either. I just shook her some and she woke up.

22 Q Okay. And you said you were getting some clothes
23 together. Where was Cesar at that point?

24 A I believe at -- at one point he had gone, like, maybe
25 to the kitchen. And then I -- he was in -- ,Complainant had gone

DIRECT EXAMINATION BY MR. HILTON - JESSICA PORTILLO 207

1 and sat in the living room. And as I was going back and
2 forth between bedrooms, I saw him, like, trying to give her
3 a hug. And I told him just to -- just to get away from
4 her.

5 And, I mean -- I mean, all of this occurred within ten
6 minutes. I mean, from the time I was woken up to the time
7 we left the house could not have been more than ten
8 minutes.

9 Q When y'all left the house, where was Cesar?

10 A After -- after he tried to hug her and I asked him to
11 -- to get away from her, he went to the porch.

12 Q What was he doing out there?

13 A I believe that he was smoking a cigarette, which he
14 got from me.

15 MR. HILTON: Just a moment, Your Honor.

16 THE COURT: Yes.

17 Q After you all left the house, where did you go at that
18 point?

19 A To my mother's house in Walterboro.

20 Q And at some point did you call Lesley, Complainant's
21 mother?

22 A I don't remember if I called Lesley or if I called my
23 mom and my mom called Lesley. I don't remember.

24 Q And did y'all all meet up at your mother's house?

25 A Yes.

CROSS-EXAMINATION BY MR. FARLEY - JESSICA ATKINSON

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1 MR. HILTON: Please answer any questions Mr. Farley
2 may have for you.

3 THE COURT: Cross-examination.

4 MR. FARLEY: May it please the Court.

5 THE COURT: Yes.

6 CROSS-EXAMINATION BY MR. FARLEY:

7 Q Hello, Jessica. How are you?

8 A I'm here.

9 Q I think I understand. I've just got a few questions
10 for you. When ^{Complainant} was testifying, there was some
11 discussion about the layout of the room and the size of the
12 bed.

13 A Uh-huh.

14 Q Would you describe it -- and I know this is going to
15 be difficult. Wouldn't you describe that room as a small
16 room?

17 A Very small.

18 Q And what size bed was in that room?

19 A Full.

20 Q A full bed?

21 And let's just clarify: A full bed is somewhere
22 between a twin and a queen, right?

23 A That is correct.

24 Q Okay. When did y'all move into that house?

25 A January of 2008.

CROSS-EXAMINATION BY MR. FARLEY - JESSICA ATKINSON 209

1 Q So you had -- how long had you been there when this
2 incident ---

3 A Two years.

4 Q You'd been there two years?

5 And weren't y'all working on the house?

6 A Yeah. We -- we had started some work, but we also had
7 another house in Walterboro that we were renovating. So
8 it's like we started some projects, but then they were
9 unfinished and ---

10 Q Some of that involved working on the master bathroom;
11 isn't ---

12 A Correct.

13 Q --- that right?

14 And that was not functional because ---

15 A Not functional.

16 Q --- you were renovating the house?

17 A That's correct.

18 Q Okay. So the only option for anybody in that house
19 would've been to go to the guest bathroom?

20 A Correct.

21 Q What -- what was Cesar doing -- what was he -- how was
22 he working? What was his line of employment?

23 A I don't remember the name of the company, but it was,
24 like, a -- a government subcontractor. They did work on
25 Humvees, modifying Humvees ---

1 Q Okay. So he ---

2 A --- for military ---

3 Q --- worked ---

4 A --- use.

5 Q --- for a military ---

6 A Yes.

7 Q --- contractor?

8 What had he done before that?

9 A Renovations.

10 Q And then, before that?

11 A He was in the Army.

12 Q So he had some experience in renovations? He ---

13 A Yes.

14 Q He -- he -- you would say he knew what he was doing
15 when it ---

16 A Yes.

17 Q --- came to renovating the house?

18 When Detective Reese and the police officers came to
19 talk to you, did you tell them the same story that you've
20 told us?

21 A No one ever came to talk to me.

22 Q The police never came ---

23 A Never ---

24 Q --- to talk ---

25 A --- came to talk to me.

CROSS-EXAMINATION BY MR. FARLEY - JESSICA ATKINSON

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1 Q Did they ever come to that house to collect ---

2 A No.

3 Q --- evidence?

4 Did you ever go to them and talk to them?

5 A No.

6 Q The -- it's kind of odd for someone to go to sleep and
7 then wake up and take a shower, wouldn't you agree?

8 A Yes.

9 Q Had this happened before in the past?

10 A Yes.

11 Q And -- and why do you think that was?

12 A He had been taking a quit-smoking aid, Wellbutrin ---

13 Q Uh-huh.

14 A --- for about two weeks. And for the past five or
15 seven days prior to that night, he had developed a -- a
16 rash all over his body that was extremely itchy. And so he
17 would sometimes get up in the middle of the night and
18 shower to relieve the itching.

19 Q Okay. So it wasn't uncommon for him to get up in the
20 middle ---

21 A Not at ---

22 Q --- of the ---

23 A --- that time.

24 Q --- night ---

25 A --- no.

REDIRECT EXAMINATION BY MR. HILTON - JESSICA ATKINSON 212

1 Q Not at that time?

2 MR. FARLEY: Just a moment, please, Your Honor. I
3 have no further questions.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION BY MR. HILTON:

6 Q Jessica, you said you never talked to anybody -- or
7 police never came to talk to you. Do you remember talking
8 to Dr. Don Elsey at Lowcountry Children's Center?

9 A Yes.

10 Q And do you remember giving a statement to him?

11 A I don't -- I don't know if I would call it a
12 statement. I mean, I went and -- the purpose of that was
13 to take E.B. and to have her interviewed and documented
14 that -- and just to make sure nothing had ever happened to
15 her.

16 Q All right. And as part of that interview, you spoke
17 with Dr. Elsey, correct?

18 A Yes, I did.

19 Q And do you remember telling him some things that night
20 -- that happened that night?

21 A I honestly don't remember what I told Dr. Elsey.

22 Q Well, let me show you something. And you can read it
23 and see if that ---

24 A Sure.

25 Q --- refreshes your recollection of that.

REDIRECT EXAMINATION BY MR. HILTON - JESSICA ATKINSON 213

1 (Mr. Hilton confers with Mr. Farley.)

2 (Whereupon, Mr. Hilton hands a document to the
3 witness.)

4 Q Just without reading it out loud, just read to ---

5 A Okay.

6 Q --- yourself the first paragraph.

7 A Okay. Just the first paragraph or everything
8 highlighted?

9 Q Just the first paragraph.

10 A Okay. Sure.

11 Q Does that refresh ---

12 A What ---

13 Q --- your recollection as to what you told Dr. Elsey
14 that day?

15 A Sure.

16 Q Okay.

17 THE COURT: Mark that as -- as Court's Exhibit or
18 exhibit for ID purposes, either way.

19 MR. HILTON: Can we get a copy of it?

20 THE COURT: Of course.

21 (Marked State's Exhibit No. 1, report document, for
22 identification.)

23 THE COURT: Just mark it and then we'll substitute a
24 copy, if you wish.

25 MR. HILTON: Okay. State's Exhibit 1 for

RE-CROSS-EXAMINATION BY MR. FARLEY - JESSICA ATKINSON 214

1 identification.

2 THE COURT: Yes. Thanks.

3 Q Having read that and refreshed your recollection, do
4 you remember now talking to Dr. Elsey?

5 A I -- yeah, I remember talking to Dr. Elsey. I mean, I
6 -- it's -- it looks like I told him exactly what I've told
7 you just now.

8 Q Okay. And -- and that was a statement in reference to
9 what happened back in January 2010; is that correct?

10 A Okay.

11 MR. HILTON: No further questions.

12 THE COURT: All right. Re-cross?

13 RE-CROSS-EXAMINATION BY MR. FARLEY:

14 Q I just want to clarify: Detectives, police officers,
15 forensic people, fingerprint technicians, any of those kind
16 of people that worked directly for law enforcement, did
17 they ever contact you or come to your house?

18 A No.

19 MR. FARLEY: I have no further questions.

20 THE COURT: Very well. Thank you. You may come down.

21 (The witness exits the stand.)

22 THE COURT: Call your next witness, please.

23 MS. HALL: Judge, the State would call Lesley
24 Hitchens.

25 THE COURT: Okay. If you would raise your right hand

DIRECT EXAMINATION BY MS. HALL - LESLEY HITCHENS 215

1 for me, please.

2 LESLEY HITCHENS, having been first
3 duly sworn, testifies as follows:

4 THE COURT: Very well. If you'll please be seated.
5 And I'm going to ask you to please state your full name for
6 the record and spell your first name and then that -- your
7 last name. But spell your first name, please.

8 THE WITNESS: Okay. My first name is Lesley, L-e-s-l-
9 e-y; last name Hitchens, H-i-t-c-h-e-n-s.

10 THE COURT: And you can pull that microphone down a
11 little bit. I see you reaching out there with your hand.

12 THE WITNESS: (Complies.)

13 THE COURT: There you go. Thank you.

14 Your witness.

15 DIRECT EXAMINATION BY MS. HALL:

16 Q All right. I think you got a cup of water. You okay
17 there?

18 A Uh-huh.

19 Q All right. Lesley, where are you from?

20 A Originally?

21 Q Sure.

22 A North Carolina.

23 Q Okay. Where do you live now?

24 A In Walterboro.

25 Q And how long have you lived there?

1 A Since 1993.

2 Q Okay. What do you do for a living?

3 A I'm a registered nurse.

4 Q And how long have you been a registered nurse?

5 A Since 2003.

6 Q And what type of work do you do?

7 A Currently or -- no.

8 Q Tell me about what you've done in the past and you can
9 tell ---

10 A I started ---

11 Q --- me what you ---

12 A --- out on ---

13 Q --- do now.

14 A --- on a medical-surgical nursing floor in the
15 hospital setting -- acute-care setting. I did that for two
16 years. I'd say the next -- it's been close to six years I
17 did labor and delivery/newborn nursery. And for the past
18 four months or so, I've been doing nursing case management
19 for a veterans nursing home.

20 Q Okay. And where were you working in 2010?

21 A In labor and delivery at Colleton Medical Center.

22 Q Okay. Lesley, do you have any children?

23 A I do.

24 Q How many, and -- and what were their -- what are their
25 names and ages?

DIRECT EXAMINATION BY MS. HALL - LESLEY HITCHENS 217

1 A I have three children: Complainant, which you guys met, is
2 11 currently; I have -- we have a middle child, Sister, who
3 is 6; and Brother, who is 4.

4 Q And -- and are they all in school?

5 A The -- Complainant, of course, is, and Sister will be going
6 to first grade in the fall. And our son will be going to
7 preschool in the fall.

8 Q All right.

9 A He's currently in day care.

10 Q And are you married?

11 A Yes, ma'am.

12 Q What's your husband's name?

13 A Paul Hitchens.

14 Q And how long have you guys been married?

15 A Eleven years.

16 Q Okay. Who all's in your extended family: brothers
17 and sisters?

18 A I have one sister, Jessica. And I have a half-sister
19 who -- she lives in Charlotte; don't see her very much.

20 Q How's your relationship with your extended family?

21 A I'd call it good. I mean, it's not bad. This has
22 obviously caused some tension and difficulties, but good on
23 the whole.

24 Q What -- what is the relationship like between you and
25 your sister?

1 A I think we have a good relationship. We do things
2 together with the kids and -- like this summer already,
3 we've been to the beach a few times with all the children
4 and a friend. And we would ---

5 Q And how about the -- the children? Are -- are they
6 all close?

7 A Yes. E.B. and ,Complainant have been -- well, they're only
8 four months apart. They've been -- like, they've grown up
9 kind of like sisters.

10 Q Okay.

11 A They fight like sisters. And they -- it's a love-hate
12 relationship at times, you know. They're very close.

13 Q All right. I think I can understand that.

14 How much time do ,Complainant and E.B. normally spend
15 together, on -- on an average basis?

16 A This summer they've been together sometimes every day.
17 This whole past school year they were been in the same
18 class. So every day, a lot on the weekend.

19 Q Okay. Let me ask you this: Who -- who typically
20 watches your children?

21 A You mean like ---

22 Q When it's not you and your husband.

23 A The little two go to a day care provider that's had
24 them -- Kim since two -- when they were born. And ,Complainant
25 would typically stay with my mother and father-in-law or my

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1 sister or my friend, Misty, or my friend, Ashley, that's
2 sitting there, which they have children, too, around the
3 same age.

4 Q Did you ever use babysitters?

5 A Never.

6 Q And how often -- or -- or -- or was it uncommon for
7 you -- you and Jessica to switch off on ---

8 A No.

9 Q --- watching each other's kids?

10 A No, it was not uncommon.

11 Q Okay. How often do you think you did that?

12 A Not as often with Jess, because the most part, I
13 think, my in-laws watched them the most. We've -- only if
14 we have a little date night or something, we'd go to a
15 movie, to dinner, and watch our -- little two may go stay
16 with my mom while Jess and E.B. kept Complainant, because
17 Complainant and E.B. could play. I don't know. But -- so
18 maybe once or twice a month, at least sometimes.

19 Q Okay. Was it more often that Complainant spent the night
20 with E.B. or E.B. spent the night with Complainant or ---

21 A There -- of course, would happen both, but I would say
22 probably E.B. wanted to -- Complainant to stay with her more,
23 because she preferred to be around her mother, just the way
24 she was.

25 Q Okay. Do you remember a -- an incident in January

1 2010 involving an allegation of sexual abuse against your
2 daughter?

3 A I do.

4 Q When was that?

5 A When, meaning?

6 Q The date. Do you remember the date or around what
7 time?

8 A It was a Saturday night. I think it was around the --
9 the 16th or so. That night that what -- that she had gone
10 to spend the night with them, I know -- I know it was a
11 Saturday.

12 Q Okay. How do you -- how do you know it was a
13 Saturday?

14 A Well, I worked nights and my husband worked days. I
15 had a pretty set schedule during the week. So Fridays,
16 between school being hectic and the times that he got off
17 work and it just -- there's not that much of a window of
18 opportunity for -- as it was nighttime already. And we
19 just -- I just would have remembered if it was that -- they
20 had pretty much had the day to play together and -- and be
21 together. So I'm pretty certain it was a Saturday.

22 Q Okay. How did ^{Complainant} come to be with Aunt -- Aunt
23 Jessica and -- and -- and E.B. that day, to the best of
24 your memory, if you remember at all?

25 A I really, to be honest, cannot be certain if we took

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1 her or if she went home with Jess for sure. But I just --
2 I really can't recall that part for sure how -- how she got
3 there. I know we agreed, Jess and I and my husband, that
4 she could -- they could spend the night together and she
5 would go to her house.

6 Q Do you remember about what time ^{Complainant} left with Jess?

7 A I really do not. I think they might have had most of
8 the day to play, at least.

9 Q And what did you do the rest of the day? Do you
10 remember?

11 A Not that particular day. It -- it -- we usually are
12 together. My husband and I and our other two children
13 would either -- it was not uncommon for her to go stand and
14 play with E.B. or, you know, stay at home and do things
15 there or -- I don't particularly remember us having gone
16 anywhere. And I -- because I was at home that night.

17 Q And do you remember about what time you went to sleep
18 that night?

19 A Well, I had trouble sleeping, because I was a night
20 shift nurse. I'm pretty nocturnal. So I usually -- it
21 would've been probably at least 11 or 12 before I would've
22 went to sleep.

23 Q Okay. After you went to bed, what's the -- what's the
24 next thing you remember?

25 A I just remember being woken up by the phone ringing.

1 To the best of my knowledge, it -- it seemed to be around
2 two -- twoish in the morning, I think. And it was my
3 sister, Jessica, calling. And it was obvious that she was
4 upset.

5 She didn't want to tell me what was going on. I got
6 that impression. She just told me that I needed to get up
7 and come meet her at my mother's home in Walterboro. And
8 at that time I believe she told me she was about at
9 Cottageville, which is about a halfway point between where
10 she lived and where my mother lived.

11 And -- and, of course, the -- the panic in her voice
12 that I felt made me think something was wrong with my
13 child. So I was, of course, trying to question her, you
14 know: "What's going on? You have to tell me what's going
15 on. Oh, is something wrong with my baby? Has she been
16 hurt?"

17 You know, and she really -- "I just don't want to talk
18 about it. I don't want to get upset right now. She's
19 fine. You know, meet me there." And she's -- I remember
20 her saying something to the effect -- to ---

21 MR. FARLEY: Objection ---

22 A --- the best ---

23 MR. FARLEY: --- Your Honor.

24 THE COURT: All right. Let me see the two.

25 (Bench conference.)

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1 THE COURT: Yes, I will. Sustain the objection.

2 Q As a result of your conversation with Jess, what did
3 you do?

4 A I immediately got up and went to my mother's house.

5 Q Okay. Did you go by yourself or with somebody else or
6 what --- what ---

7 A I went by myself. I -- we had, as I said, two other
8 small children at home that were sleeping. And someone had
9 to stay with them. And we -- she had basically at least
10 assured me that Complainant was in no danger or was not hurt at
11 the moment basically and that he was okay to stay with the
12 other two. We -- I -- I -- we just made the decision for
13 me to go alone so we didn't have to wake them up.

14 Q How long did you -- do you think it took for you to
15 get to your mom's house?

16 A Less than 10 minutes.

17 Q Does she live nearby?

18 A Yes. We live in -- both live in town.

19 Q Okay. Who was there when you arrived at your mom's
20 house?

21 A That I remember, I -- I believe I beat them there. It
22 was just my mom. And she was up, waiting.

23 Q Okay. And just so I can clarify: Is Mom "Nanny" to
24 those girls?

25 A "Nanny" to the girls.

1 Q Okay. When did you then see your daughter again?

2 A It didn't seem like much time passed before they all
3 came in: Jess, E.B. , and Complainant.

4 Q And explain to me what their demeanor was at -- at
5 that point. And -- and maybe I'll just go person by
6 person. Can you explain to me what Complainant's demeanor was
7 at that point?

8 A Kind of quiet, but scared; a little looking --
9 confused. Could tell she had been crying, but just kind of
10 flat in that way. Wanting to come in -- I remember her
11 coming in, hugging me, and sitting with me. And I believe
12 she cried a little bit at that point.

13 Jess, I could definitely tell, had been crying.

14 Q Okay. And how about E.B. ?

15 A I think E.B. had the more -- more of a shocked look
16 on her face, like more of a flat, blunted affect, like, "I
17 -- I don't know what's going on. I'm just here." And ---

18 Q What -- what exactly is a blunt -- blunted affect?

19 A Like a shocked look -- you look at -- like you're in a
20 daze, because you're -- you're confused or you don't know
21 what's really going on. You ---

22 Q Okay.

23 A --- you're not ---

24 Q Is that ---

25 A --- showing a lot of emotion or ---

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1 Q Is that a technical term that you -- you use?

2 A In nursing we would use a "flat affect," meaning that
3 you're not really frowning or smiling; you're not showing
4 much emotion.

5 Q Okay. Where did you all convene in the house?

6 A In my mother's living room.

7 Q And where was everybody sitting?

8 A My mom has a chair, a special chair for her back --
9 because she has back trouble -- in the corner. She was
10 sitting there. I remember sitting in one of the little
11 Queen Anne-type-style chairs she had. And I remember Jess
12 and E.B. , to my knowledge, sitting on the couch. ,Complainant
13 would be kind of back and forth between standing and with
14 me or sitting over there. She was a little antsy.

15 Q All right. And at any point did ,Complainant disclose the
16 details of what had occurred to her at Jess and Cesar's
17 house?

18 A Yes, she did, at least some of it.

19 Q Based on the details that she gave you, what did you
20 do?

21 A Well, of -- my first concern was my child and -- and
22 her safety. I knew she was safe where she was at. And
23 from a medical standpoint, I felt like she probably needed
24 to be checked out. We talked about possibly going to the
25 emergency room. It was probably threeish in the morning.

1 So there she -- she cried and didn't -- didn't -- she
2 didn't want that at all.

3 It sounded like from what happened, you know, the best
4 I could tell I -- I didn't know what to do, because you're
5 really shocked at that point, you know? I did remember
6 taking her to the bathroom -- going with her and kind of
7 taking her and making -- she went to the potty, and I
8 looked and made her wipe. And showed her -- and looked at
9 her underwear and made sure that there was no bleeding or
10 discharge or anything like that.

11 And she just begged me not to at least take her there.
12 She didn't want the thought of another man ---

13 MR. FARLEY: Objection ---

14 A --- doctor or ---

15 MR. FARLEY: --- Your Honor.

16 A --- something -- looking at her.

17 MR. FARLEY: Objection.

18 (Bench conference.)

19 THE COURT: Sustained.

20 Q Because she not -- begged you not to take her to the
21 hospital, what was your course of action, then, as a
22 parent?

23 A She just -- I can't answer how I want to. I
24 understood her reasoning for not wanting to go. I thought
25 about calling Dr. DiMarco, who is a pediatrician and a

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1 female that I worked with and was very familiar with
2 Complainant. They had been friends and been in our home. I
3 thought she might feel more comfortable with her. But at
4 that time -- I guess that was about three or four o'clock
5 in the morning -- I hated to wake her up or -- or do -- so
6 we -- we just -- just -- I don't know. It just -- we
7 talked about things for a while and we just kind of came to
8 a rest that day. We tried to go home eventually. I want
9 to say it was probably five o'clock in the morning or so.
10 And that was a Sunday, because it happened -- you know,
11 like I said, it was around 2 a.m. Sunday when she called.

12 So we just kind of tried to talk with Complainant -- after
13 we tried to get some sleep -- talk with her some more. And
14 to the best of my knowledge, we didn't -- I go to work at
15 about 6:45 p.m. I had called and talked with Dr. DiMarco
16 then and told her what was going on and asked her
17 professional opinion and would she be willing to talk to
18 and look at Complainant, because she is a female pediatrician.
19 And Complainant's pediatrician was a male. She would ---

20 MR. FARLEY: Objection ---

21 A --- be more comfortable ---

22 MR. FARLEY: --- Your Honor.

23 THE COURT: Overruled. You may proceed.

24 A I wasn't going to subject my child to a male examining
25 her, even if it was a doctor, if it made her uncomfortable

1 after what she had been through.

2 THE COURT: Sustained. As being non-responsive.

3 Q I guess this is probably as good a time as any to ask:

4 Complainant was 9 at the time of these allegations; is that
5 correct?

6 A Yes.

7 Q What had you personally taught her about the birds and
8 the bees?

9 A I never remember talking about the birds and the bees
10 with her at that age. Complainant always seemed like a
11 childlike, naive little girl. And I just didn't feel it
12 was appropriate yet at the time, I guess. I didn't talk
13 much about it.

14 Certainly, she never watched anything inappropriate in
15 our presence or was there any inappropriate material in our
16 home or around our immediate family and friends that she
17 was allowed to be around. I never saw the reason to quite
18 yet. In my opinion, she was still a little young.

19 Q Okay. After you guys were done at -- at Nanny's house
20 that night, what did you guys do?

21 A We went home and we tried to go to sleep.

22 Q All right. And how -- how did that go?

23 A Not so good. It was hard for Complainant to sleep. She
24 insisted on sleeping in the bed with me and my husband.

25 Q Has there been changes in her sleeping behavior?

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1 A From that point forward? Yeah. From that point
2 forward, she pretty much refused to sleep by herself. It
3 was probably months there she was pretty much in our bed or
4 at least we had to go try to lay with her to get her to
5 sleep. And she might would fall asleep, but she'd
6 eventually still end up back in our bed.

7 Q All right.

8 A She would have had dreams.

9 Q Were there any general changes in her demeanor or her
10 personality after that?

11 A Yeah. She seemed, you know, a little more quiet or
12 standoffish. She seemed to be afraid that somehow people
13 would know, or she didn't want people to know and that they
14 would find out or -- that kind of thing. Very -- she would
15 -- was more emotional. I would definitely say she cried a
16 lot more at drop-of-a-hat kind of thing.

17 Q What did you then do decide -- decide to do about
18 getting medical attention for her?

19 A I talked with Dr. DeMarco. She agreed to look at her
20 and talk with her. And since it was Sunday evening when I
21 talked to her, she agreed at that time to come over Monday,
22 which would've had to be after school when school -- to
23 talk with her and -- and examine her.

24 Q All right. Did you send ^{Complainant} to school that Monday?

25 A I did.

1 Q And were you present when Dr. DeMarco -- well, let me
2 ask this: Where did Dr. DeMarco talk to her and ---

3 A She came to our home.

4 Q Were you present at the home when Dr. DeMarco arrived?

5 A I was present when she arrived. I was not there very
6 long while she was there, because I had to go to work. We
7 work in the same unit. My husband was there.

8 Q Did you receive any recommendations from Dr. DeMarco?

9 A To my knowledge, I believe that is where we got the
10 information to take her to Dee Norton Center, downtown
11 Charleston.

12 Q At any point did you all confront the issue with law
13 enforcement involvement?

14 A I was told by Dr. DeMarco when she ---

15 MR. FARLEY: Objection, Your Honor.

16 THE COURT: Objection is hearsay, yes?

17 MR. FARLEY: Yes, Your Honor.

18 THE COURT: Is there an exception?

19 MS. HALL: Your Honor, it would simply be that it's
20 not going for the truth of the matter asserted. It would
21 be as to when, not -- not why.

22 THE COURT: Overruled.

23 Q Can you answer the question?

24 A I was told by Dr. DeMarco, one, that she was legally
25 bound to report it. I also know by being a medical

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1 professional that as doctors and nurses, we're taught to --
2 any signs/symptoms of abuse or reports have to be legally
3 reported. So I was aware of that to start with. She told
4 me that she would be legally bound to do that, and that she
5 would. And I was told when I had contacted the Dee Norton
6 Center and made an appointment -- I want to say they may
7 have taken a statement at that time too. And they told --
8 they also said they would be making a report to law
9 enforcement.

10 Q What date did you make that appointment for Dee
11 Norton?

12 A I think if Dr. DeMarco saw her around Monday, it would
13 have probably been probably the next day after I got off
14 work the next morning. That would've been -- probably been
15 Tuesday.

16 Q Okay. And when did you finally ---

17 A They ---

18 Q --- attend that appointment?

19 A --- they saw us that same Friday with ---

20 Q And who all went to that appointment?

21 A My husband, ^{Complainant}, and I -- and I believe my father-
22 in-law rode, but he was just -- he sat in the waiting room
23 so that if ^{Complainant} had to be out while we were in, he --
24 some -- someone could sit with her.

25 Q Do you remember roughly what time of day that

1 appointment was?

2 A I want to say in the afternoon around maybe two
3 o'clock or so, because I know it was after lunch, at least
4 early afternoon, two/three o'clock maybe. Yeah. We were
5 there a while.

6 Q What did you do when you got there?

7 A Standard: You go and wait; fill out some paperwork.
8 I -- I remember they called my husband and I back first, I
9 believe. And we talked with Dr. Elsey for a while. He
10 interviewed us; took some statements from us. Told us --
11 they showed us around, what the facility looked like and
12 where they would be examining ^{Complainant} there, that kind of
13 stuff, and told us how, you know, that he would be talking
14 with her in the interview room. And he took us to the room
15 and showed us what it looked like. And I remember him
16 saying that it was being videoed -- "See the camera up
17 there" -- and wanted us to know what to expect.

18 And he said that when he got done with her, he would
19 talk with ---

20 MR. FARLEY: Objection ---

21 A --- us again.

22 MR. FARLEY: --- Your Honor.

23 THE COURT: Hearsay?

24 MR. FARLEY: Hearsay, yes.

25 MS. HALL: Withdrawn.

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1 THE COURT: Very well.

2 Q Was it your understanding that Dee Norton was going to
3 report to the sheriff's office?

4 A Yes. We were told that by the child's advocate that
5 we spoke with.

6 MR. FARLEY: Objection, Your Honor: hearsay.

7 A They told us ---

8 MS. HALL: Stop. No.

9 THE COURT: Hold -- hold on. She can talk about what
10 her understanding was.

11 A Okay. It was my understanding that they were going to
12 report it; is that fair?

13 Q And did they make any recommendations for you there?

14 MR. FARLEY: Objection, Your Honor: The question
15 requires a hearsay response.

16 THE COURT: The question is -- at this point is: Did
17 they make any recommendations, not what were they. Did
18 they? The ---

19 A Yes.

20 Q At what point did -- or did Dorchester County
21 Sheriff's Office make contact with you?

22 A It was the next -- sometime in the next week. Since
23 that appointment with Dee Norton was on a Friday, it was at
24 some point the following week. I just cannot be absolutely
25 certain of the day. It's been a while.

1 Q Who from the family talked to the Dorchester County --

2 -

3 A I did.

4 Q And did you give an oral statement?

5 A I did.

6 Q Do you remember who you spoke to?

7 A Detective Morgan.

8 Q Beyond having gone to the Dorchester Children's
9 Center, what -- one second.

10 MS. HALL: I'm just going to go ahead and leave it at
11 that. Thank you. Please answer any questions that Mr.
12 Farley or Ms. LeMatty may have.

13 THE COURT: All right. (To the jury) It's lunch
14 time, and we're going to take our lunch break.

15 Ladies and gentlemen, please be mindful not to discuss
16 this matter or allow anyone to discuss it with you over the
17 lunch. Leave your notebooks in your seat. They will be
18 secured for you over the lunch.

19 Do not blog, text, tweet, or otherwise communicate or
20 do any investigations with regards to this matter. You
21 must receive all of the information from what -- from which
22 you will make up your mind here in court while court is in
23 session.

24 Again, St. George is very small. If you happen to see
25 anyone involved in the case over the lunch break and they

1 do not even say hello, please understand it would not be
2 appropriate for them to speak to you. They -- and they are
3 not being rude. They just understand that they -- that
4 would be inappropriate.

5 Ladies and gentlemen, we are going to start back at
6 2:30 -- at 2:30. Please be downstairs in the jury-assembly
7 room at 2:30 and you will be escorted upstairs. Have a
8 very good lunch. If you will go, please, with our
9 bailiffs.

10 (The jury exits at 1:06 p.m.)

11 THE COURT: All right. Ms. Hitchens, just as I told
12 Complainant, I must tell you: Over the lunch break, you can
13 talk about anything in this world, on this world, about
14 this world. But please remember not to discuss your
15 testimony.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Have a good lunch. We'll see you at 2:30.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Anything before we take our
20 lunch break from the state?

21 MS. HALL: Nothing from the State, Your Honor.

22 THE COURT: All right. From the Defense?

23 MR. FARLEY: No, Your Honor.

24 THE COURT: Counsel, I wanted to -- just for
25 scheduling purposes, I wanted to see -- come -- come help,

1 please.

2 (Off the record from 1:08 p.m.)

3 (On the record at 2:35 p.m.)

4 THE COURT: Okay. Anything before we bring the jury
5 out from the State?

6 MS. HALL: Nothing from the State.

7 THE COURT: From the Defense?

8 MR. FARLEY: No, Your Honor.

9 THE COURT: Very well. Let us have the jury.

10 (The jury enters at 2:36 p.m.)

11 THE COURT: (To the jury) All right. Ladies and
12 gentlemen, I so hope you had a good lunch. And at this
13 time we will continue with the state's case and the cross-
14 examination of Ms. -- of this witness. Yes.

15 MR. FARLEY: Thank you, Your Honor.

16 THE COURT: Yes.

17 CROSS-EXAMINATION BY MR. FARLEY:

18 Q I just have a few questions for you. When did law
19 enforcement get involved in this case? Did you contact
20 them?

21 A I never personally contacted them, because it was my
22 understanding that the Dee Norton Center and the other
23 doctor involved were to do that.

24 Q Okay. Did you ever meet with law enforcement
25 officers?

CROSS-EXAMINATION BY MR. FARLEY - LESLEY HITCHENS

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1 A Not met in person. No. I talked on the phone with
2 Detective Morgan.

3 Q And ---

4 A And he took a statement then ---

5 Q He took a statement on the phone?

6 A A length -- a lengthy statement. He asked me from
7 start to finish my side of what happened.

8 Q Did he or anyone else from law enforcement, meaning a
9 uniformed police officer or a detective, speak to your
10 daughter?

11 A No.

12 Q To your knowledge, did they go to the incident
13 location?

14 A I have no knowledge of that. I wouldn't know.

15 Q How long after the event did law enforcement become
16 involved in this case?

17 A Well, I said before I think it was the 22nd, a Friday,
18 that we went to the Dee Norton Center. I know that at the
19 very least, they were notified that day. And it was some -
20 - at some point the following week that Detective Morgan
21 called me back. I just cannot honestly remember the date.

22 Q I understand. I absolutely understand. But I think
23 we can agree that it was almost two weeks after the event
24 that law -- you spoke to Detective Morgan?

25 A The 16th was a -- I don't think it was almost two

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1 weeks. It was definitely greater than a week.

2 MR. FARLEY: Okay. I have no further questions, Your
3 Honor.

4 THE COURT: All right. Redirect?

5 MS. HALL: Just -- just a -- a question or two.

6 REDIRECT EXAMINATION BY MS. HALL:

7 Q Do you remember going to the Dorchester Children's
8 Center -- I mean, I'm -- I apologize -- the Lowcountry
9 Children's Center?

10 A Dee Norton -- yes.

11 Q And do you remember talking to Dr. Elsey?

12 A I do.

13 Q And do you remember giving a statement to Dr. Elsey?

14 A I do.

15 Q And do you remember if Paul gave a statement at the
16 same time that you were giving a statement to law
17 enforcement?

18 A Yes, he did.

19 Q And did ^{Complainant} give a statement to Dee Norton?

20 A Yes, she did.

21 MS. HALL: No further questions.

22 THE COURT: Okay. Re-cross?

23 MR. FARLEY: No, Your Honor.

24 THE COURT: Very well. Come on back down.

25 THE WITNESS: Thank you.

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1 (Witness exits the stand.)

2 THE COURT: Now, call your next witness.

3 MR. HILTON: State would call Dr. Lucinda DeMarco.

4 THE COURT: Come on around, Doctor.

5 DR. LUCINDA DEMARCO, having been
6 first duly sworn, testifies as follows:

7 THE COURT: Thank you. Please be seated. Thank you.
8 And state your full name for the record stated -- and spell
9 your last name for us.

10 THE WITNESS: Lucinda DeMarco. It's capital D, little
11 e, capital M-a-r-c-o.

12 MR. HILTON: Thank you, Your Honor.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION BY MR. HILTON:

15 Q Dr. DeMarco, where are you employed?

16 A At Colleton Medical Center.

17 Q And what do you -- what do you do there?

18 A I'm a pediatric hospitalist.

19 Q What's a "hospitalist"?

20 A A hospitalist is a person that just takes care of kids
21 in the hospital.

22 Q And as a hospitalist, what -- what are you duties?

23 A I actually have multiple duties. But primarily, I
24 take care of all the babies in the nursery when they're
25 born, and I also take care of any child that gets admitted

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1 to the pediatric floor as well.

2 Q Okay. And what sort of educational background do you
3 have?

4 A Well, I went to college for four years; I went to
5 medical school for four years. And then I did a pediatric
6 residency for three years and then stayed on an additional
7 year as a chief resident. And then I went out into private
8 practice. And I did that for 13 years in Wheeling, West
9 Virginia, and then another 4 years in Indiana. And then I
10 decided to strictly do just hospital medicine, rather than
11 doing hospital medicine and office pediatrics as well.

12 Q All right. And so how long total have you been a -- a
13 doctor?

14 A Too long. I think about 25 years.

15 Q All right. And how long of -- in -- of that time
16 frame were you -- were you a pediatrician?

17 A I've been a pediatrician for 21 of those.

18 Q Okay. And in your course as a -- a medical doctor and
19 pediatrician, have you had the opportunity to examine
20 victims of sexual-assault cases?

21 A Yes, sir.

22 Q And those are child victims?

23 A Yes, sir.

24 Q Okay. And have you ever testified in criminal cases
25 before?

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1 A Yes, sir.

2 Q Regarding those examinations?

3 A Yes, sir.

4 Q How many times, would you say?

5 A Too many times than I'd like to count, to be honest.

6 Between the three states that I've been in, probably 30
7 times, maybe.

8 MR. HILTON: Your Honor, at this time we'd offer Dr.
9 DeMarco as an expert pediatrician in sexual-assault cases.

10 THE COURT: Is there any voir dire?

11 VOIR DIRE EXAMINATION BY MR. FARLEY:

12 Q Hello Dr. DeMarco. You said you have 12 years of
13 school, probably a lot more of hard knocks. And where did
14 you attend undergraduate?

15 A Lehigh University.

16 Q And where is that?

17 A In Bethlehem, Pennsylvania.

18 Q And where'd you go to medical school?

19 A Ross University School of Medicine.

20 Q Where is that?

21 A And that's based out of New York.

22 Q Okay. And you did a residency?

23 A At Hahnemann Hospital in Philadelphia.

24 THE COURT REPORTER: Hahnemann?

25 THE WITNESS: Hahnemann.

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1 THE COURT: Do you need help spelling that? Okay.

2 THE WITNESS: H-a-h-m-e-n-n-a-n ---

3 THE COURT REPORTER: Okay.

4 THE WITNESS: --- I think. I don't spell very well.

5 That's why I'm a doctor.

6 THE COURT: We all have spell-check these days.

7 THE WITNESS: Thank God.

8 THE COURT: Who spells?

9 THE WITNESS: Right.

10 Q Have you ever been to any specialized training for
11 sexual-assault-type cases?

12 A I have.

13 Q And where was that?

14 A It -- it's actually been in different places. When I
15 was in West Virginia, I went to some there. The most
16 recent one that I went to now has been a couple of years
17 ago and was actually in Greenville.

18 Q South Carolina?

19 A Yes, sir.

20 MR. FARLEY: Judge, I don't have any more questions.

21 THE COURT: Any objection?

22 MR. FARLEY: No, Your Honor.

23 THE COURT: Very well. I'm going to explain to the
24 jury briefly about -- about that.

25 Ladies and gentlemen, let me explain to you what's

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1 just -- what you've just seen. Normally, under our rules
2 of evidence, witnesses are not -- are not allowed to
3 testify regarding their opinions or the reasons for those
4 opinions. There is an exception. And that is when, by
5 virtue of someone's knowledge/training/experience/profession,
6 they have become an expert in one or more fields, one or
7 more areas. And those individuals are allowed to testify
8 regarding their opinions within their field of expertise
9 and the reasons for those opinions.

10 Dr. DeMarco is an expert in the field of pediatrics
11 and pediatrics in sexual-assault cases. And she will be
12 allowed to testify with regards to her opinions within
13 those expertise and the reasons for the opinions. All
14 right. Thank you.

15 MR. HILTON: Thank you, Your Honor.

16 THE COURT: And -- and I'll just mention, ladies and
17 gentlemen: Expert testimony is given for the purpose of
18 helping you understand the evidence. It's certainly not
19 for the purpose of controlling your judgment. And we'll
20 talk more about this in the concluding instructions.

21 Okay. Mr. Hilton.

22 MR. HILTON: Thank you, Your Honor.

23 DIRECT EXAMINATION BY MR. HILTON (Continues):

24 Q Dr. DeMarco, do you know Lesley Hitchens?

25 A Yes, sir.

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1 Q How do you know her?

2 A Lesley used to be one of our nursery nurses. And so
3 she and I worked together at . She ---

4 Q And did you know her children?

5 A I did. Actually, her daughter, ^{Complainant}, and my boys
6 went to school together when they were at C.P.A. when we
7 first moved here four years ago and then at Forest Hills
8 when we were living in the Forest Hills area.

9 Q What is "C.P.A.," other than certified public
10 accountant?

11 A The Academy.

12 Q Okay. All right. All right. So is it safe to say
13 you're somewhat of a family friend of the -- of the
14 Hitchens ---

15 A Yes.

16 Q --- family?

17 Okay. Did you have the occasion to speak with Lesley
18 Hitchens about a sexual assault on her daughter?

19 A Yes, sir.

20 Q And what did she ask you to do based on that
21 conversation?

22 A Well, I think it -- when we first started with the
23 conversation, I think part of it was to see what exactly
24 she needed to do to make sure that she was following
25 through with the right steps. And so we talked about that.

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1 We talked about contacting DSS. We talked about contacting
2 the police. We talked about getting Complainant to the -- I
3 call it the "sexual-assault center by MUSC" -- so that she
4 could have a -- a -- an -- a truly expert, forensic
5 interview and -- and a physical exam and then whatever
6 treatment needed.

7 I said to her, though, that, you know, it was
8 important that the information got documented as soon as
9 possible. And I told her -- I said, if she needed me to
10 talk to Complainant -- because I knew Complainant; I had a rapport
11 with Complainant -- she needed me to talk to Complainant and I would
12 be happy to talk to her and to examine her, I'd be more
13 than willing to do that.

14 Q And is that, in fact, what you did?

15 A And that's, in fact, what I did.

16 Q Okay. And do you remember when you examined Complainant?

17 A I want to say I talked to Lesley -- and time-frame-
18 wise I may get this messed up. But I talked to Lesley -- I
19 thought I talked to Lesley one evening and the next, like,
20 early evening -- the next day I saw Complainant.

21 Q Okay. And the examination of Complainant, what did that
22 consist of?

23 A Basically, a -- a complete history and physical, just
24 like any other examine would -- would consist of. I sat
25 and I talked to her about what had occurred. And ---

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1 Q Why is that important?

2 A Well, because any time that you're -- you're seeing a
3 patient to determine what is wrong with the patient, the
4 most important part is your history. So you have to get a
5 thorough history before you know where to focus your
6 physical exam.

7 Now, just as a matter of course, in -- in these types
8 of cases, I always do a head-to-toe exam, because you never
9 know if you're going to find something elsewhere, other
10 than the obvious. But that's just -- you know, that's --
11 to me that was the way I was taught that's what a good
12 physician is supposed to do, and that's what I always did.

13 Q Okay. And do you remember what -- what history ^{Complainant}
14 gave you?

15 A She basically told me -- and unfortunately, I did not
16 write down nitty-gritty notes, because I was told that my
17 information was not needed. But she basically had told me
18 what had happened: She was spending the night at her
19 aunt's house and that she had been -- and I'm just going to
20 use the collective term, which were not her words -- she
21 was sexually --

22 MR. FARLEY: Objection, Your Honor: hearsay.

23 MR. HILTON: Statement from medical -- medical
24 treatment.

25 THE COURT: 8034. Very well.

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1 MR. FARLEY: You've ruled, Your Honor.

2 THE COURT: Thank you. Yes.

3 THE WITNESS: Go ahead?

4 Q Continue on that.

5 A Okay. And so she basically had been -- I'm going to
6 say sexual assaulted by Cesar. I'm sorry.

7 Q All right. And in your assessment of -- of Complainant,
8 did you discovery any physical findings?

9 A Yeah. I did a -- a head-to-toe physical on her. And
10 at the time that I saw her, she did have some redness
11 between the labial lips, which, as you know, you know, on a
12 -- when you're looking at a woman's bottom, you've got the
13 labia majora, which are the bigger lips that are there; and
14 then, the inner lips that are the labia minora, the smaller
15 lips.

16 So when you spread those apart, she was a little bit
17 red and irritated there, which is the area that's around
18 the vagina and the urethra.

19 Q Okay. And is your opinion -- or as an expert in your
20 field, Dr. DeMarco, was her physical manifestations
21 consistent with her medical history?

22 A Yes, sir.

23 Q Now, let me ask you a more general question: Roughly,
24 how many sexual assault victims have you examined, would
25 you -- would you estimate?

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1 A I couldn't even begin.

2 Q Is it more than a hundred?

3 A Oh, yes.

4 Q More than a thousand?

5 A Probably close.

6 Q Close to a thousand?

7 In these types of cases, is it -- is it usual to find
8 physical signs of sexual abuse?

9 A No. Unfortunately --

10 MR. FARLEY: Objection, Your Honor. This is --
11 relevancy beyond her qualification.

12 THE COURT: Thank you. Overruled. You may proceed.

13 A No. Usually, you don't find any evidence of sexual
14 assault in most cases.

15 MR. HILTON: Please answer any questions Mr. Farley
16 may have for you.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION BY MR. FARLEY:

19 Q I'll try to get you out of here as soon as possible,
20 Dr. DeMarco.

21 A Okay.

22 Q You talked about -- a good doctor performs head-to-toe
23 assessment of the child. And you talked about -- I think
24 your words were: "It's important to get this stuff
25 documented as soon as possible." Is that correct?

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1 A No. Actually, I said it's important to take a good,
2 thorough history.

3 Q Okay. Would you agree with me, though, that it's very
4 important to get -- to document facts, findings, things for
5 a sexual-assault case so it can be used later down the
6 road, like today?

7 A Yeah. Absolutely. And -- and the reason that I did
8 not document it was multiple: One was the police didn't
9 want any documentation; the second thing was -- is I also
10 knew that she was going to be going ---

11 Q Can I --

12 A --- to ---

13 Q --- just stop you right there ---

14 A Uh-huh.

15 Q --- and just hit the point? The police told you they
16 didn't want any documentation?

17 A No, sir.

18 MR. FARLEY: I have no further questions, Your Honor.

19 THE COURT: Very well. Redirect?

20 REDIRECT EXAMINATION BY MR. HILTON:

21 Q Let's talk about that, Dr. DeMarco. Did you contact
22 the sheriff's office?

23 A Yes, sir.

24 Q And did you speak with somebody?

25 A Yes, sir.

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1 Q And do you remember what they told you?

2 A Yes. They told me that the knew about the case.

3 MR. FARLEY: Hearsay, Your Honor.

4 MR. HILTON: They've opened the door to this.

5 MR. FARLEY: Not to . . .

6 THE COURT: Let me see.

7 (Bench conference.)

8 Q Dr. DeMarco, after talking with the sheriff's office,
9 you -- I think you told Mr. Farley you did not provide a
10 report; is that correct?

11 A Correct.

12 Q All right. And was it your understanding at that time
13 that -- that Complainant was going to be examined by another
14 doctor?

15 A Yes, sir.

16 Q Okay. And that all that had been taken care of?

17 A Yes. Or it was going to be taken care of.

18 Q Okay. And the fact that you didn't write a report,
19 would that change your testimony here today?

20 A No, sir.

21 Q Okay. And would you say anything different had you
22 written a report?

23 A No, sir.

24 MR. HILTON: Thank you. No further questions.

25 THE COURT: All right. Re-cross?

1 MR. FARLEY: May I have just a moment, Your Honor?

2 THE COURT: Sure.

3 MR. FARLEY: No further questions.

4 THE COURT: Very well. Is this witness free to leave?

5 MR. HILTON: She is, Your Honor.

6 THE COURT: Any objection?

7 MR. FARLEY: No, Your Honor.

8 THE COURT: You are free to go. Thank you.

9 All right. Call your next witness, please.

10 MS. HALL: Judge, I believe there's a matter of law
11 that we need to take up before we call ---

12 THE COURT: All right.

13 MS. HALL: --- the next witness.

14 THE COURT: Okay. Very well.

15 Ladies and gentlemen, as you hear, there is a matter
16 of law that I must take up outside your -- your presence.
17 We're also going to use this as our afternoon break.

18 So when you step to your jury room, please do not
19 discuss this matter or allow anyone to discuss it with you.
20 Leave your notebooks in your seat. I don't know that we
21 have any smokers, but if we do, let them smoke. Very well.

22 Again, we're going to use this as our afternoon break.
23 So all those cookies you've been resisting all day, let her
24 rip. Be with you shortly.

25 (The jury exits at 2:57 p.m.)

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

2 MS. HALL: Judge, I believe you -- you wanted to do
3 some in-camera testimony of Dr. Elsey; he's available now.

4 THE COURT: Oh, good.

5 MS. HALL: Judge, may we -- may we approach?

6 THE COURT: Yeah.

7 (Bench conference.)

8 DR. DON ELSEY, having been duly sworn,
9 testifies as follows:

10 THE COURT: We've had a discussion about how
11 inadequate I am running my microphone strengths. And we've
12 had a discussion that you are one of those people that
13 clearly doesn't need a microphone. And so I have been
14 criticized by the degree -- the percentage that I had you
15 on the microphone yesterday. So I'm going to try very hard
16 to put your microphone strength where it needs to be so
17 there's no feedback.

18 THE WITNESS: Okay.

19 THE COURT: So if -- if y'all hear feedback, y'all let
20 me -- including you -- you let me know. Because I'm going
21 to scale -- I'm starting with you. I've never -- I didn't
22 know we would go to 53 percent, but that's where I have you
23 to start.

24 THE WITNESS: Okay.

25 THE COURT: So -- so for sound-check purposes, if

1 you'd state your full name for the record.

2 THE WITNESS: Donald Edword Elsey.

3 THE COURT: Fifty-three percent is perfect.

4 THE WITNESS: All right.

5 MS. HALL: Judge, rather than go through the entirety
6 of what I -- what I intend to go through with him, for the
7 jury's purposes, I'm -- I'm just going to go ahead and
8 start from a point where, you know, arguably yesterday we
9 had already qualified you as an expert and -- and -- and go
10 from what I would have you -- of what I would ask you in
11 your expert opinion as you have already been qualified as
12 an expert.

13 THE COURT: Any objection to that?

14 MR. FARLEY: I'm not exactly sure what she's saying.

15 THE COURT: Here's what she's saying: What she's
16 saying is that she is going to, in the interest of time,
17 not go through the process of qualifying the doctor as an
18 expert again. She's not going to go through that again;
19 that she would propose to begin at the point where he is
20 qualified as an expert and then move from that point.

21 MR. FARLEY: If the solicitor is going to start right
22 where -- right after he's been qualified? Do you know what
23 I mean? If he had -- if this be the real deal and he had
24 been qualified, that's fine. But if we're skipping, like,
25 pages and pages of testimony to get -- we're -- we're not

1 okay with that.

2 THE COURT: You are or are not?

3 MR. FARLEY: We are not if she's skipping the vast
4 majority of her questioning that doesn't pertain to the --
5 the expert. We're cool with him being qualified as an
6 expert ---

7 THE COURT: Good.

8 MR. FARLEY: --- for the purposes of this.

9 THE COURT: Got it.

10 MR. FARLEY: But I don't want there to be a thousand
11 questions that are going to be missed in this in-camera
12 hearing to get to the one or two at the end that she wants
13 to ask about for the purposes of this hearing.

14 THE COURT: Okay.

15 MS. HALL: Judge, I -- I mean -- and ---

16 THE COURT: You -- he's just been qualified as an
17 expert in the field of child sexual trauma, forensic
18 interviewing. My notes -- my notes indicate there was some
19 discussion of child development, but I don't know that you
20 qualified him in that regard. I was thinking it was -- it
21 was a twofold qualification.

22 MS. HALL: And I don't believe I had qualified him ---

23 THE COURT: I thought it was a child sexual abuse and
24 in forensic interviewing.

25 MS. HALL: My -- what -- what I have written down is

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1 child-sexual-assault cases and child-sexual-assault
2 forensic interviewing.

3 THE COURT: That is my memory as well.

4 MS. HALL: Okay.

5 THE COURT: Okay. Taking it from that point.

6 DIRECT EXAMINATION BY MS. HALL:

7 Q Dr. Elsey, can you define for us what a "forensic
8 interview" is?

9 A It is an interview in order to assess details about
10 what, if anything, has happened to a child.

11 Q And did you get any specialized training in that?

12 A Yes, I have. I have attended training in the American
13 Professional Society on the Abuse of Children training
14 approximately 15 years ago. I was trained in Finding Words
15 -- now it's called "Child First" -- in South Carolina
16 approximately 10 years ago in order to properly
17 forensically interview a child.

18 I also supervise other staff. And we do peer review
19 around these interviews. We do that both in our office,
20 and we do that on a national peer review once a month.

21 Q And can you explain to us what a normal forensic
22 interview process is?

23 A The structure is called "RATAC," and I'll explain what
24 that is. The "R" stands for rapport, which is asking
25 questions that are relatively simple for a child: who do

1 you live with; what school do you go to. But it does give
2 us information. If they answer those questions just with a
3 free narrative, it lets you know this child can -- can do
4 that. If they -- they shrug and don't say anything, it
5 could make the rest of the interview challenging.

6 Q Okay.

7 A The next part is anatomy identification. That's to
8 get common language of the child about what they call
9 different parts of their body.

10 Next you would do what's called "touch inquiry": who
11 gives you hugs; who gives you kisses; are there parts of
12 the body people shouldn't touch. And then you go from
13 there. If they do disclose at that point that someone's
14 touched an inappropriate part of their body, you would say,
15 "Tell me about that," which is the abuse scenario.

16 After you've finished that piece, you would do
17 closure, which is some sort of "Thank you for talking to me
18 today," something like that.

19 Q And -- and how long does an average forensic interview
20 take?

21 A Twenty to thirty minutes, depending on the age of the
22 child.

23 Q How many have you done in your career?

24 A Approximately 4500.

25 Q And do you focus on particular age groups?

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1 A At our center we see ages 2 to 18. However, we also
2 have been asked and have interviewed older individuals,
3 adults, who have cognitive limitations and would -- and
4 would present more as a younger child.

5 Q When you perform forensic interviews, do you record
6 these?

7 A Yes, we do.

8 Q And what's the purpose of that?

9 A So we can be held accountable for our work, to prevent
10 the child from having to be re-interviewed over and over
11 again, and as part of the investigation.

12 Q Okay. And do you record all forensic interviews?

13 A Yes.

14 Q Do you write a report?

15 A Yes, we do.

16 Q Do you make suggestions or recommendations in your
17 report?

18 A Yes, we do.

19 Q Who are -- who is the report and the video usually
20 distributed to?

21 A It's distributed to -- if there's other investigative
22 agencies involved, such as law enforcement, DSS, attorneys,
23 defense attorneys, solicitors. Sometimes therapists would
24 also want to view it as part of their treatment process.

25 Q Let's focus a little bit on how you ask these

1 questions during a forensic interview. What -- how -- how
2 do you ask questions during a forensic interview?

3 A The goal is to ask open-ended questions, which are --
4 which allow for a free narrative response from the child.

5 A very common way to do that is to say, "Tell me about
6 that; tell me more about that" ---

7 Q Uh-huh.

8 A --- versus a leading question. A leading question we
9 try to never ask. That's when you would imply the answer
10 in your question.

11 THE COURT REPORTER: I'm sorry. Say that one more
12 time, the ---

13 THE WITNESS: A leading question is when you would
14 imply the answer in your question.

15 Q I'm -- I want to direct your attention to a forensic
16 interview that was conducted on Complainant . Do you
17 remember that interview?

18 A Yes, ma'am.

19 Q Do you remember the date of that interview?

20 A Yes, ma'am.

21 Q What was it?

22 A January 22nd, 2010.

23 Q And where did it take place?

24 A At the Dee Norton Lowcountry Children's Center.

25 Q And what steps did you take before you conducted the

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1 forensic interview?

2 A Reviewed the intake, talked to the caregivers, and
3 then saw the child for the interview.

4 Q How long did it take?

5 A Approximately 25 minutes.

6 Q And was a -- a report made of that?

7 A Yes, ma'am.

8 Q Have you had the opportunity to view that recording?

9 A Yes, ma'am.

10 Q Within your field of expertise, are you able to
11 develop and form opinions as to forensic interviews upon
12 completion?

13 A Yes, ma'am.

14 MS. HALL: Judge, at that point I would probably be
15 asking some additional questions to familiarize him with
16 the actual videotaping and to move the videotape into --
17 into evidence at that point, play the videotape for the
18 jury. I just wanted to give you kind of an idea of -- of
19 where I am here.

20 THE COURT: Got it. (To the witness) Would you do me
21 a big, big favor? I -- and I know that you've been --
22 you've obviously been around microphones enough. Pull that
23 microphone a little closer. Grab it, pull it.

24 THE WITNESS: I keep ---

25 THE COURT: There we go.

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1 THE WITNESS: --- trying to pull ---

2 THE COURT: It's not going ---

3 THE WITNESS: --- this chair ---

4 THE COURT: --- to break.

5 THE WITNESS: --- closer, but ---

6 THE COURT: I --

7 THE WITNESS: --- it's stuck.

8 THE COURT: --- we have a -- we have to connect the
9 chair. Because we wouldn't want anyone to pick it up and
10 throw it at the judge.

11 THE WITNESS: Is that better?

12 THE COURT: I think that's a lot better. I think ---

13 THE WITNESS: Okay.

14 THE COURT: -- that's great. Okay.

15 DIRECT EXAMINATION BY MS. HALL (Continues):

16 Q There's a portion of the video when you ask about the
17 difference between a truth and a lie. Why do you ask that?

18 A To assess the ability of the child to define the
19 difference in that.

20 Q Is there -- is that involved in that RATAAC protocol?

21 A It is, but it was.

22 Q Okay.

23 A We really don't ask that anymore. The -- in the newer
24 trainings they have discouraged from asking that. And our
25 local solicitor discouraged us from asking that. Because

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1 in the interview, it doesn't serve a whole lot of purpose -

2 --

3 Q Okay.

4 A --- because the child may understand what truth and
5 lie is, but they still may say something that may not be
6 accurate.

7 Q And the drawings of the body, that -- that portion of
8 the video, why do you do that?

9 A To get common language about the different parts of
10 the body. We use whatever language the child uses.

11 Q And is that part of that RATAC protocol?

12 A Yes.

13 Q I want to focus in on some of the -- the language that
14 Complainant used with regards to particularly the -- she uses
15 the words "slapping and shaking private" on the video. As
16 an expert, in your opinion, the descriptive she used of
17 "slapping and shaking," is -- is that age-appropriate
18 language for a child her age?

19 A I think she was describing what she saw. And it
20 absolutely did seem accurate for her age.

21 Q Okay. In your opinion, is there any significance to
22 the language she used for describing that act?

23 A I think it's significant because she was using
24 language, again, at an age-appropriate level. Sometime
25 children come in and use language that seems like maybe an

1 adult had used those words for them. This child described
2 things I really didn't know that she even knew what she was
3 describing, but she did describe the behavior that she --
4 that she said she saw.

5 Q And in your opinion as an expert, is there any
6 significance to her hand gestures that she uses during that
7 portion of the interview?

8 A Yes. It was another way for her to illustrate to try
9 to help me understand what she was trying to explain.

10 Q As well as that -- that description of "yellow and --
11 and mushy" -- and -- and I believe what she's referring to
12 is what has come out of his privates -- is there any
13 significance, in your expert opinion, as to her disclosure
14 and description of -- of those parts?

15 A Again, I think she described something in her language
16 and in her words, not fully understanding exactly what it
17 was.

18 Q Did you do any sort of follow-up interview with the
19 family or Complainant

20 A I did.

21 Q And tell us about that interview.

22 A We -- when we see a child for a forensic interview, we
23 normally set up an appointment roughly a week or so after
24 that to see how the family's doing, see how the child's
25 doing, assess for any treatment needs, and then make those

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1 treatment referrals as needed.

2 Q And did you notice, in your expert opinion, in -- in
3 any assessment that you did that she had any sort of
4 emotional signs that would mean anything to you or have any
5 significance to you as an expert?

6 A She told me some things she was experiencing that
7 certainly are indicative of a child who's experienced
8 trauma. And so it was part of my recommendation that she
9 get trauma-focused treatment for those -- for those
10 emotional reactions she was having.

11 Q And what were those emotional symptoms?

12 A She told me that she was having trouble sleeping; that
13 what she had told me she experienced were coming back in
14 her head, something I would call -- not her -- I would call
15 it "intrusive thought," which is a thought that you can't
16 really stop from coming in your head. If -- if we all were
17 to draw up a thought -- of a bad thought, we can do that,
18 but sometimes they pop in your head anyway. That's what
19 she described was -- was happening to her.

20 The parents had also noticed some problems: some
21 sleeplessness. She also told me she was having some
22 nightmares about what she had told me happened.

23 Q And . . .

24 MS. HALL: Let me just check real quick.

25 THE COURT: Sure.

1 Q I think you've mentioned that she reported some --
2 some sleeplessness, some -- some nightmares. What else was
3 it?

4 A That's what she reported to me. The parents reported
5 that she told them that she had been having some times at
6 schools where the thoughts would bother her at school.

7 Q And -- and as an expert in this field, is -- is there
8 a particular diagnosis that comes up when you -- when you
9 come across these types of issues?

10 A Those types of diagnoses are under the posttraumatic
11 stress, when a child's re-experiencing the stress; is
12 having those intrusive thoughts about them. Sometimes
13 children avoid who they're talking about or avoid the place
14 that it happened. That's another system of posttraumatic
15 stress disorder.

16 Q And -- and based on your assessment of potential --
17 well, did you have an assessment of potential posttraumatic
18 stress disorder in this case?

19 A Yes.

20 Q And -- and what did you recommend?

21 A I recommended she receive trauma-focused cognitive
22 behavioral therapy, which is a -- the therapy of choice
23 when there's been a trauma in the child's life or an
24 adult's life and which is a type of therapy I've been
25 trained in. However, there was people trained closer to

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1 where the family resided. And -- and I found out who that
2 was and referred them to there, which was the Hope Haven,
3 which has an -- a branch in her office in Walterboro, I was
4 told.

5 MS. HALL: I don't -- I don't believe I have any
6 further questions.

7 THE COURT: Cross-examination.

8 MS. LEMATTY: Thank you.

9 CROSS-EXAMINATION BY MS. LEMATTY:

10 Q Good afternoon, Dr. Elsey. How are you?

11 A Good, thank you.

12 Q You had testified that you had -- you saw Complainant just
13 on -- what was it: January 22nd ---

14 A Yes, ma'am.

15 Q --- of -- of 2010?

16 Was there any meeting or conversation with Complainant that
17 day that was not encompassed on what was on videotape from
18 the interview?

19 A I saw her for that treatment assessment follow-up on
20 February the 1st.

21 Q Okay. So you saw her for -- on -- on another date,
22 February the 1st?

23 A Yes.

24 Q Is there a report from that particular ---

25 A There's a ---

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1 Q --- incident?

2 A --- progress note.

3 Q There's a progress note?

4 A Yes, ma'am.

5 Q Okay. Do you happen to know if that progress note was
6 provided to the solicitor's office or requested by them?

7 A I don't -- I don't know.

8 Q Okay. And so do you happen to have that?

9 A I do.

10 Q Okay.

11 THE COURT: Do you ---

12 Q Could I ---

13 THE COURT: Just a second. Do -- do you all have it?

14 MS. HALL: We do not.

15 THE COURT: Everybody wants it. All right.

16 MS. LEMATTY: Yes.

17 THE WITNESS: With the judge's permission, I'll be
18 glad to give it.

19 THE COURT: Thank you. I -- I -- I hate to take it
20 back, because we can certainly get copies of it all around.
21 Y'all come on and look at the original note. If you would
22 just let these lawyers take a look at the original.

23 THE WITNESS: Okay. I -- Judge, I will tell you, I'll
24 probably have to translate it for them.

25 THE COURT: Okay. Well, you're here with us. This is

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1 great.

2 (Pause while all counsel review document and confer.)

3 CROSS-EXAMINATION BY MS. LEMATTY (Continues):

4 Q And Dr. Elsey, this document that you've just shown
5 us, this is a progress note?

6 A Yes, ma'am.

7 Q Does this contain a diagnosis of any type for ---

8 A No, ma'am.

9 Q --- any -- okay.

10 And the -- what I will call your "original report,"
11 the -- I believe this is called a "CFTA." And I have
12 forgotten the initials for that acronym.

13 A Child and family trauma assessment.

14 Q Okay. In that document you don't make any diagnosis
15 of Complainant or anybody else, correct?

16 A That's correct.

17 Q Okay. And so the -- the information that you just
18 testified about, as -- as far as Complainant having trouble
19 sleeping and that kind of thing, did that come from your
20 second appointment with Complainant this -- this follow-up?

21 A Yes, ma'am.

22 Q Okay. Did not come from anything that happened on
23 January 22nd?

24 A No, ma'am.

25 Q Okay. When you did your assessment of Complainant, did you

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1 receive any information from any source, other than your
2 intake?

3 A Before I did my interview with Complainant?

4 Q Yes.

5 A I met with the parents.

6 Q Okay. And that was documented -- documented in your
7 intake form?

8 A Yes, ma'am.

9 Q Did you receive any kind of other records on Complainant:
10 medical records or any other type of -- of information?

11 A I have a copy of the police report. And it looks like
12 I had that prior to the interview also.

13 Q I'm sorry. It looks like she had what also?

14 A The incident report.

15 Q Okay. And that would be the incident reported, dated
16 January 16th, 2010; dated at the bottom Derrick Sorro,
17 January 22nd, 2010?

18 A The one I'm looking at here does say the incident date
19 of 1/16. At the bottom I don't see what you just --

20 Q On the bottom -- the reporting officer on the very
21 bottom left?

22 A Oh, yes. At the bottom right it says -- has a
23 "Morgan" written in there.

24 Q Okay. Maybe if I could just see it for a second, just
25 to make sure we're talking about the same document ---

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1 A Okay.

2 Q --- here?

3 (Whereupon, Ms. Hall and Ms. LeMatty approach the
4 witness and review the document.)

5 THE WITNESS: Okay.

6 Q And did you receive that incident report prior to
7 seeing Complainant on January 22nd of 2010?

8 A Yes, ma'am.

9 Q Okay. Was there any other information that you had
10 prior to -- regarding Complainant or her family prior to January
11 22nd of 2010?

12 A Can -- can I go back? The -- the report, as I look at
13 it, it -- it mentions our intake person, Donna Slipko. So
14 -- and then, it has a date of 1/23 at the bottom, approving
15 officer. I saw the child on the 22nd, so this may have
16 come after I saw the child.

17 Q Okay. So then, the information you had regarding
18 Complainant and her family would have been simply your -- you
19 have an intake form?

20 A Yes, ma'am.

21 Q Okay. And you went through your normal forensic
22 interview process with Complainant as you do with numerous other
23 cases?

24 A Yes, ma'am.

25 Q And on January 22nd you did not make any kind of

1 diagnosis of -- of her or anything like that?

2 A That's correct.

3 Q But she did -- was it LCC who scheduled -- was it
4 Complainant and her family had come back on the day of the
5 follow-up?

6 A Yes.

7 Q February the 1st?

8 A Correct. Yes, ma'am.

9 Q And what was that follow-up -- what was the purpose of
10 that follow-up?

11 A The follow-ups was to see how things were going, any
12 new information; and to assess Complainant to see if she's
13 having any -- how is she doing; how was she handling her
14 current life situation.

15 Q And is that something that is part of the normal
16 protocol and process at Lowcountry Children's Center?

17 A Yes, ma'am.

18 Q Okay. And it was -- at that time did you make any
19 diagnosis of Complainant on that day?

20 A No, ma'am.

21 Q But I believe you had said before you had made a
22 recommendation, as far as treatment goes?

23 A Yes, ma'am.

24 Q And -- I'm sorry -- what was that?

25 A That she receive treatment based on her symptoms of

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1 trauma she was having.

2 Q And -- and what type of treatment, if -- if any
3 particular type, did you recommend?

4 A Trauma-focused cognitive behavioral therapy.

5 Q Okay. And did you recommend a particular location or
6 provider for that service?

7 A I did.

8 Q Okay. And subsequent to February 1st of 2010, have
9 you seen Complainant or her family at all?

10 A Not until yesterday here in the court.

11 Q Okay. Was any other services provided to her family,
12 according to what you have in your file, from Lowcountry
13 Children's Center?

14 A From what I have in my file? No, ma'am.

15 Q Okay. Ms. Hall had asked you some questions about
16 your opinions regarding language that Complainant used during
17 the forensic interview.

18 A Yes, ma'am.

19 Q And I'm sorry I just want to make sure that I
20 understood your responses to those questions. She -- I
21 believe she asked if you attached any significance, in your
22 expert opinion, as to the language that Complainant used?

23 A Yes, ma'am.

24 Q And do you recall what your response to that was?

25 A Her language appeared to be age-appropriate. It

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1 appeared to me that she was describing something without
2 labeling exactly what it was. Some -- some parts of it
3 wasn't -- she didn't really understand what it was, but she
4 certainly could describe what she said she saw/experienced.

5 Q And it was Complainant who told you she was having trouble
6 sleeping or her parents?

7 A Both.

8 Q Both? Did Complainant report any other symptomatology to
9 you, other than trouble sleeping?

10 A And nightmares.

11 Q Nightmares? Oh. I can almost make that out.

12 A I'd be happy -- I understand my -- my writing is not
13 great. I'll be happy ---

14 Q Oh.

15 A --- to read that, if you ---

16 Q Mine ---

17 A --- like.

18 Q --- is, I'm sure, worse. Let's see. But -- but
19 again, you provided no diagnosis ---

20 A That's correct.

21 Q --- on either event?

22 A That's correct.

23 MS. LEMATTY: Thank you. Nothing further.

24 THE COURT: Redirect?

25 MS. HALL: No redirect.

1 THE COURT: Very well. All right. I'll hear from
2 you.

3 MS. LEMATTY: Thank you very much ---

4 THE COURT: Yes.

5 MS. LEMATTY: --- Your Honor. With regard to the
6 forensic interview itself -- the portion of Dr. Elsey's
7 testimony where he explains the process, explains his
8 contact with Complainant, goes over what happened on that date
9 and how he -- he did what he did -- I -- I think that
10 that's very factual, very straightforward. It's not
11 something that he rendered opinion about or was required to
12 render an opinion about. And I think that that testimony
13 is -- is appropriate not as expert testimony. And I know
14 I'm probably not articulating myself very well, but it's
15 not necessary for it to be expert testimony.

16 With regard to the other proposed questions that Ms.
17 Hall asked regarding the descriptive language and the
18 significance of the hand gestures, I -- I believe that that
19 line of questioning is outside the scope of the areas in
20 which he has been qualified as an expert. He's been
21 qualified as an expert in forensic interviewing and child
22 abuse, but not in -- in an area of language interpretation
23 or child development or anything of that nature that would
24 render that type of an opinion appropriate. And we would
25 ask that that not be allowed in, in terms of the

1 examination of Dr. Elsey.

2 THE COURT: Let me stop there, because I'm afraid I'll
3 forget to go back through each of yours.

4 With regards to that testimony, I notice that Dr.
5 Elsey was quite careful not to interpret what that meant.
6 But what he was saying was that that was this child's
7 language and that sometimes you can tell where adults have
8 given the language to a child. But he talked about the
9 fact that this was her language. It's just the way she was
10 describing something that she very well had no -- no basis
11 to know what she was describing. And -- and I noticed that
12 he was very careful to describe -- to describe what the
13 alleged victim was doing.

14 And I thought he was very careful to do that. He
15 didn't say -- he didn't opine what she was describing but
16 talked about -- I thought -- I -- I actually thought it was
17 very helpful to the jury, as any expert testimony ought to
18 be, to talked about the fact that this is -- that -- that
19 he believed that what he was hearing was a child describing
20 something that the child didn't know what it was, what was
21 happening, and yet was trying to use her language to
22 describe what she was seeing.

23 And -- and I think that insofar as that portion is
24 concerned, that his expertise as someone who -- his
25 bachelor's child psychology, has a licensed clinical

1 counselor, and has his Ph.D. in child development with his
2 other expertise in the area of forensic interviewing and
3 counsel with children who were both sexually as well as
4 physically abused -- I think that he -- his expertise would
5 encompass that and would allow him to testify as an expert
6 with regards to that portion of the testimony.

7 What's next?

8 MS. LEMATTY: With regard to his opinion regarding
9 posttraumatic stress disorder, I believe he said that he
10 said he saw symptoms of that. He did not provide any
11 diagnosis for this child at any point along the way. I
12 think, since he did not diagnose her with that particular
13 affliction or any other affliction, it wouldn't be proper
14 for him to testify as to her showing signs of such a thing.
15 I think it would, in essence mislead, the jury in terms of
16 dealing with that particular set of issues.

17 THE COURT: I understand. I really think that -- that
18 what you're -- that what you're addressing now goes to the
19 weight on cross-examination, rather to the admissibility of
20 his ability to testify to that. I think that -- that is an
21 area for cross-examination.

22 MS. LEMATTY: Thank you, Your Honor.

23 THE COURT: Thank you. Anything else?

24 Now, you know, this is our afternoon break. Anybody
25 need a -- a Beaufort County comfort break? My court

1 reporter does. That's it. That rules. Let's -- let's
2 take about -- and, you know, our jury's waiting. And so
3 why don't we take about five minutes.

4 (Off the record from 3:33 p.m. until 3:39 p.m.)

5 MS. HALL: Before we have the jury come back in, can
6 we just put something on the record, you know, after
7 Bonnie's ready?

8 THE COURT REPORTER: I'm ready.

9 MR. HILTON: It's nothing major.

10 MS. HALL: It's nothing major.

11 THE COURT REPORTER: Okay. I'm ready.

12 THE COURT: Nothing major? We're major.

13 MS. HALL: Just that on our potential witness list, we
14 included Wonda Bennett, the grandmother of the victim. And
15 -- and it's not our intention now to call her. She's
16 indicated to our office that she'd very much like to be in
17 the courtroom to support her family members who are here.
18 And I don't believe there's any objection from the defense
19 by having her now here and having put on the record that we
20 don't intend to call her as a witness ---

21 THE COURT: And that they can rely ---

22 MS. HALL: --- in our case ---

23 THE COURT --- on that.

24 MS. HALL: --- in chief.

25 THE COURT: Okay. Y'all ---

1 MR. FARLEY: That ---

2 THE COURT: --- can rely on that?

3 MR. FARLEY: That's correct ---

4 THE COURT: Very well.

5 THE COURT: --- Your Honor.

6 THE COURT: Yeah.

7 MR. FARLEY: Thank you.

8 THE COURT: Sure. Now, is she present in the
9 courtroom?

10 MS. HALL: She is.

11 MS. BENNETT: Right here.

12 THE COURT: Oh, okay.

13 MS. HALL: Thank you.

14 THE COURT: Very well, then. We don't need to go find
15 her. Wonderful. Good.

16 MS. HALL: Thank you.

17 THE COURT: Okay. Anything else before we bring the
18 jury back in from the state?

19 MS. HALL: Try to ---

20 MR. HILTON: Just make sure the computer's working.

21 (Off the record briefly to address technology issues.)

22 THE COURT: All right. Anything else from the -- from
23 the state? from the defense?

24 MR. FARLEY: No, Your Honor.

25 THE COURT: Let's have the jury.

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1 (The jury enters at 3:45 p.m.)

2 THE COURT: (To the jury) Ladies and gentlemen, at
3 this time we will continue with the State's case.

4 Please call your next witness.

5 MS. HALL: Thank you, Your Honor. The State would
6 call Dr. Don Elsey.

7 DR. DONALD ELSEY, having been
8 first duly sworn, testifies as follows:

9 THE COURT: Thank you. If you'd please be seated, and
10 state your full name for the record.

11 THE WITNESS: Donald Edword Elsey.

12 THE COURT: Feel free to push that up again. You
13 know, I -- it's not -- it's not listening to you as -- like
14 it should. Very well. Your witness.

15 MS. HALL: Thank you, Your Honor.

16 DIRECT EXAMINATION BY MS. HALL:

17 Q Dr. Elsey, what do you do for a living?

18 A I'm the clinical director at the Dee Norton Lowcountry
19 Children's Center.

20 Q And what is the Dee Norton Lowcountry Children's
21 Center?

22 A We're a child-advocacy center. We see children when
23 there are concerns about their safety. We provide
24 treatment for children as need.

25 Q And -- and what would you say that the field of your

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1 work, then, is?

2 A Childhood trauma. We get referrals from many
3 different agencies, many different people, when they're
4 concerned about the safety of the child.

5 Q Okay. And how long have you worked for the Dee Norton
6 Lowcountry Children's Center?

7 A Fifteen years.

8 Q Let's talk a little bit about your training. Can you
9 tell me a little bit about your educational background?

10 A Yes. I have a bachelor's in psychology and sociology.
11 I have --

12 Q Let me -- let stop you right there. Where'd you get
13 that?

14 A Jacksonville University in Florida. I have a graduate
15 degree from The Citadel in clinical counseling. I have a
16 doctorate from Nova University in childhood development.

17 THE COURT REPORTER: (To the witness) I'm sorry.
18 From where?

19 THE WITNESS: Nova University, Florida.

20 A I am a licensed professional counselor in South
21 Carolina and a licensed professional counselor supervisor.

22 Q So that sounds like pretty extensive training. Am --
23 am I correct in saying it is extensive training?

24 A Yes, ma'am.

25 Q In that training did you receive training by yourself

1 or with someone else or -- can you explain to me
2 postgraduate what your training was like, with regards to -
3 - to other people's involvement with that?

4 A To keep your -- your license active, you have to have
5 "X" amount of hours of training. I also do trainings all
6 over the state on various topics around children.
7 Actually, I've done trainings all over the country before.

8 For forensic interviewing I've had specific training
9 around that both by the American Professional Society on
10 Abuse of Children about 15 years ago. South Carolina
11 adopted "Finding Words," which is now called "Child First,"
12 which is an intensive training for forensic interviewing.
13 And I did that approximately 10 years ago.

14 We do ongoing supervision, ongoing peer review, which
15 means others who do the same type of interviewing look at
16 your interviews, critique your interviews. We do that at
17 our office. We do that on a national basis also.

18 Q The -- the training you did 15 years ago, what was
19 that one called?

20 A The American Professional Society on the Abuse of
21 Children.

22 Q And how long was that training?

23 A A week.

24 Q And -- and the one that you did 10 years ago?

25 A A week.

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1 Q And where did you do those training?

2 A The training 15 years ago was in Michigan. The
3 training was in Columbia 10 years ago.

4 Q And you say that you -- you've trained other people.
5 How many different classes do you think you've taught?

6 A Hundreds.

7 Q Do you -- do you attend yourself conferences in this
8 field?

9 A Yes. We -- we put on a number of conferences at our
10 center. I also go to various conferences to keep on their
11 latest training, latest -- the latest research.

12 Q Are you certified in any sort of field?

13 A There is no certification in this field. So no, I'm
14 not certified.

15 Q So there's no mandated training requirements that you
16 have to follow?

17 A Well, to get my license, you have to have a certain
18 amount of continuing-education units, but it's not
19 considered a certification. It's considered your license.

20 Q And how many years have you been in this -- in this
21 general field?

22 A The general field? About 30 years. I've worked ---

23 Q And tell ---

24 A --- with -- I've worked with -- I've worked with
25 children before I worked in the center, both -- both on an

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1 inpatient and outpatient basis, working with children and
2 their families; ran -- ran programs for children for years.

3 Q And was that all in South Carolina or in other places?

4 A All in South Carolina. Except my senior year in
5 college, I worked in Jacksonville at a psychiatric
6 hospital.

7 Q All right. Have you ever testified as an expert in a
8 criminal case before?

9 A Yes, ma'am.

10 Q And how many times you would say you've testified in a
11 criminal case?

12 A In a criminal case? Approximately 50 times.

13 Q And in what fields have you been qualified as an
14 expert in a -- in these criminal cases?

15 A Child abuse, forensic interviewing, child abuse
16 treatment, and childhood development.

17 Q And how many times in South Carolina?

18 A All those were in South Carolina.

19 MS. HALL: Your Honor, at this time the state would
20 move to have Dr. Elsey qualified as an expert in the child
21 of -- or in the area of child-sexual-assault cases and in
22 child-sexual-assault forensic interviewing.

23 THE COURT: Is there any voir dire?

24 MS. LEMATTY: No, Your Honor.

25 THE COURT: Any objection?

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1 MS. LEMATTY: Subject to our earlier objection.

2 THE COURT: Very well. Very well.

3 (To the jury) Ladies and gentlemen, we talked earlier
4 about expert witnesses and expert testimony. And I am at
5 this time declaring that Dr. Elsey is an expert in the
6 field of child-sexual-assault cases -- or child sexual
7 assault and child-sexual-assault forensic interviewing.

8 You may proceed.

9 MS. HALL: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MS. HALL (Continues):

11 Q Dr. Elsey, can you define for us what a "forensic
12 interview" is?

13 A Yes. It's an interview where you're trying to find
14 out what happened, if anything, to a child by following
15 certain protocol and asking developmentally appropriate
16 questions.

17 Q And did you get specialized training in conducting
18 forensic interviews?

19 A Yes, I have.

20 Q Can you explain to me what that -- that training
21 involved?

22 A The -- the Finding Words training, which I did in
23 Columbia approximately 10 years ago, was a full-week
24 intensive training, including mock interviews, including
25 live interviews where you were critiqued, to learn all the

1 nuances of how to ask proper questions to children. I had
2 also been trained prior to that by the American
3 Professional Society on the Abuse of Children: again,
4 similar type of formats to again solicit as accurate
5 information as possible from a child.

6 Q And how many forensic interviews have you conducted in
7 your lifetime?

8 A Approximately 4500.

9 Q And -- and how many do you do a week?

10 A It varies. I don't do as many now as I did back in
11 the past, but about five a week, approximately.

12 Q And why don't you do as many now as you did in the
13 past?

14 A We've been able to hire a few more staff that I
15 supervise. They're able to take up some of that load.

16 Q And what has your supervisory capacity been?

17 A I supervise the other clinicians, the other therapists
18 in the office. I -- I supervise some psychiatric residents
19 from the medical university, some graduate students from
20 The Citadel, from the University of South Carolina, that
21 type of responsibilities.

22 Q So do you show other forensic interviewers how to do a
23 forensic interview, then?

24 A Yes.

25 Q Okay. How many were you doing in your heyday, then, a

1 week?

2 A Ten to -- ten to fifteen.

3 Q And -- and explain to me how a -- a typical forensic
4 interview process works. I mean, what do you do first?

5 A First thing you do is review whatever information we
6 have prior to the child coming in. Then we meet with the
7 caregiver, because we know the caregiver's often the -- the
8 best place for a child to get whatever help they need, for
9 the child being safe. And then we do ---

10 Q Let me stop you right there. You -- well, you said
11 any information that we have before the child got there.
12 What -- what are you talking about?

13 A Someone has made the referral. Someone has called and
14 said, "Hey, I want you to see so and so." And they provide
15 a little bit of information about that particular child and
16 that case.

17 Q Okay.

18 A So ---

19 Q And then you see the family. And then what?

20 A Then we see the family. Then we interview the child.
21 And then after that we would get back with the family and
22 give them feedback about the child and -- and usually set
23 up another appointment to -- to see how things are going.

24 Q What type of -- of issues do you commonly see in these
25 forensic interviews? I mean what types of, I guess,

1 allegations or ---

2 A We get referrals ---

3 Q --- what topics?

4 A We get referrals from all type of allegations of -- of
5 childhood trauma ranging from sexual abuse, physical abuse,
6 neglect issues, exposure to domestic violence, exposure to
7 substance abuse, exposure to pornography -- all sorts of
8 issues like that.

9 Q Okay. And -- and I think you said you had referrals.
10 How does -- how does a person normally come to you -- to
11 you to do a forensic interview?

12 A They're referred by various agencies, various
13 individuals. They call our intake office; she gathers the
14 information and see if it's appropriate for us to see them.
15 If a child -- if someone calls and says, "My child has
16 ADHD; can you help," we refer them to someplace else.
17 That's not what we do.

18 Q And what type of agencies do you typically get
19 referrals from?

20 A We get referrals from the court ---

21 THE WITNESS: Bless you.

22 A --- from -- from DSS, from law enforcement, from
23 individuals, from attorneys -- various places -- hospitals,
24 doctors.

25 Q And how long does a typical forensic interview take?

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1 A The actual time with a child takes 20 to 30 minutes,
2 depending on the age. We spend time with the family also,
3 and that generally takes about the -- well, 45 minutes or
4 so.

5 Q So you -- they're usually there, then, a couple hours?

6 A Correct.

7 Q Do you particularly focus on -- on a certain age group
8 at the Lowcountry Children's Center or broader than that?

9 A We see children from age 2 to 18. Sometime we've been
10 asked to see an adult who may have some cognitive delays,
11 and we've also seen them. That's been pretty much for law
12 enforcement. But generally, it's age 2 to 18.

13 Q And do you use a particular method when you conduct
14 your forensic interview?

15 A We do.

16 Q And can you explain to me what that method is?

17 A The training we received at -- at Finding Words is
18 basic protocol called "RATAC," which stands for rapport --
19 the initial part of the interview is just gaining some
20 rapport with the child, talking about some things they
21 already know or we already know: for example, who do you
22 live with; where do you go to school.

23 And it gives us an ability to know how the child's
24 going to answer questions, and can they answer questions
25 accurately. If a child at that point gives us all sorts of

1 misinformation, we may stop at that point. So it's initial
2 -- just kind of getting the child warmed up to questions.

3 The next part of the interview is anatomy
4 identification. That's when we come to some common
5 language with the child on what they call different parts
6 of the body: eyes, nose, and -- and private areas of the
7 body. We use whatever language the child uses.

8 After we have that identified, we would do what's
9 called a "touch inquiry": who gives you kisses; who gives
10 you hugs; are there parts of the body people shouldn't
11 touch. And then, depending on what the child says, we
12 would do an abuse scenario. If a child identifies a -- a
13 private part that's been touched, we would ask them more
14 about that -- tell me what happened -- to try to get
15 information about that.

16 After we've finished all those areas of the interview,
17 we do closure, which is letting the child know we
18 appreciate them answering our questions. If we need to do
19 any sort of safety issues around that -- you told me your
20 mother -- you could tell your mother and she'd keep you
21 safe, then we just reiterate that with them, some sort of
22 endpoint to the interview.

23 Q Okay. And -- and you were taught that method at the
24 Finding Words conference or training?

25 A Training. Yes, ma'am.

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1 Q And how long have you practiced this particular
2 method?

3 A Approximately 10 years.

4 Q And is this method widely used?

5 A This state has adopted it as our method. I mentioned
6 earlier we do a national peer review. And that's all over
7 the country, Hawaii, all over -- all -- a lot -- many
8 states. And I say about half use that particular method.
9 There are other similar methods. They all follow that same
10 basic protocol, to be honest with you. So most follow that
11 protocol.

12 Q So there's different -- or there's ---

13 A It's called --

14 Q --- different names, but basically the same method?

15 A Basically the same method.

16 Q And when you perform a forensic interview, do you
17 record it in any way?

18 A Yes, we do.

19 Q And -- and what's the purpose of recording a forensic
20 interview?

21 A So we can be held accountable for what we ask the
22 children, and hopefully minimize the number of times a
23 child's asked these questions. And it can be used in part
24 -- as part of an investigation. It may be used for
25 therapeutic reasons later on.

1 Q And is it possible they would be used at trial?

2 A Yes, ma'am.

3 Q Do you record all the interviews that you do?

4 A Yes, ma'am.

5 Q And -- and how do you preserve those -- those
6 recordings?

7 A As the technology changes, we've changed it over the
8 years. We used to use VHS tapes; now DVD tapes. But now
9 we use actually a -- on the computer; they're saved in a --
10 in a file.

11 Q Okay. And along with the recording of the interview,
12 do you also write a report?

13 A Yes, ma'am.

14 Q And what's the purpose of that?

15 A To just provide the information on what we -- what we
16 heard from the caregiver; what we have from the child; and
17 then, any recommendation so that can be given to
18 appropriate -- either authorities or a therapist after the
19 interview is completed.

20 Q So you do ultimately make a recommendation at the end
21 of your report?

22 A Yes.

23 Q And can you give me some examples of what those
24 recommendations are?

25 A We may recommend that the family get support because

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1 of what the child's disclosed. It may be absolutely
2 distraught. We may recommend nothing because everything
3 seems to be okay. We may recommend the child come back for
4 a treatment assessment -- that happens quite a bit -- to
5 kind of see how things are going, what they child may need.
6 We may recommend treatment at that point.

7 It's a variety of things. We may recommend that the
8 child not be exposed to certain people while the
9 investigation is ensuing because of safety concerns.

10 Q And who are these reports and -- and videos typically
11 distributed to?

12 A The reports are distributed with proper release to --
13 if there's an investigation going on -- again, as I
14 mentioned earlier, to the therapist; possibly to the -- the
15 attorneys involved. The -- the DVD or the forensic-
16 interview recording is -- takes more -- like a judge's
17 order if you order that to be seen by someone. But that's
18 -- we're a little more closed with that, because it's --
19 it's very sensitive information on that.

20 Q Certainly. Let's focus a little bit, then, having
21 known what a forensic interview is and -- and what you do
22 in a typical forensic interview. What -- what type of
23 questions do you ask during a forensic interview?

24 A We ask open-ended questions, which are broad
25 questions. And again, depending on the age of the child --

1 I mentioned earlier sometime it's a 2-year old. If you ask
2 a 2-year-old, "Tell me more about that," they'll look at
3 you like you don't know what you're doing. So you have to
4 ask more direct questions, depending on the age of the
5 child.

6 Q Uh-huh.

7 A But you really start out broad: "Tell me about that.
8 Tell me everything you know about that." Sometime you ask
9 -- have to ask more direct questions, such as: "You told
10 me X happened. Now, where was that?" That's a more direct
11 question. And again, you have to get more narrow,
12 depending on the age of the child, depending on how they
13 present.

14 Q And within the context of -- of the child's statement
15 itself, what type of things are you looking for within the
16 child's response?

17 A Are their -- is their presentation age-appropriate;
18 are they using age-appropriate language; are they able to
19 give context to what they're saying. Are they able to give
20 detail to what they're saying -- "detail" meaning specifics
21 or sensory detail about what they've disclosed. What's
22 their language like; is it consistent with their -- their
23 age and their developmental level.

24 And are they able to source; like, how do you know
25 that. That simple question can give you a lot of

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1 information at times.

2 Q What, if anything, is so important about asking open-
3 ended questions?

4 A That is -- again, there's been a lot of research.
5 That is the best way to get accurate information from a
6 child.

7 Q As part of your role as a forensic interviewer, do you
8 work alongside law enforcement and other state agencies
9 that -- in determining what happened?

10 A Yes, ma'am.

11 Q And in regards to this particular case that we're here
12 for today, did you interview some individuals associated
13 with this case?

14 A Yes, ma'am.

15 Q Who all did you interview?

16 A I interviewed the parents of the child. I interviewed
17 her cousin and her cousin's mother.

18 Q And did you interview the child herself?

19 A Yes.

20 Q Okay.

21 A Complainant? Yes.

22 Q And -- and I want to direct you to that particular
23 forensic interview that you, I believe, completed on
24 January 22, 2010, involving the -- the victim, Complainant

25 . Do you remember that interview?

1 A Yes, ma'am.

2 Q And where did that interview take place?

3 A At the Dee Norton Lowcountry Children's Center.

4 Q And -- and what steps did you take before starting
5 that interview?

6 A I reviewed the intake; I met with the caregivers, the
7 mother and father. And then I interviewed the child.

8 Q What type of intake did you have?

9 A From the mother just the basic story about what the
10 concerns were.

11 Q And what room did you conduct this forensic interview
12 in?

13 A We have -- we had at the time three interview rooms --
14 we have four now -- three interview rooms. They are very -
15 - I will use the word "stark." There's not toys in there.
16 There's not pictures on the wall, because we want to have
17 the child's attention while we ask them questions. They're
18 not -- they're not scary rooms. They just have a soft
19 chair and a -- and board to write on.

20 Q And was there anyone else in the room when you did
21 that intake interview?

22 A No, ma'am.

23 Q Was there anyone else watching?

24 A Yes, ma'am.

25 Q How did Complainant -- what was Complainant's demeanor when she

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1 -- she came to that forensic interview?

2 A She presented as verbal, bright, personable, easy to
3 engage.

4 Q And how long did that forensic interview take?

5 A Approximately 20/25 minutes.

6 Q Okay. Is that a -- a normal length of time for a
7 forensic interview?

8 A Yes, ma'am.

9 Q And was a tape made of that forensic interview?

10 A Yes, ma'am.

11 Q Can you tell us how that forensic interview started?

12 A I started with the rapport building, asking her some
13 questions. I don't remember exactly the questions I asked
14 to start off with. But it was questions about her family,
15 I'm assuming, would -- came early in the interview, again,
16 to gather detail about how did she talk, how did she
17 provide information ---

18 Q Okay.

19 A -- trying to make her feel comfortable.

20 Q Have you had an opportunity to view the recording of
21 this forensic interview recently?

22 A Yes, ma'am.

23 Q When's the last time you've seen it?

24 A Early last week.

25 Q And I -- I want to show you a copy --

1 MS. HALL: And I'd just like to mark this as State's
2 Exhibit 2, I believe, for identification purposes at this
3 point.

4 (Marked State's Exhibit No. 2, DVD, for
5 identification.)

6 Q And I just want to ask you: Does this look like the
7 forensic-interview recording?

8 A Well, it looks like the copy of it. I'd have to see
9 it to know exactly what's on it, of course. But that's our
10 stickers we use.

11 Q These are the stickers that you use?

12 Do you see the -- the individual's name on there?

13 A Yes, ma'am.

14 Q And the date that it was recorded?

15 A Yes, ma'am.

16 Q And does this recording fairly and accurately depict
17 the forensic interview that was done with Complainant
18 on January 22, 2010?

19 A Well, I haven't seen that yet, but I'm going to assume
20 that it does, based on the name that's on the outside.

21 MS. HALL: Can we approach, Your Honor?

22 (Bench conference.)

23 THE COURT: (To the jury) Ladies and gentlemen,
24 here's -- here's what we're going to do: And -- and I'm
25 going to share with you, because I want you to know it's

1 going to be a very short break. I'm going to allow this
2 witness to view a portion of the tape, but I must do that
3 outside your presence for verification purposes. And then
4 we'll come back -- have you come back in.

5 So I'm going to ask you to please step to your jury
6 room. Do not discuss this matter or allow anyone to
7 discuss it with you, and don't go far. Just step to your
8 jury room.

9 (The jury exits at 4:06 p.m.)

10 THE COURT: All right. That's what we're going to do.
11 You all just show -- show him a portion. And Dr. Elsey, I
12 want you to look at whatever portion you need to assure
13 yourself this is -- this is what it purports to be, okay?

14 THE WITNESS: Okay.

15 THE COURT: And if you want to check it periodically -
16 - have them fast-forward and check it throughout the tape -
17 - that's fine too. You do what you need to do. Okay?

18 THE WITNESS: Do I have to purport that it's the
19 entire interview or just portions of it -- my interview?

20 THE COURT: Listen -- good question. I'm going to ask
21 you just to listen to the question that you're asked by
22 counsel, and that's -- that's all that you're asked to do.
23 Okay?

24 THE WITNESS: Thank you.

25 THE COURT: All right. Everybody hear that? Okay.

1 And it's going to come up on your screen right here in
2 front of you.

3 (The video is played.)

4 MS. HALL: Dr. Elsey, at this point do you believe
5 that you could say that this is -- fairly, accurately
6 depicts the forensic interview that was done with Complainant

7 ---

8 THE WITNESS: Yes ---

9 MS. HALL: --- that day?

10 THE WITNESS: --- ma'am.

11 MS. LEMATTY: And Your ---

12 THE COURT: Okay.

13 MS. LEMATTY: --- Honor, I want ---

14 THE COURT: Yes.

15 MS. LEMATTY: --- to make sure that -- that he's
16 saying that this is the actual entire tape. If he's not
17 satisfied that it is the complete document that it purports
18 to be, I'd like for him to be satisfied.

19 THE COURT: Thank you. (To the witness) Are you
20 satisfied?

21 THE WITNESS: I'm satisfied that this is the tape.
22 Now, I -- I haven't seen the entire thing to know if it's
23 the entire thing. I don't know if it's been edited or
24 deleted, based on other things. I don't know that. But it
25 -- this is -- this is the interview of Complainant that I did.

1 I'm satisfied with that, if that was your question.

2 MR. FARLEY: Your -- Your Honor, may we approach real
3 quick?

4 THE COURT: Sure, of course you can. Sure.

5 (Bench conference.)

6 THE COURT: (To the witness) A couple of things:
7 First thing, if at this point you want to just check it
8 periodically throughout the tape, that's absolutely not a
9 problem, because you've got to be comfortable with your
10 testimony, okay?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: But secondly, if, over the course of -- as
13 you watch the tape, if -- if anything pops up and you are
14 concerned about it, I want you to say something: "I don't
15 remember that. Please stop the tape." That is absolutely
16 appropriate. Okay?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: And finally, I want -- I need you to know
19 that what is going to be played to this jury is not the
20 entire tape that -- that you did, because I have made
21 determinations that -- as a matter of law that the tape
22 must be stopped at a particular time, okay?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: So I don't -- it -- that's -- I didn't
25 want you to be looking for the rest of the tape and wonder

1 what happened. But it will go up until a point, and then
2 it will stop. It won't jump around. It will go up ---

3 THE WITNESS: Okay.

4 THE COURT: --- to a point, and then it will stop.

5 THE WITNESS: Thank you very much.

6 THE COURT: Absolutely. Okay. So you might want to -
7 - ask him if he wants to -- to ---

8 MS. HALL: Do ---

9 THE COURT: --- check it.

10 MS. HALL: Do you want to -- we can fast-forward
11 throughout this and then we can just go through portions
12 and stop periodically so that you can check and make sure
13 that this is the entire report, if you'd like?

14 THE WITNESS: No, ma'am. I think the judge explained
15 what I can do if something comes up that I'm not familiar
16 with. But I'm ---

17 THE COURT: Uh-huh.

18 THE WITNESS: --- I'm comfortable now.

19 MS. HALL: Okay. Perfect.

20 THE COURT: Very well. All right. Anything further
21 before we invite the jury back in from the State or the
22 Defense?

23 MS. HALL: Nothing from the State.

24 MS. LEMATTY: No, Your Honor.

25 THE COURT: Very well. Let us have the jury.

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1 (Off the record briefly to address technology issues.)

2 (The jury enters at 4:12 p.m.)

3 THE COURT: Yes, ma'am. You may proceed.

4 MS. HALL: Thank you.

5 DIRECT EXAMINATION BY MS. HALL (Continues):

6 Q Having just viewed a portion of that video, Dr. Elsey,
7 is that -- does that fairly and accurately depict the
8 forensic interview that you conducted with Complainant
9 on January 22, 2010?

10 A Yes, ma'am.

11 MS. HALL: And at this time the State would offer that
12 forensic-interview tape into evidence.

13 THE COURT: Yes?

14 MS. LEMATTY: Your Honor, subject to ---

15 THE COURT: Yes.

16 MS. LEMATTY: --- our prior ---

17 THE COURT: Yes.

18 MS. LEMATTY: Thank you ---

19 THE COURT: Absolutely.

20 MS. LEMATTY: --- very much, Your Honor.

21 THE COURT: Yes, ma'am. Absolutely.

22 I'm going to admit the tape, subject to the objection
23 of the defense and subject to my prior ruling.

24 MS. HALL: Thank you ---

25 THE COURT: Very well.

1 (State's Exhibit No. 2, DVD, in evidence.)

2 MS. HALL: --- Your Honor. And at this time we'd ask
3 that we could publish ---

4 THE COURT: To the room.

5 MS. HALL: --- that video to the room.

6 THE COURT: To the room. There. If you all cannot
7 hear, let me -- you know, hands up; let me know.

8 MS. HALL: And, Dr. Elsey, I'm just going to let it
9 play -- play through it first, and then I'll come back and
10 ask you some questions.

11 (The video is played.)

12 THE COURT: I'm so glad that Mr. Hilton is having to
13 struggle with the technology and not me.

14 MR. HILTON: Judge, with the Court's permission, we're
15 going to substitute the Defense copy of the disc. It's the
16 exact copy of it -- of the tape. Everything's the same,
17 just one copy versus the other. I think there might be a
18 problem ---

19 THE COURT: Okay.

20 MR. HILTON: --- with the State's.

21 MR. FARLEY: We have no problem with that ---

22 THE COURT: Very well.

23 MR. FARLEY: --- Your Honor.

24 THE COURT: Thank you. Thank you.

25 (The video is played.)

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1 THE WITNESS: (To the Court) Your Honor?

2 THE COURT: Yes.

3 THE WITNESS: I have a copy, too, in case he wants --
4 want to try that. He may want --

5 THE COURT: Yeah. Yeah. Got another one.

6 MR. HILTON: I -- I'm not sure that that is the
7 problem if it's messed up on this.

8 THE COURT: I got a computer and it's got a drive in
9 it. You want to try mine?

10 MR. HILTON: We got another computer right here.
11 Judge, this is what we call "Murphy's Law."

12 THE COURT: I know that. I know it. Absolutely.
13 It's called -- again, so glad I'm not -- it's not me.

14 (Off the record briefly to address technology issues.)

15 (The video is played.)

16 DIRECT EXAMINATION BY MS. HALL (Continues):

17 Q All right. Let's see if we can get back to it. Dr.
18 Elsey, within your field of -- or expertise, are you able
19 to develop and from opinions as to forensic interviews and
20 come to conclusions?

21 A Yes, ma'am.

22 Q And there's a -- there's a portion of that interview
23 where you -- you do the -- the anatomical drawings of the
24 body. Why do you do that?

25 A To get common language for a child's various parts of

1 their body.

2 Q And is that part of that RATAC protocol?

3 A Yes, ma'am.

4 Q And -- and I want to focus just a little bit on some
5 of the language that Complainant used in -- in her disclosure to
6 you -- or during that forensic interview.

7 As an expert in the field of -- of child-sexual-
8 assault cases, what, in your opinion -- that description
9 that she used as "shaking or slapping the privates," what
10 does that mean to you, in terms of her language?

11 MS. LEMATTY: Objection, Your Honor.

12 THE COURT: Very well.

13 MS. LEMATTY: As previously ---

14 THE COURT: Overruled.

15 MS. LEMATTY: --- stated.

16 Q You can answer.

17 A To me it -- she was just telling what she was seeing.
18 She didn't really know what it was. She didn't describe
19 what it -- what -- what it would be called. She just
20 described something that she said she saw.

21 Q And -- and can you tell me about the age-
22 appropriateness, if any, of her language used?

23 A I think all of her language seemed to be age-
24 appropriate. Now, she was a very articulate young lady,
25 and certainly did like to talk. But it did not appear to

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1 me she had words for what she was describing, other than
2 just to describe what she was seeing.

3 Q And is it unusual for a 9-year-old of -- of that, you
4 know, age and -- and maturity to use, for lack of a better
5 term, "childlike language" like that?

6 A I'm sorry. Your first part of your question was, is
7 it ---

8 Q Is it unusual for a -- for a 9-year-old of that age
9 and maturity to use childlike language like that?

10 A Oh, no, not at all.

11 Q In your expert opinion, is there any significance to
12 her use of that type of language?

13 A Yes. It appeared to me she, again, was just
14 describing what she said she was seeing. She wasn't using
15 language that it seemed somebody else had given to her. It
16 was just what she said she experienced.

17 Q And -- and as to the hand gestures that she used, I
18 think at one portion, where she's talking about him putting
19 her hand on his hand -- I -- I apologize; it's -- it gets a
20 little confusing -- him putting her hand onto his privates
21 and moving it, she -- she did a hand gesture there. In
22 your expert opinion, is there any significance to her hand
23 gesture?

24 A Yes. Again, I think she was just trying to help me
25 understand what she was trying to tell me, because I don't

1 think she fully understand -- understood what she was
2 describing.

3 Also, if you notice in the interview, she used her
4 hands quite often to describe different things. I jotted
5 down some things when I was looking at it. When -- the
6 hair in the sink; she used that. So several times she
7 would use her hands to help illustrate what she was trying
8 to tell me.

9 Q And similarly, when she described what came out of
10 Uncle Cesar's privates as -- as "yellow and smushy" or
11 "mushy" -- I -- I couldn't really tell -- in -- in your
12 opinion as an expert, is there any significance to that
13 description as well?

14 A Yes. Again, she never had a name for it. She just
15 described it.

16 Q What's your -- your protocol at the Dee Norton
17 Lowcountry Children's Center with regards to follow-up
18 interviews or assessments?

19 A We try to see the child and family again within a week
20 or so to see how things are going in the family; to see if
21 the child is having any sort of concerning behavioral
22 issues; see how the family's doing, if they need any
23 special help; and then determine specific treatment needs,
24 if any.

25 Q Is that scheduled at -- at the original -- I guess,

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1 the original forensic interview date?

2 A It's scheduled -- it's scheduled that date for a
3 subsequent date. Yes.

4 Q And did you perform a follow-up interview with Complainant
5 and her family?

6 A Yes, ma'am.

7 Q And -- and when did you do that?

8 A February the 1st, 2010.

9 Q And -- and tell us about that -- that subsequent
10 assessment.

11 A I met with the caregivers, and they told me ---

12 MS. LEMATTY: Objection ---

13 A --- that ---

14 MS. LEMATTY: --- Your Honor. I don't believe that
15 this falls within an appropriate exception for hearsay.

16 THE COURT: Yes. The objection's hearsay.

17 MS. HALL: I -- I believe the -- just one moment.

18 THE COURT: Yes.

19 Q Did Complainant and her family bring forward any specific
20 concerns that they had?

21 A Yes.

22 Q And can you tell me what those concerns were?

23 A There were concerns about her having some behavior
24 changes they've noticed since she originally disclosed
25 these things happening: not being able to sleep; some

1 nightmares; affecting her school work, her ability to focus
2 in school.

3 Q And -- and in your opinion as an expert, what are
4 those symptoms, I guess -- what did -- what is the
5 significance of those symptoms to you as an expert?

6 A Well, they're -- they're concerning because they're
7 disturbing to the child. Is there a connection between
8 what she -- what she said happened to her and these? She
9 said there was. She said there was a connection.

10 So as a professional I would want to get help for that
11 child and that family so she could help control those
12 behaviors and not interrupt her sleep, her school, any
13 aspect of her life.

14 Q And was that help for any particular diagnosis or ---

15 A Well ---

16 Q --- what exactly did you want her to get help for?

17 A The symptoms she was describing could be part of
18 posttraumatic stress disorder. However, to make that
19 diagnosis, you have to these symptoms for at least 30 days.
20 And I had seen her relatively soon after these -- this --
21 what she alleged happened. So it would be inappropriate to
22 make that diagnosis at that point.

23 But certainly, there was concerning behavior, so I
24 felt that deserved treatment. And I referred her for
25 what's called "trauma-focused cognitive behavioral therapy"

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1 -- that is the treatment when a child's been traumatized --
2 and was able to find a therapist near where she lived to
3 help her get that treatment

4 MS. HALL: Beg the Court's indulgence for just a
5 moment, Your Honor.

6 THE COURT: Very well.

7 Q Just one more question: Would -- and I -- and I'll
8 use a hypothetical here -- would not wanting to -- to sleep
9 in a bed alone, not wanting to be anywhere but in bed with
10 a -- a parent, and nightmares, the reluctance to be alone,
11 would those symptoms be indicative of -- of potential
12 posttraumatic ---

13 MS. LEMATTY: Objection ---

14 Q --- stress disorder?

15 MS. LEMATTY: --- Your Honor.

16 THE COURT: Yes?

17 MS. LEMATTY: I believe it -- she's asking for a
18 conclusion on a diagnosis that was not provided.

19 THE COURT: And -- and that's the objection: that you
20 -- she -- she's asking for a diagnosis that was not
21 provided?

22 MS. LEMATTY: May we approach, Your Honor?

23 THE COURT: Sure, of course.

24 (Bench conference.)

25 THE COURT: The objection would be overruled. And I

1 don't know that Dr. Elsey remembers the question. You may

2 ---

3 THE WITNESS: I would ---

4 THE COURT: -- need to ---

5 THE WITNESS: --- like to have it repeated ---

6 THE COURT: -- to ask ---

7 THE WITNESS: --- please.

8 THE COURT: --- it again.

9 Q And I'm going to couch it in a hypothetical. If a
10 child presents with not wanting to sleep alone, wanting to
11 sleep in the bed with her parents, being withdrawn, and not
12 wanting to -- to be alone, and maybe also having
13 nightmares, would those be potential indicators for
14 posttraumatic stress disorder?

15 A All those things you mentioned -- not wanting to sleep
16 in the bed by herself is not necessarily an indicator of
17 posttraumatic stress disorder. Some of the others you
18 mentioned is. You cannot base those symptoms and say,
19 "Well, then, this happened." But you certainly can have
20 those symptoms and base -- "Well, this certainly could be
21 posttraumatic stress disorder if not properly treated."

22 Q Just so I'm clear: Would that be indicative of a
23 traumatic experience?

24 A It certainly could be.

25 MS. HALL: All right. No further questions at this

1 time.

2 THE COURT: All right. We'll have cross-examination
3 tomorrow morning ---

4 MS. LEMATTY: Thank you, Your Honor.

5 THE COURT: --- at 9:30, ladies and gentlemen, at
6 9:30. Now, of course, leave your notebooks in your seats
7 and we will secure them over the balance of this evening.
8 And you do realize, now, when you go home that curiosity is
9 going to be heightened. But again, put it on the judge,
10 because you must not discuss this matter or allow anyone to
11 discuss it with you.

12 Again, I don't know that there will be any publicity.
13 I don't have any information that there will be. However,
14 in an abundance of caution, I'd just advise you not to read
15 anything, not to listen to anything about this matter. And
16 that would be radio, television, and on the Internet.

17 MR. HILTON: May we approach before the jury goes out?

18 THE COURT: Okay. All right.

19 (Bench conference.)

20 THE COURT: (To the jury) All right. Don't listen to
21 anything; don't read anything: radio, television,
22 newspaper, Internet. Don't blog; don't tweet; don't chat.
23 Don't otherwise socially communicate about this matter.
24 You must receive all of the information from which you will
25 make up your mind here in court while court is in session.

1 But we are going to begin in the morning at 9:30.

2 Ladies and gentlemen, I look forward to seeing you in the
3 morning. If you'll please go with our bailiffs.

4 (The jury exits at 5:01 p.m.)

5 THE COURT: Okay. I know you were concerned -- I know
6 somebody was concerned about your schedule, but I don't
7 know what your issue is. And -- and solicitor understood
8 that there was going to be some concern about you being
9 here. The good news is you'll be first. And you'll be out
10 of here early, no doubt. Very well. All right. Thank
11 you. Thank you so much.

12 All right, then. Anything before we take our leave
13 this evening from the State?

14 MR. HILTON: Nothing from the State.

15 THE COURT: From the Defense?

16 MR. FARLEY: No, Your Honor.

17 THE COURT: I will see you all in the morning,
18 probably about 9:20. Have a good evening.

19 (To the witness) And of course, I know I don't need
20 to tell you, but just be mindful not to discuss your ---

21 THE WITNESS: Yes, ma'am.

22 THE COURT: --- testimony this evening with anyone.
23 Thank you, now.

24 (Off the record at 5:02 p.m.)

25 DAY THREE

1 (On the record at 9:49 a.m.)

2 THE COURT: We can go ahead and bring the jury in,
3 too.

4 COURT SECURITY: Go ahead and bring the jury?

5 THE COURT: Yeah. And we'll just pass their pads out
6 to them.

7 I should ask first, though: Anything from the State
8 before we bring the jury out?

9 MS. HALL: Nothing from the State, Your Honor.

10 THE COURT: From the Defense?

11 MR. FARLEY: No, Your Honor.

12 THE COURT: Very well. We got to get their -- their
13 notepads, too. That -- we'll just sort of do it all at the
14 same time.

15 (Brief pause.)

16 (Jury enters at 9:50 a.m.)

17 THE COURT: (To the jury) We're going to pass out your
18 notepads for you.

19 (Court security passes out the notepads to the
20 jurors.)

21 THE COURT: We must have had fruit basket turn over
22 last night.

23 JURORS: (Laughter.)

24 THE COURT: You're not finding your pad and you've
25 looked through all of them. We've gotten -- we must have

1 pads somewhere else.

2 (Brief pause.)

3 THE COURT: Well, let's see. This is remarkable.
4 Tell me what number you are?

5 JUROR: Ma'am?

6 THE COURT: What number are you?

7 COURT SECURITY: Sixty-nine.

8 THE COURT: Six -- all right. And did you write your
9 name, or did you write your number?

10 JUROR: Yeah.

11 THE COURT: You write -- you wrote your name?

12 JUROR: Yes.

13 THE COURT: Okay.

14 JUROR: My name and my number on it.

15 THE COURT: All right. Who's got -- who's got our
16 alternate? Come on. Give it up, because we got yours.
17 What -- what number is this. What number's on -- written
18 on that one?

19 COURT SECURITY: This one's 34.

20 JUROR: 34.

21 THE COURT: 34. Okay. Who's 34? Who is Juror 34?

22 JUROR: (Indicates.)

23 THE COURT: All right. What's written on your pad?

24 JUROR: Same thing. I was the first --

25 THE COURT: Huh?

1 JUROR: That was first one I had. This is the one I
2 was writing on yesterday.

3 THE COURT: I got you. So they've gotten mixed up.

4 JUROR: Yes.

5 THE COURT: Oh -- oh, no. Okay. All right. Well,
6 did -- let me ask you this question: Are -- are there any
7 other notes on that one?

8 JUROR: This the one I have all my notes on.

9 THE COURT: Oh. It's got all of your notes.

10 JUROR: I don't have any notes.

11 THE COURT: It doesn't have anybody else's notes on
12 that.

13 JUROR: No, ma'am.

14 THE COURT: No -- nobody else's notes? Scribble that
15 out and put your -- your name -- you got it now?

16 JUROR: Yeah.

17 THE COURT: You've laid claim to it?

18 JUROR: Yeah.

19 THE COURT: Now, this one, does that one -- that had
20 no notes on it. And did you have notes? Had you made
21 notes?

22 JUROR: No, ma'am.

23 THE COURT: Hallelujah. Just scribble that out and we
24 gonna put "69" on that one, and it will be yours.

25 Does anybody else have that problem, because I

CROSS-EXAMINATION BY MS. LEMATTY - DR. DONALD ELSEY 316

1 certainly wouldn't -- I'm so sorry y'all don't -- that that
2 -- there was a mix up.

3 (To all jurors) Do you have your notepad?

4 JURORS: (In unison) Yes.

5 THE COURT: Wonderful. Wonderful. I'm so sorry that
6 that happened. I gotta work on that. Okay. Very well.

7 So what happened is you came in and there was another
8 notepad in your chair, and you were like, "They must --
9 that's what the did."

10 I -- we'll work on that. Very well. Okay.

11 Now, ladies and gentlemen, at this time we will
12 continue with the State's case, and the cross-examination
13 of Dr. Elsey. Ms. LeMatty.

14 MS. LEMATTY: Thank you, Your Honor.

15 THE COURT: Yes.

16 MS. LEMATTY: If it please the Court. Counsel; ladies
17 and gentlemen.

18 CROSS-EXAMINATION BY MS. LEMATTY:

19 Q Good morning, Dr. Elsey.

20 A Good morning.

21 Q How are you today?

22 A Good, thank you.

23 Q Just a -- go over a little bit yesterday. You had
24 testified that you saw ^{Complainant} and her family two times.

25 A Yes, ma'am.

CROSS-EXAMINATION BY MS. LEMATTY - DR. DONALD ELSEY 317

1 Q You performed the forensic interview on Complainant and you
2 performed the follow up.

3 A Yes, ma'am.

4 Q And you did not make any diagnosis of her, but you did
5 do a report and a video tape interview.

6 A Yes, ma'am.

7 Q And this forensic interview and report is a service
8 provided by Lowcountry Children's Center to alleged victims
9 of child maltreatment.

10 A Yes, ma'am.

11 Q That's -- that's part of -- of what you do. And in
12 essence, that's gathering information a complaining
13 witness, and placing it into what's effectively a
14 standardized format --

15 A Yes, ma'am.

16 Q -- through a standardized process.

17 A Yes, ma'am.

18 Q The room being the way it is, the questions being
19 asked in the manner that you asked them.

20 A Yes, ma'am.

21 Q And the information that you gather is then provided,
22 with appropriate releases or under the appropriate
23 statutes, to the various other agencies that are involved
24 in investigating these types of crimes, correct?

25 A Yes, ma'am.

CROSS-EXAMINATION BY MS. LEMATTY - DR. DONALD ELSEY 318

1 Q And that in essence is your part of the investigation
2 in a case.

3 A Yes, ma'am.

4 Q You -- you don't go out and seek any further
5 information based on what was elicited in the interview or
6 anything like that.

7 A We do have multi-disciplinary staff meetings where we
8 do have other agencies who may be involved in
9 investigation. We have a meeting and talk about what
10 different agencies have discovered in their investigations.
11 So that's another piece that we are involved in.

12 Q Okay. But in terms of something, say, like the
13 collection of -- of any kind of evidence, you -- you guys
14 don't have somebody that would go out to a scene and
15 collect evidence, or do anything of that nature.

16 A No, ma'am, we do not.

17 Q And you -- so you work in conjunction with law
18 enforcement, but you're not a substitute for law
19 enforcement.

20 A No, ma'am.

21 Q And so you provide the information to law enforcement,
22 and it's up to law enforcement to act on what is contained
23 in that information in order to build or not build a case
24 in -- in a situation where there's maltreatment alleged.

25 A Yes, ma'am. We're a piece of the investigation.

REDIRECT EXAMINATION BY MS. HALL - DR. DONALD ELSEY 319

1 Q So the -- the bottom line is you can't say what
2 happened -- in terms of what was reported to you, what
3 happened in E.B. 's room that night.

4 A I'm not sure I understand the question.

5 Q You're -- you're not able to -- to say anything beyond
6 what was reported to you. You make no determinations with
7 regard to the information that you're given, correct?

8 A Yes, ma'am, that's correct.

9 Q Thank you very much.

10 THE COURT: Redirect?

11 MS. HALL: Just one question.

12 REDIRECT EXAMINATION BY MS. HALL:

13 Q I think you just said you can't say what -- what
14 happened. Is it true that only the victim can say what
15 happened that night?

16 A Yes, ma'am.

17 Q No further questions.

18 THE COURT: All right. All right. Any re-cross?

19 MS. LEMATTY: No, Your Honor.

20 THE COURT: Very well. (To the witness) You may come
21 down.

22 Is this witness free to leave?

23 MS. HALL: He is.

24 THE COURT: Any objection?

25 MR. FARLEY: No, Your Honor.

1 THE COURT: Very well. You are free to go.

2 WITNESS: Thank you.

3 THE COURT: Thank you. Uh-huh. All right.

4 If you'd please call your next witness.

5 MS. HALL: At this time, Your Honor, the State would
6 rest.

7 THE COURT: Very well. Ladies and gentlemen, you have
8 now heard the witnesses and received the evidence which you
9 will from the State and the State's case in chief. That
10 signifies to me there are -- there are matters that I must
11 take up outside your presence.

12 I'm therefore going to ask you to please step to your
13 jury room. Do not discuss this matter or allow anyone to
14 discuss it with you. Please leave your notepads in your
15 seat. We will be with you shortly.

16 (Jury exits at 9:59 a.m.)

17 THE COURT: All right. Motions.

18 MR. FARLEY: At this time, Your Honor, we move for a
19 directed verdict. If you take the evidence in the light
20 most favorable to the State, I don't think that they've put
21 evidence up for each and every element of the crime
22 charged.

23 Specifically, there's no indication that there was any
24 intrusion into the child's body.

25 THE COURT: Very well. Thank you so much. I would

1 respectfully deny your motion. There is, I would find,
2 evidence on each and every element of the offense. It's
3 not for me to weight it; it's for the jury to weigh it.

4 But I am to determine whether or not there is evidence
5 on each and every element of the offense from which the
6 jury could deem guilt. And I find that there is evidence
7 present.

8 Now, are you all prepared to begin your case?

9 MR. FARLEY: We are, Your Honor. I need to --
10 obviously I need to speak to my client --

11 THE COURT: All right.

12 MR. FARLEY: -- before we ---

13 THE COURT: Very well.

14 MR. FARLEY: --- before we do that. So if I may have
15 ---

16 THE COURT: All right. Does he intend to testify?

17 MR. FARLEY: I want to ---

18 THE COURT: Just confirm that?

19 MR. FARLEY: --- make certain.

20 THE COURT: Very well. We'll take about a five minute
21 break to allow you to just reconfirm that, and then let me
22 know. Okay? And then I'll give him -- I'll give him the
23 charge with regards to that.

24 Do you want me to give him the charge first and then
25 you can have benefit of that as you meet with him?

1 MR. FARLEY: I would prefer just to meet with him and
2 then ---

3 THE COURT: Meet with him first?

4 MR. FARLEY: --- that way, we can keep rolling ---

5 THE COURT: Okay.

6 MR. FARLEY: --- with the process.

7 THE COURT: Well, very well. Because I -- I'm going
8 to give him the charge either way.

9 MR. FARLEY: Right. I'd prefer to do that after.

10 THE COURT: Okay. Very well. Take about five
11 minutes. Y'all feel free to -- to retire from the
12 courtroom. We'll be at ease.

13 (Off the record at 10:01 a.m.)

14 (On the record at 10:06 a.m.)

15 THE COURT: All right. Yes, sir.

16 MR. FARLEY: Thank you, Your Honor. The defendant
17 does not wish to testify, and we will not be calling
18 witnesses.

19 COURT: All right. I'd just -- (clears throat) excuse
20 me -- ask him to please stand.

21 (The defendant stands.)

22 THE COURT: All right. Do you -- raise your hand --
23 right hand. Thank you, sir.

24 (The defendant complies.)

25 THE COURT: Do you solemnly swear or affirm that

1 testimony that you will give will be the truth, the whole
2 truth, and nothing but the truth?

3 DEFENDANT: I do.

4 THE COURT: All right, sir. And you are Caesar
5 Orlando Portillo?

6 DEFENDANT: Yes, Your Honor.

7 THE COURT: And Mr. Portillo, at this time, I am going
8 to explain to you certain of your rights. If you do not
9 understand anything that I say, please let me know. If you
10 want me to explain anything in more detail, please let me
11 know that also. Do you understand?

12 DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. We've now reached the stage of
14 the trial, Mr. Portillo, where you may present your
15 defense. You have the right to claim the protections given
16 to you by the Fifth Amendment to the Constitution of the
17 United States.

18 This amendment states in part (as read): "No person
19 shall be compelled in any criminal case to be a witness
20 against himself."

21 This means that you cannot be required to testify in
22 this case. You have the right to testify on your own
23 behalf; however, no one can make you testify. This is a
24 personal right, and no one can waive this right except you.

25 If you decide to testify, you will be subject to the

1 same rules that govern other witnesses, and you may be
2 examined and cross-examined on any relevant issue in this
3 case.

4 In addition, if you have any convictions involving
5 dishonesty or false statement, or for crimes punishable by
6 imprisonment for more than one year, and this Court
7 determines that the probative value of admitting this
8 evidence outweighs its prejudicial effect to you, the
9 solicitor will be able to introduce your record to attack
10 your credibility.

11 If you decide to testify, this decision on your part
12 must be freely, voluntarily, and intelligently made, with
13 knowledge of the protections given to you by the Fifth
14 Amendment, and the consequences of your decision to
15 testify.

16 If you decide not to testify, I will instruct the
17 jurors that they cannot give the fact that you did not
18 testify any consideration whatsoever, and that there is to
19 be absolutely no prejudice to you because you did not
20 testify. It is left entirely up to you whether or not you
21 testify.

22 Mr. Portillo, you may speak with -- I urge you to
23 speak with your attorneys; I urge you to speak with your
24 family and friends or anyone else. But you must understand
25 that the final decision whether to testify or not testify

1 is left entirely -- entirely up to you.

2 Do you understand what I've explained to you?

3 DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Do you have any questions of
5 me about what I have explained to you?

6 DEFENDANT: No, Your Honor.

7 THE COURT: Okay. Have you discussed with your
8 lawyers whether you should or should not testify?

9 DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. Do you wish to speak with your
11 lawyers any more at this time?

12 DEFENDANT: No, Your Honor.

13 THE COURT: You know I'm more than willing for you to
14 do that, now. If you need more time, I want you to take.
15 You understand?

16 DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you need more time?

18 DEFENDANT: No, Your Honor.

19 THE COURT: All right. And are you now prepared to
20 make your decision whether you wish to testify or not
21 testify?

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: And what is that decision?

24 DEFENDANT: Not to testify.

25 THE COURT: Very well. All right. Now, will there be

1 other witnesses?

2 MR. FARLEY: No, Your Honor.

3 THE COURT: All right. All right. Thank you all. We
4 then need to go over the charge. So I am going to ask you
5 all to retire to chambers with me so we can do that.

6 (To the bailiff) And just tell the jury we're gonna
7 probably be about 15 more minutes. We're gonna treat this
8 as their morning break. Okay? Very well.

9 We will be in recess for 15 minutes. Counsel, if you
10 would just retire with me for an informal charge
11 conference. Great.

12 (Off the record at 10:11 a.m.)

13 (On the record at 10:46 a.m.)

14 THE COURT: Thank you so much, and please be seated.

15 MR. FARLEY: Judge, a matter came up between your
16 office and here.

17 THE COURT: Okay.

18 MR. FARLEY: The solicitor told us in chambers that he
19 was gonna put up a copy of the statute ---

20 THE COURT: Yes.

21 MR. FARLEY: --- that we spoke about.

22 THE COURT: Yes.

23 MR. FARLEY: The copy of the statute contains other
24 language besides this. If the Court would look on their
25 monitor.

1 I -- I -- I think that it's -- we -- we -- obviously,
2 we object to that being put up during closing arguments.
3 But specifically --

4 THE COURT: All right. I agree. They gotta -- they
5 gotta blank that out.

6 MR. FARLEY: I mean it's small. They can type it into
7 a Word document.

8 THE COURT: Say what?

9 MR. FARLEY: It's a -- it's -- it's a sentence. They
10 can type it into a Word document.

11 THE COURT: Or they -- or they can just cover ---

12 MR. FARLEY: Or cover it up.

13 THE COURT: --- put something over it and cover it.
14 Either way.

15 MR. FARLEY: Thank you, Judge.

16 (Brief pause.)

17 MR. HILTON: May it please the Court?

18 THE COURT: Yes.

19 MR. HILTON: I'm now displaying the cropped picture
20 and just seeing if there's any objection to that.

21 THE COURT: Can I ask you a question? How did you do
22 that that quickly?

23 (Courtroom laughter.)

24 THE COURT: Wow. That's great. Yes. Any objection
25 to that?

1 MR. FARLEY: No, Your Honor.

2 THE COURT: I can't believe they -- can't believe
3 y'all did it that quick. That's so amazing. Okay.

4 (Briefly off the record.)

5 THE COURT: All right. Counsel, I want to thank you
6 for helping me with the charge. We've had an informal
7 charge conference. Counsel has expressed some thoughts and
8 concerns about some portions of the charge, but at the end
9 of the day, they've been -- you all have been such a great
10 help.

11 I think I have met your concerns. If not, please
12 remember that you must object to the charge after the
13 charge is -- is delivered, under the rules, to preserve
14 your -- your objections. So just -- if you will be mindful
15 of that. And I -- and I do thank you for your help.

16 Now, I intend to tell the jury that they will first
17 hear from Ms. Hall on behalf of the State, and then they
18 will hear from Mr. Farley on behalf of the Defense. And
19 then I'll tell them that -- then I'll deliver the charge to
20 them. Very well.

21 (To the bailiff) Ms. Salisbury, once the jury is
22 seated, you probably want to start working your magic for
23 them for lunch.

24 (Brief conversation between the Court and the
25 bailiff.)

1 THE COURT: Wonderful. If we could have our jury.

2 THE BAILIFF: You're ready for them now?

3 THE COURT: Yeah. Let's have the jury.

4 THE BAILIFF: Okay.

5 (Jury enters at 10:51 a.m.)

6 THE COURT: (To the jury) All right. Before we took
7 our break, ladies and gentlemen, I indicated to you that
8 you had heard from the State and the State's case in chief.
9 We will now turn to the Defense.

10 MR. FARLEY: Your Honor, the Defense rests.

11 THE COURT: Thank you so much. Now, ladies and
12 gentlemen, you've now heard from the witnesses and received
13 the evidence which you will in this case. What remains for
14 us are the arguments of counsel, and then my charge or
15 instruction on the law.

16 Ladies and gentlemen, you are going to first hear from
17 Ms. Hall in her closing argument on behalf of the State.
18 You'll then hear from Mr. Farley in his closing argument on
19 behalf of Mr. Portillo.

20 Ladies and gentlemen, once the closing arguments are
21 finished, we're gonna have a very, very short break. And
22 you'll understand what that is. It will be self-
23 explanatory when we reach that point.

24 Then I will deliver the charge or the instruction on
25 the law to you. There will be another very short break,

1 and I'll explain that to you also. And then you will
2 receive this case for your deliberations.

3 Ladies and gentlemen, at this time, I ask that you
4 please draw close as we listen to the closing arguments of
5 our attorneys. Ms. Hall.

6 MS. HALL: Thank you, Your Honor. Bear with me here.
7 I'm just gonna get myself situated.

8 (Brief pause.)

9 MS. HALL: All right. First I wanted to say thank you
10 so much, ladies and gentlemen, for your attention this
11 week. I know this hasn't exactly been, you know, the
12 swiftest case. And I certainly apologize for any delays
13 that we may have caused.

14 Certainly with technology, you know, we're getting
15 used to this place. And some of us are kind of used to the
16 old school style of easels and -- and -- so I'm sorry that
17 we've taken a little bit of time in that.

18 But I want to just go ahead and jump right into it. I
19 mean, let me start by saying this -- and -- and I think I
20 said this to you at the very beginning in my opening -- my
21 little job here is to do justice. That's what Mr. Hilton's
22 job and -- and the job of the Solicitor's Office is to do
23 justice. And -- and that remains true now.

24 In essence, as a prosecutor, I have to be a straight
25 shooter. And -- and that -- that works fine by me. I

1 mean, that's kind of how I -- I am anyways.

2 So it follows, then, that my job is to be clear, to
3 not hide the ball from you, to not muddy up the waters, to
4 not confuse you or complicate things by any means. I have
5 to prove my case and that's something that I've been up
6 front with you guys from the very beginning.

7 My case is my case. My facts are my facts. I can't
8 change them. I can't create new ones. And I find myself
9 saying it all the time, but "it is what it is." My case is
10 my case.

11 So in the same way that I gave you a framework at the
12 beginning of my opening of what I had to prove to you, I
13 want to kind of give you that framework again and show you
14 what I have proved to you now that the case is done.

15 And -- and I read to you the indictment the other day,
16 and I showed you the allegations in that indictment. And I
17 said that there were basically three big points that I had
18 to prove to you: That Caesar Portillo, (indicates) that
19 man, performed a sexual battery -- in this case oral sex --
20 on his niece; secondly, that the sexual battery occurred in
21 this county, Dorchester County; and third, that Complainant

22 , the victim, was under the age of 11 at the time
23 that sexual battery occurred.

24 Now, if you would, kind of keep that in the forefront
25 of your mind while we go through the rest of this, because

1 as I continue to talk, those are the things that I need to
2 prove. And ultimately, everything ties back to that man.

3 And before I really get started, I want to talk to you
4 a little bit about a statute that the judge is gonna tell
5 you about in her charge and in her instructions on the law.

6 And if you'll remember -- and -- and we put the
7 statute right there. It was an iPhone photo. But yeah,
8 and y'all can flip those up if you want, if it helps you
9 read it better.

10 THE COURT: Just -- just wait one second, so we can do
11 that, Ms. Hall.

12 (Brief pause for technological adjustments.)

13 THE COURT: There. Thank you.

14 MS. HALL: Dr. DeMarco told you -- told y'all
15 yesterday that there is rarely any physical evidence in
16 these types of cases. And the Legislature, knowing that,
17 knowing that fact, has drafted and passed a statute. And
18 it -- and you can see there, it's 16-3-657 that says that
19 (as read): "The testimony of a victim need not be
20 corroborated."

21 And as to there, it's plain as day. The testimony of
22 a victim in these types of cases need not be corroborated.

23 And the crime that Mr. Portillo is charged with,
24 criminal sexual conduct with a minor in the first degree,
25 falls within those 16-3-52 to 658. The charge that he's

1 charged with is -- is 655, incidentally.

2 But in essence what that statute says is you can
3 believe just Complainant And -- and I want to start out, too,
4 and say that from the beginning -- ultimately this is a lot
5 simpler than we make it. As jurors you guys took an oath
6 at the very beginning. And it was as simple as this: If
7 the 12 of you do not believe Complainant, then you must define -
8 - or find the defendant not guilty.

9 But in the same way, if the 12 of you go back into
10 your jury room and you determine that you do believe
11 Complainant, then in that same way and under that same oath, you
12 must come back and find the defendant guilty of criminal
13 sexual conduct with a minor in the first degree.

14 And let's talk a little bit about the law in this
15 case, and let's talk about the burden of proof. Because in
16 a criminal case, the burden of proof is beyond a reasonable
17 doubt. And it's not beyond a shadow of a doubt, or -- or
18 any other type of burden of proof. It's beyond a
19 reasonable doubt. And it's not some sort of burden that
20 the Defense is gonna make you think is some sort of
21 impossible burden to ever meet. If that were true, no one
22 would ever get convicted.

23 There's a definition that says, "beyond a reasonable
24 doubt is doubt which causes a juror to hesitate to act." I
25 submit to you that that's not really a definition that I

1 think is all that great. I hesitate to act before I pull
2 out from a stop sign. That doesn't mean that I'm not gonna
3 continue to pull out and drive onto the road.

4 There's a better definition of "beyond a reasonable
5 doubt," and that's one that the judge is gonna instruct you
6 on. And that definition is that after you've heard all the
7 evidence in this case, which you have, that you will be
8 firmly convinced of the defendant's guilt, and then the
9 State has satisfied this burden.

10 There are very few things in this life that we know
11 for certain, and that's not what the law requires.

12 You know, so everybody has a different style in a
13 closing, but I think probably the easiest way to go through
14 is just to go back over what we heard. And -- and I work
15 better sequentially, just how it works. So I want to point
16 out when the witnesses' testimony corroborated one another
17 throughout. So just be aware that I'm -- that I'm gonna be
18 doing that throughout going through everybody's testimony.

19 And so let's just start with the beginning. Let's
20 start with Complainant. I told you that Complainant was
21 gonna be the most important person you were gonna hear
22 from. And that actually played itself out twofold, because
23 you got to hear from her once on the witness stand and then
24 again in that forensic interview.

25 And Little Complainant, she had a lot to say. She's a

1 talkative little girl in that interview. She was a little
2 bit quieter yesterday, and that probably had something to
3 do with, you know, a bunch of strangers and everybody
4 looking at her.

5 But what's clear, from both her testimony here in
6 court and in her forensic interview, is that she was an
7 incredibly smart and very intuitive little girl. And she's
8 animated and personable and engaged, and generally with it
9 through her testimony and in that forensic interview.

10 And Complainant told you twice what she saw, what she felt
11 that night, what she witnessed, what she heard. And I want
12 to go step by step through what she told.

13 And to sort of set the stage, Complainant said that she
14 went to Aunt Jess and Uncle Caesar's house to play with
15 E.B. that night. And we know that not just from Complainant,
16 but from Lesley and from Jessica. They both corroborated
17 that for us.

18 She also said that she and E.B. were playing during
19 that day and they watched movies that night and they went
20 to bed in E.B. 's room. And Jess can corroborate for that
21 -- corroborate that for us, too.

22 Complainant gave us the layout of the house in general.
23 She drew that nice little picture of where everything was
24 laid out, where E.B. 's room was located within the rest of
25 the house. She gave us details about the rooms, you know:

1 where things were kept, where things are stored, which
2 rooms were, you know, finished and weren't finished; which
3 bathrooms worked, which ones didn't.

4 She gave a very detailed breakdown, too, of what
5 E.B. 's room looked like, you know: where boxes were,
6 where there -- you know, there was a lamp -- there was a
7 lamp on the floor and a lamp on a -- on a shelf on the
8 other side. And she told us about the sources of light in
9 that room: which lights were on, which lights were off.

10 And -- and to that, you know, children can be
11 surprising in that sense. They -- they have the ability to
12 remember those types of details that -- I mean, I hardly
13 remember what I ate for breakfast this morning. And -- and
14 she can remember all of those little details about that
15 room.

16 And again, Jess was able to kind of confirm some of
17 those spacial details for us, too: where the rooms were in
18 relation to one another; how big the rooms were; where
19 those towels were kept, that they weren't kept in a linen
20 closet, because they didn't have one in the hallway; things
21 of that nature.

22 And she also confirmed roughly around what time Complainant
23 and E.B. went to sleep that night, and definitely what
24 room they went to sleep in that night.

25 Then Complainant told us that she woke up in the middle of

1 the night to Uncle Cesar laying next to her, and taking her
2 hand and placing it on his private parts as he was laying
3 next to her in the bed. And she told us that she knew that
4 because of how it felt -- she said the word "soft" -- and
5 because she eventually saw his privates.

6 And she describes for us what adults know to be manual
7 stimulation of a male's genitals. I -- I know that there
8 are other vernacular terms for that. We all know what that
9 is, but at this point, let's just -- just keep it at that.

10 She told us without equivocation that Complainant -- or
11 that Cesar was clothed and what he had been wearing earlier
12 that day. She -- she -- I think she described it as a
13 green shirt and jeans and work boots. And that he had his
14 clothes on, but that his penis was out of his pants.

15 So what woke her out of her slumber was that he had
16 moved her hand onto his penis. And then he took her hand
17 and he -- she moved it back and forth. And she said that
18 he did this for a while. She said it was a longer period
19 of time than when he was licking her privates, which she
20 said she estimated between 5 and 8 minutes, you know, for
21 whatever that's worth.

22 And then she goes on -- in the forensic interview, she
23 goes beyond that and she does something that is so telling
24 to me. She showed us the hand movement. And I want to
25 stop and focus there for a minute.

1 She showed us the hand movement. How does a child at
2 nine years old, a little girl like that, show us a hand
3 movement like that?

4 And at one point -- and -- and you guys will have
5 access to -- to watch the video again, if you want. But at
6 one point, I -- I watched her -- you know, I've watched
7 that video so many times now. But I watched her and she
8 doesn't even -- she stops at one point. She's not doing
9 her whole arm, she moves at the wrist. It's just her wrist
10 moving. What little nine-year-old girl knows that hand
11 movement? You know, most adults know that hand movement,
12 but what little -- fourth grade little girl knows that hand
13 movement?

14 Now, ^{Complainant} also told us -- told us that E.B. was
15 asleep next to her in the bed at that time. And Aunt Jess
16 corroborates that they were asleep in the bed as well. And
17 ^{Complainant} said it was a queen-size bed; Aunt Jess says it was
18 a full. Regardless, they're small children. I mean, I --
19 you know, as -- as a child, your perspective is different
20 on -- on how big things are. Regardless, they're two small
21 kids in a bed. I used to think the queen bed was really
22 big by myself, until I got married and my husband starting
23 hogging up all that. So I mean, it's all perspective.

24 And you heard from both ^{Complainant} and from Aunt Jessica
25 about how E.B. sleeps. In fact, they both talked about

1 how they had a hard time trying to wake up E.B. .

2 So moving on, Complainant then says that he stops moving
3 her hand back and forth on his privates, and moves on to
4 touching his own privates and simultaneously touching her
5 privates. And again, she uses her own words for an adult
6 act, which as adults, we know to be male masturbation and -
7 - and manual stimulation, or even potential penetration of
8 a female vagina.

9 And she said -- and I'm gonna use her ---

10 MR. FARLEY: Objection, Your Honor. May we approach?

11 THE COURT: Sure.

12 (Bench conference.)

13 MS. HALL: I'm gonna use Complainant's exact words that she
14 -- that she told us about that. And she said -- in that
15 forensic interview, she said, "Oh, yeah. I heard the
16 slapping and the shaking."

17 And -- and -- and yet again, she uses a hand motion.
18 And -- and not just one, but two hand motions here. Again,
19 she shows us with her hands what that slapping and shaking
20 movement is like. And if I remember correctly, it's kind
21 of like a -- an upward hand motion with one hand, and then
22 they're using -- she kind of leaves one hand stabilized, as
23 if it's holding something.

24 And then she shows us what he did with his hand on
25 her. And -- and on that portion of the video -- it's not

1 even necessarily his hand, it's her -- it's the finger.
2 And she shows us that he went like -- you know, he was down
3 and around her vagina with his finger.

4 And -- and what's important about that is Dr. DeMarco
5 came in here and she told you that she examined Complainant.
6 She's not exactly sure what date, but it -- she believes it
7 was no -- a day or two afterwards. And she remembers
8 specifically that she had redness and irritation around her
9 labia, around her vagina.

10 Again, what nine-year-old little girl knows those
11 hands movements and those finger movements? And what nine-
12 year-old little girl can tell you about the sounds
13 associated with hand -- like a quick and consistent
14 movement of skin-on-skin contact, the slapping and the
15 shaking?

16 So Complainant refers to the slapping and the shaking of
17 his privates sort of later on in the interview, but she
18 also makes it clear that he was kind of doing this
19 throughout. He would -- he would get up and slap and shake
20 his private, and then he would come back to her and do
21 other things.

22 And those other things -- that particular other thing
23 is the precise act for which Cesar Portillo is charged.
24 She told us that he pulled down her pajama bottoms. She
25 even remembers the color of her pajamas. She said they

1 were blue. She said that they were long sleeved, they had
2 long pants, they had peace signs and love written on them.
3 And she remembered wearing panties to bed that night.

4 And she said that he pulled down her pajama bottoms
5 and her panties, and it was -- and she was very clear, they
6 didn't come all the way off, but they kind of rested around
7 her ankles.

8 And she then tells us that he then put his mouth on
9 her privates, and that it lasted between 5 to 8 minutes,
10 you know, for what that's worth. And then she tells us
11 that it -- that it didn't hurt, and she said it "feeled
12 kind of gross." I mean, she -- it's kind of cute. She
13 didn't even conjugate that right: "It feelled kind of
14 gross."

15 And she said, "It didn't really hurt, but you know it
16 kind of sort of hurt, because his tongue was down there,
17 but -- but -- so it kind of hurt." But mostly she said it
18 felt gross.

19 And when I asked her on the same -- on the stand about
20 those same questions, she said that it was, you know, very
21 uncomfortable and very inappropriate. And -- and that's
22 true. I mean, I think she's come to learn that now.

23 No nine-year-old child should be subjected to that.
24 And what nine-year-old child could imagine that act out of
25 thin air? What child would know previous knowledge of

1 things of a sexual nature, would know that adults put their
2 mouths on each other's privates? Does that make sense to a
3 child whatsoever, that an adult would want to put his mouth
4 on her private? No.

5 And I would argue that, taken in combination with Aunt
6 Jess's testimony, that was a key factor in why she told
7 that night. And immediately, she told immediately. She
8 said to Aunt Jess, "Cesar just did something odd to me," or
9 something to that effect.

10 And -- and yeah, a grown man coming into your bed in
11 the middle of the night, and putting his mouth on a child's
12 vagina is odd. And it's reasonable to see how Complainant did
13 not really know what to make of that beyond all other
14 touching, and mainly it was using her hand to arouse him.
15 She just couldn't wrap her head around why he would lick
16 her privates.

17 And then he was -- at -- at some point she says he
18 stops. And she says she's not really why he stops, but
19 that he does and that he stands back up. And at that point
20 he -- he began shaking and slapping his privates again.
21 And she said at that point something comes out of his
22 privates. And she says that -- first she says she's
23 uncertain if it did. And then she -- she thinks harder
24 around it, and she says, "Yes. I saw something mushy come
25 out of his privates after the shaking and the slapping."

1 And she describes it as a little "goo."

2 Now, I didn't really follow that whole thing about,
3 you know, these -- and she says it on the interview, "You
4 know, these people have these green things," and I mean, I
5 -- I don't know. But she then says that she thinks it was
6 yellowish in color, and that it was not as firm as poo, but
7 it was something in between like a "mushy goo."

8 And -- and I know that -- that -- I know that I'm
9 saying this a lot. I'm very aware of it. But what nine-
10 year-old little girl knows the consistency and color of
11 ejaculate? What little nine-year-old girl even knows that
12 anything but pee can come out of a man's private?

13 Now, I want to go back and -- and I talked to -- to
14 Dr. -- Dr. Elsey in some of my questioning about the words
15 that she used and the language that she used. And I want
16 to focus on those words and that language itself: "Cesar
17 was moving his hand; he was slapping and shaking privates;
18 mushy goo came out; it feeled gross." These are the types
19 of words that a nine year old, with no previous knowledge
20 of sexual things or any sort of sexual thing of that
21 nature, would use to describe an act that she doesn't
22 understand.

23 She didn't know what was happening like an adult -- if
24 an adult had been in that room what was happening. But she
25 used the words that she knew and the hand gestures that she

1 saw and the descriptive words that she knew how to tell us
2 extremely adult-only material. And -- and her language,
3 while childlike and -- and very age appropriate, was right
4 on with the acts that she describes.

5 And that leads me to -- let's focus about the feelings
6 that she associated with those acts. Now, she told us that
7 he took his finger and moved it around down and around her
8 vagina and -- and that it hurt. And that's understandable.
9 A finger, it's pointy, particularly in a sensitive area
10 like that on a child. And then she described how it felt
11 for him to put his mouth on her privates. And she -- if
12 she were making something up, she would have said, you
13 know, it pinched me or it stabbed me or something --
14 something other than "it felt kind of gross."

15 And it was wet down there from where he was licking,
16 but that it didn't really hurt, you know, that there -- his
17 tongue was down there, so it kind of sort of hurt, but it -
18 - but it didn't really hurt. Her physical feelings, her
19 sensory touch is right on with the acts she describes.

20 And speaking of those acts, they make sequential
21 sense. I think another term for that that -- that maybe
22 Dr. Elsey talked about was "internal coherence," meaning
23 that in the context of everything going on, the acts make
24 sense in that context.

25 And you know, if she had said that something came out

1 of his privates immediately and then he started to touch
2 her, and then finished up with licking her and never
3 touched his privates again, that -- that wouldn't make much
4 sense to us as adults. I mean, there -- there's a way, but
5 it wouldn't make as much sense of these events happening.
6 So most -- in her most innocent terms, she explains to Dr.
7 Else, and what to an adult cognitively makes sense.

8 She described in the beginning his privates being soft
9 and they felt like skin. And then she was using -- he was
10 using her hand, and -- and for lack of a better term, to
11 get himself up. And from there, she says he would slap or
12 shake his privates with his own hand intermittently, and
13 then lick her privates. And then finally, he slap and
14 shake his privates, until something came out of his
15 privates.

16 And then that encounter was over for him. He threw
17 the covers back over her before -- right after wiping up
18 her vagina, took a shower; and then ultimately, according
19 to Complainant, ended up smoking a cigarette on the front porch.

20 That's just classic. Which sort of brings us to the
21 end of Complainant's encounter in E.B. 's bedroom that night.
22 She says that "he wiped me off with a towel, and he threw
23 the towel on the floor. And that he threw the covers over
24 me, without even pulling up my pants and my underwear, and
25 he left the room. And he came right back.

1 And in that time period, she'd pulled up her pants and
2 her underwear again. And -- and by the time that he walks
3 back in, she's made the decision that she is going to
4 pretend like she's waking up.

5 And -- and Mr. Farley even asked her on the stand
6 yesterday, you know, why she did that. And -- and she was
7 very matter of fact about it. She -- she kind of poised
8 herself for a second, and she thought, "Well, because I
9 felt like that was the thing to do." And she told you that
10 she felt like he was doing this to her, because he thought
11 she was asleep; and that if she were awake, he wouldn't be
12 doing it to her.

13 Now, she didn't know. I mean, she didn't know as an
14 adult, he probably wasn't coming back to do more, because
15 what he needed there was -- was done at that point,
16 arguably. But she didn't know that, she -- she's a child.
17 And -- and she wanted to make sure that he knew that she
18 was waking up.

19 And -- and he told her, "I'm just coming in here to
20 get a towel. Go back to bed." Sort of a -- you know,
21 let's play this thing off as if there's nothing wrong, I'm
22 just in here to get a towel, and -- and sort of play it off
23 sort of thing.

24 And -- and while I'm here talking about the towel, I -
25 - I got to mention something that occurred to me just

1 yesterday while I was listening to testimony. And -- and
2 that's the significance of that towel. What did he need
3 with another towel? And I got to thinking about it. That
4 towel he used on Complainant, that had his saliva on it that
5 he'd wiped off of Complainant's vagina, and potentially
6 something else in that towel. You know where he was
7 covering his tracks by wiping off the saliva off of
8 Complainant's vagina. And then he came back in that room to get
9 another towel, because he didn't want to use that dirty
10 towel for his post-sex shower.

11 So he comes in and he gets a towel from the closet
12 with -- which both Complainant and Aunt Jessica have said that
13 the family keeps those towels in there, since there's no
14 linen closet in the hallway. And he leaves the room and he
15 goes to the one working bathroom in the house, the hallway
16 bathroom.

17 And at that point it's roughly, you know, somewhere
18 between 1:30 and 2 o'clock in the morning. No one's quite
19 sure on exact times, because it was in the middle of the
20 night and everybody's getting woken up with this out-of-
21 the-ordinary event.

22 And Complainant hears the bathroom door close, and the
23 shower go on. And she gets out of bed and she runs to tell
24 her Aunt Jess.

25 So that brings us to Aunt Jess. Let's focus a little

1 bit on what Aunt Jess said. She's married to Cesar and she
2 told us that she fell asleep next to him -- or that he fell
3 asleep next to her on the bed early that night, because it
4 wasn't uncommon. He'd been working a lot recently, and he
5 fell asleep in his clothes. And that's consistent with
6 what Complainant told us, that he was in his clothes in the
7 middle of the night when he came into that bedroom at, you
8 know, 1:00 a.m.

9 And she said that she went to bed and the girls were
10 still up kind of watching a movie in E.B. 's room, she
11 thinks. She's not really sure. But she says that the next
12 thing she remembers is Complainant waking up, and these are her
13 words, "wide-eyed, confused, startled", next to her bed.
14 And she says it struck her as abnormal.

15 So she sits up and she turns on the lamp and -- and
16 Complainant tells her what Cesar just did. She -- he did
17 something odd. And -- and while she can't remember exactly
18 what, it was a disclosure of something sexual in nature.
19 And it's clear that from what Complainant had told Jess, Jess
20 knew it was something really inappropriate.

21 And at that time, Cesar's in the shower. And that
22 directly corroborates Complainant's account of the events. Jess
23 says that when he comes back into the bedroom, he's wiping
24 his face with a towel, sees the light on, sees Complainant's in
25 there awake, and says something to the fact of, "What's

1 going on?" And to which Jess says, "Complainant just told me
2 something really disturbing" and -- or -- or strange or --
3 she uses some word like that. And Complainant kind of mirrors
4 that, too, in -- in her forensic interview as well.

5 And at that point, Cesar denies it. He says, "I
6 didn't do anything." And -- and she says that he's upset.
7 She doesn't use the word "outraged" or "horrified" or
8 "astounded" or "floored". She just says that he's upset,
9 short of shaking, and -- and she can see him trembling a
10 little bit.

11 And then he sat down on the bed next to her and
12 Complainant. And -- and then there's an awkward silence, so
13 Jess decided right then and there not only to get Complainant
14 out of there, but to get her own daughter out of there.
15 And she said that her motherly instinct kicked in, and --
16 and she left that house and she was gone.

17 And Complainant said that -- on her forensic interview --
18 that he tried to hug them both at that point, which
19 immediately Jess shot down. She said that she shot it down
20 and said, "Do not touch her."

21 And then she goes on to tell us, just as Complainant did
22 her testimony here and in the forensic interview, that they
23 were in a rush to get out of there. It's the middle of the
24 night, they've had to wake up E.B. ; she's a hard sleeper.
25 Complainant had a hard time doing it, so she had to go get Aunt

1 Jess to go in there and actually wake up E.B. .

2 And Complainant said that she found her things and went to
3 go sit in the living room. And Jess confirms that too.
4 Jess says that Complainant went to go sit in a chair in the
5 living room. And Jess also told us that she said that --
6 she was taking, like, trips in and out of rooms to gather
7 things as she's trying to get out of there. And she's
8 having to go through the hallway to go from room to room.

9 And -- and that makes sense from the drawing that
10 Complainant gave us, because the hallway was kind of a point of
11 access to all these different rooms.

12 And she says that in one of those trips. from room to
13 room collecting her things to leave, she saw Cesar re-
14 approach Complainant in the living room and again try to hug her
15 and to physically embrace her, after Jess has already told
16 her [sic] not to touch her, to get away from her. He's
17 right back over there again, trying to draw Complainant in and
18 draw her close.

19 And -- and she just happened to catch it the second
20 time. It's not like he was doing it out -- out in the open
21 in front of Jess again. They're in a separate room and she
22 happened to see it down the hallway. And both Complainant, in
23 the forensic interview, and Jess, in court, said yesterday
24 that they shot down that attempt for him to -- to touch her
25 again, too.

1 What person who has, within the past few minutes, been
2 accused of sexually violating a little girl has the nerve
3 to, not only once, but twice, go back up to that child and
4 try to embrace that child to touch that child again?
5 Wouldn't a person who is truly shocked and horrified by the
6 allegation be more like, "Oh, no, no, no. I did not do
7 that"; and be more adamant, throw up your hands, back
8 yourself away, remove yourself from the situation, not be
9 anywhere near that child. You stay over there, I stay over
10 there.

11 And then what person goes back up to the child to try
12 to embrace her again?

13 And then Jess leads us down the road to Walterboro, to
14 Lesley, who met -- and they met everybody at -- at Nanny's
15 house. And Lesley says that she was seriously concerned
16 about the safety of her child. She was worried that she
17 was hurt physically, and she followed that up by going into
18 the bathroom with Complainant that night. She made Complainant go
19 potty, she made her wipe, she made sure that -- she looked
20 at the -- the piece of toilet paper afterwards to make sure
21 that there was no blood or discharge whatever.

22 And she said it was the middle of the night, and she
23 didn't know what she was gonna do. She had a child in
24 distress who had just come to her with really disturbing
25 information, who was begging her not to go to the emergency

1 room. And while Lesley didn't remember every date and time
2 specifically, that family was thrust into a traumatic
3 experience that night and they were all in shock.

4 They didn't know what to do. They didn't know how to
5 handle it. They knew that their first concern was their
6 baby, and to make sure that she was physically safe and
7 psychologically okay.

8 And -- and law enforcement, Lesley thought, would come
9 as a result of what was doing -- what -- what she would do
10 right for her child by physically taking care of her,
11 making sure she got medical attention; and then taking her
12 to the Lowcountry Children's Center to get a forensic
13 interview, and to make sure psychologically she was okay.
14 And that she was informed, by both medical providers and
15 the Lowcountry Children's Center, that they would make that
16 report to the sheriff's office. And -- and so she set
17 about to do the things that were right for her little girl.

18 And -- and that leads us to Dr. DeMarco. She was a
19 family friend of the Hitchens'; somebody they trusted, they
20 knew her, they knew her children, Lesley had worked with
21 her. And they didn't want her to see a male pediatrician,
22 which was -- they didn't want her to see a male
23 pediatrician. They wanted her to see somebody that she was
24 comfortable with. And they asked for a house call, which
25 Dr. DeMarco, who was qualified as an expert as a

1 pediatrician yesterday, was happy to oblige to come over to
2 their house.

3 And she took a patient history, meaning, she asked
4 what had happened to Complainant. And she said that she
5 performed a physical exam, and she asked that -- the
6 physical history just to know in particular what to look
7 for. But just to be complete she did the head-to-toe.

8 And she went ahead and -- and told us what --
9 something that struck me as being important: The -- the
10 history is the most important thing, and this was the
11 hallmark of her testimony: The results of her physical
12 examination were consistent with her patient history, what
13 Complainant had told her; meaning, that what she found and what
14 Complainant said added up.

15 And -- and she even noted, and I've already talked
16 about it, but that redness and that irritation around her
17 labia or in and around her vagina. And that adds up too.

18 Then Dr. DeMarco suggested the family see a place in
19 Charleston or North Charleston, a place that she knew of
20 that handle cases just like this one. And they needed to
21 schedule that and go see somebody there, and that's exactly
22 what Lesley did. She called the Dee Norton Lowcountry
23 Children's Center and they said they were gonna report to
24 the appropriate county, and that -- and the appropriate
25 agency.

1 And being that they work with law enforcement agency -
2 - agencies all the time and provide an investigative
3 function for law enforcement in the area, including the
4 Dorchester County Sheriff's Office, that they'd be able to
5 easily let the sheriff's office know for the parents. And
6 -- and Lesley handled it at that point. She thought it was
7 handled. They felt like they were placing their child in
8 the best people's care for trauma like this.

9 And you heard from Dr. Elsey. I -- I don't know how
10 the man does what he does, but I'm thankful he does. And
11 he told you about the forensic interview. He told you
12 about the steps they use, the RATAC protocol -- the
13 rapport, anatomy, touch inquiry, abuse scenario, and
14 closure protocol -- and the importance of being -- of
15 providing open-ended questions.

16 And he said he wanted to give the child the best
17 chance at telling us everything that happened, so that they
18 can figure out what happened, and to let -- help other
19 people and other agencies involved in these cases know what
20 happened to that child. And -- and that's their function.
21 They're a child advocacy center for investigation.

22 He also told you that he's done over 4500 of these
23 cases in his lifetime, and that in his heyday, he was doing
24 10 to 15 a week. He's teaching other people how to do
25 them, and he's still doing some in his spare time. That's

1 why he did -- he did Complainant's.

2 And he says there's a lot of level of review in this
3 process. Because we want to make sure that we can do the
4 best we can, we learn how to be better at doing this
5 forensic interviews all the time.

6 And here's what I -- what I focused on a little bit a
7 little while ago, is he talked about her language: Her
8 words, the way she described the -- the things that
9 happened to her, what she understood to be happening. Even
10 though it was clear she didn't understand those acts, she
11 didn't understand what those acts were. But she used what
12 she -- what she knew: the words she knew; the language she
13 used; the descriptives: mushy, slapping, shaking; the --
14 the words she knew to -- to make herself clear. She even
15 gave us hand motions.

16 And he also stated that, in that follow up interview
17 that he did, that the family expressed concerns about her
18 emotional state, about nightmares, and sleepless, and --
19 and stuff like that. And he said that while he could not
20 diagnose post-traumatic stress disorder, since those
21 symptoms have to be present for a period of 30 days and he
22 had only seen her maybe on -- two weeks later, he wanted
23 her to get follow up treatment. And he wanted to send her
24 to -- and I can't remember what the -- the treatment was,
25 but it was "the treatment" for these types of cases; the

1 cognitive behavioral therapy.

2 And -- and he referred them along to someone else, so
3 that she could get the treatment she needed for these
4 behavioral issues and emotional manifestations of trauma.
5 And let's be clear, these manifestations of trauma showed
6 up after the incident with Uncle Cesar, not before.

7 So here we are. I mean, that's the end of testimony
8 of the people that you heard. And now, I don't know what
9 Defense Counsel is gonna say. I don't get an opportunity
10 to talk to you again. This is my only opportunity to get
11 to talk to you, so in these types of cases I have to
12 anticipate. And -- and that's -- I have to anticipate
13 common arguments that Defense Counsel intends to make. So
14 I'm gonna try -- try to address some of those.

15 The first of which is, "Law enforcement didn't do a
16 good enough job." And I expect that to be a point of
17 Defense Counsel. So let's talk about law enforcement in
18 this case.

19 I'm not gonna tell you the Dorchester County Sheriff's
20 Office couldn't have done more. But this is just an old
21 defense tactic. When you don't have anything else to
22 argue, you argue that the police messed it up. They never
23 seem to remember that if the sheriff's office had done
24 more, the case probably would have only gotten better.

25 And I wish that we had found DNA. But in that

1 forensic interview, Complainant said that she wasn't really sure
2 where that semen went. And she was clear with Jess and her
3 mom and her pediatrician and Dr. Elsey that it didn't go in
4 her or on her. And what would the police have been looking
5 for then?

6 I also wish that law enforcement had found some key
7 witnesses that saw everything from afar, but that's not
8 gonna happen either. That's why Defense Counsel wants to
9 distract your attention from everything that's been offered
10 in this case and try to blame it on the police.

11 But you also heard Dr. Elsey testify that the
12 Children's Center is a function of law enforcement. And
13 they work with agencies like the solicitor's office, the
14 sheriff's office, and DSS and other agencies like that all
15 the time. They do those interviews as part of their job as
16 an investigatory agency. And they provided their works and
17 their findings to the sheriff's office.

18 And Dr. Elsey said that one of the reasons that they
19 record those interviews is because they don't want to
20 subject a victim or their family to having to tell the
21 story more times than necessary. And here, law enforcement
22 didn't have to make them tell it more times than necessary,
23 because Dr. Elsey had already interviewed Complainant, both of
24 her parents, Jess, and E.B. .

25 Sometimes Defense Counsel likes to use an analogy that

1 -- that reasonable doubt is like this sort of sliding
2 scale. And -- and -- and way down here the defendant is --
3 is, you know, just white as snow, completely innocent. And
4 -- and prosecution has to get him all the way over here,
5 and isn't that so far? It's so hard to get them all the
6 way over here to completely guilty. And that we just
7 didn't meet our burden by convincing you for whatever
8 reason. Usually it's police work, but it can be other
9 things, too.

10 And sometimes that argument works. But not here, and
11 I'll tell you why. And it links back to that statute that
12 I talked to you earlier -- and Dr. DeMarco said there's
13 rarely any physical evidence in these cases -- and that
14 statute says that a victim's testimony need not be
15 corroborated, it need not be corroborated. Where in a
16 different kind of case, you might need a victim to be
17 supported by other testimony, by law enforcement records,
18 physical evidence, or something like that, in these types
19 of cases the legislature says that the allegation of that
20 victim alone is enough to convict the defendant.

21 The beauty of it is the statute says that, and you can
22 rely on that on making your decision. But I just went
23 through, for the past however long I've been talking -- and
24 I'm sorry it's been a long time -- but I've just shown you
25 all those different places where she was corroborated. And

1 I'm not gonna rehash all that, but Complainant is corroborated
2 throughout her story.

3 And -- and I promise I'm wrapping it up now. It's
4 hard to fathom how a nine year old could make this up; how
5 a nine year old, who knows nothing about sex, can make up a
6 lie that makes so much sense and is so contemporaneous with
7 the facts and the situation that night. If she even made
8 it up and Cesar had truly awoken her when he came in to get
9 that towel, that means that she had between the time that
10 he walked in to get that towel and woke her up, and the
11 arguably 30 seconds it took for her to get out of bed and
12 go tell Aunt Jessica. That's how much time she had to
13 fabricate this particular, very detailed, incredibly
14 elaborate -- and why that -- that -- how could she have
15 made it up?

16 She couldn't have perfectly timed it like that. She
17 couldn't have thought, "Oh, well, he's in the shower now,
18 so this is a perfect time to -- to pin some sexual
19 allegations on my uncle. So let's -- let's think about it
20 and go -- go back. And well, I'll -- I'll say that, you
21 know, licking privates took probably about 30 minutes. And
22 we'll go back a little bit more and -- oh, and I should
23 make up some PTSD symptoms afterwards to make it look
24 legit." No nine-year-old knows how to make this up. It
25 just doesn't work like that.

MS. HALL: I urge you to go back into your jury room. Consider what Complainant told you. Consider the things that I've just gone over with you. And consider the words that you took at the beginning in your oath. The words of that at the very end are, "... and a true verdict render."

1 Go back and bring back the truth in this verdict.

2 Find Cesar Portillo guilty of criminal sexual conduct with
3 a minor in the first degree. Thank you for your time.

4 THE COURT: Thank you, Ms. Hall. Mr. Farley.

5 MR. FARLEY: May it please the Court?

6 THE COURT: Yes.

7 MR. FARLEY: Well, folks we can just pack it up right
8 now. We can go home, because if you believe what the State
9 has to say, there's no purpose for a jury in this country.

10 The State has mischaracterized the facts of this case;
11 the State has mischaracterized the law in this case; and
12 the State has absolutely not proven their burden.

13 Ladies and gentle -- gentlemen, it's a sad and scary
14 day in America where a mere accusation, without police
15 investigation, without police doing virtually anything in
16 this case, can result in a man being here before you today,
17 arrested on one of the most serious charges our state has.
18 Right up there with murder, right -- and right up there
19 with breaking into somebody's house with a ---

20 MS. HALL: Objection.

21 (Bench conference.)

22 MR. FARLEY: Law enforcement did not do anything in
23 this case. Let's talk about that. The family of the
24 victim, they went to a medical professional as soon as
25 possible. That medical professional referred them to Dr.

1 Elsey and his agency. The family did what they were
2 supposed to. Law enforcement dropped the ball.

3 Law enforcement did not investigate this situation.
4 Law enforcement never met with the victim, never met with
5 the mother of the victim, never met with the aunt of the
6 victim, never visited the house. They did not do anything.
7 The only contact was a phone call, a phone call.

8 They didn't go to the house. The house is the scene
9 of the crime. You ask any police officer, "Is it important
10 to go to the scene of the crime when you investigate a
11 crime?" Of course, it is.

12 State talks about -- there's this one key piece of
13 evidence that all of us know, that if they had that, the
14 State would be able to prove their case; and that's the --
15 that's the DNA evidence that the little girl says was left
16 at the scene of the crime. Did they go look for it? No.
17 Well, maybe they thought that too much time had passed.
18 Oh, well, it's been -- took us two weeks just to get this
19 case and to contact the mother of the victim. It's -- it's
20 gone by now. We might as well just -- you know, they --
21 we've got enough.

22 How do they know? If they had gone, it may have been
23 there, if it ever existed at all. We don't know. That is
24 a key piece of information that if we had today, we would
25 know.

1 I don't know if this crime happened. Cesar tells you
2 that it did not --

3 MS. HALL: Objection.

4 MR. FARLEY: -- by his plea of not guilty.

5 MS. HALL: Withdrawn.

6 MR. FARLEY: I've sworn an oath to uphold the
7 constitution. The judge has sworn an oath to uphold the
8 constitution. Cesar, when he was in the military, swore an
9 oath to protect and defend the constitution. He's here
10 today -- he is here today to see that constitution at work.

11 Your job today is to enforce the constitution of the
12 United States of America.

13 The Solicitor brings up this law that -- which is the
14 law on the books. I'm not gonna deny that the victim not
15 be corroborated. That's the law.

16 But you have to believe the victim. The State has to
17 prove to you that what the victim said happened, happened.
18 She doesn't have to be corroborated by any means, but that
19 doesn't mean you take what she says for the God's honest
20 truth.

21 You have a role here. And your role is to determine
22 if the State has proven that the defendant did this crime.
23 All right? That's what your job is.

24 Let's talk a little bit about the facts of the case.
25 The solicitor went on and on. She -- she focused on, well,

1 before the incident everything's corroborated. She focused
2 on after the incident, everything's corroborated.
3 Everything's corroborated, except the incident, and that's
4 what they're here to prove. It's a -- it's a no-brainer.
5 They are here to prove this, and of course, everything
6 before and after's corroborated.

7 But the incident itself has not been corroborated.
8 The police did not go and collect evidence in that room.
9 Nothing has been done. Nothing has been done that should
10 have been done in this case that would give the State the
11 power to prove it.

12 The facts -- we're talking about a very, very small
13 room. Arguably a dark room. I don't know. There was no
14 description of the volume of light that was coming out of
15 the -- the closet. I don't know. I wasn't there. You
16 don't know. You weren't there. The State has not prove --
17 has given us any certain information on that. All right?

18 Small room, boxes everywhere, t.v. in the corner.
19 Queen bed? full bed? twin bed? It's a full bed. And
20 adult, in my opinion, would have much more idea of bed
21 sizes than a -- than a child. I'm not saying that she lied
22 about it. I'm saying she didn't know. We have a small
23 full bed in a small room full of boxes, and a t.v., two
24 nightstands, lamps. It's a compact space.

25 And the way that the bed was set up, Cesar would have

1 to come in the door, walk all the way around this bed,
2 negotiating this tight spot; come on the other side of the
3 bed where Complainant is sleeping, get in the bed, get out of
4 the bed; get in the bed, get out of the bed.

5 The stories vary from the first video -- from the
6 video, which was chronologically the first incident, to the
7 testimony that we heard today. That -- those stories vary.

8 He -- we're -- we're also told that he pulled down the
9 covers, the winter covers, pulled down her pants, pulled
10 down her underwear. All the time while E.B. , her little
11 cousin, was sleeping next to her.

12 The child didn't wake at all. She's a heavy sleeper.
13 How do you characterize a heavy sleeper? Mother says she's
14 a normal sleeper. I don't know what that means "a heavy
15 sleeper." Some -- some mornings I'm a heavy sleeper and
16 some mornings I'm up like that. I don't -- I don't think
17 that that's something that you could characterize somebody
18 with.

19 But even if -- even if that's true, coming in the
20 room, opening the door, going in the closet, tight spot,
21 small bed, in and out of the bed. Y'all are the finders of
22 fact. I think you know where I'm going with this.

23 Let's talk about -- let's talk about her reporting,
24 and I'll probably jump back and forth between the facts.
25 She -- she did, that night, go and tell Aunt Jess. The

1 stories differ about what she said, but she was -- she was
2 arguably shocked. But from the time she reported
3 immediately, to the time that the first interview took
4 place, that was about three days. Three days of adults
5 asking her questions.

6 And I can only -- as a parent, I can only imagine what
7 kind of questions I'd ask my little girl. But certainly
8 they'd ask questions that would shape the child's thinking.
9 Perhaps -- and we don't know this -- perhaps, they did
10 these gestures for the child. "Was he doing it like this?
11 Was he doing it like that? Did you see something come out?
12 Did it look like this? Did it look like that?" I don't
13 know.

14 Three days -- three days is a long time. Three days
15 is a long time. As a parent you are going to be -- this is
16 gonna be the focus of your life. You are gonna think about
17 this all the time. You're certainly gonna talk to your
18 child about it and try to get to the bottom of it. There
19 is more than ample opportunity for adult words, adult
20 phrases, adult actions, adult takes on the situation to be
21 given to the child. All right? So there is more than
22 enough opportunity.

23 There's also discussion about the redness in the
24 girl's privates. The doctor had never treated this girl
25 before. We never heard of that. He -- she said she took a

1 history. We don't know if she had any gynecological
2 issues. The doctor said in most cases, 90-some-odd percent
3 of the cases, there are no signs of outward trauma
4 whatsoever.

5 Three days had past. I -- I -- there could be many
6 explanations for the redness. I -- I'm not a doctor. I
7 don't know. But I think that -- that -- that information
8 can be set aside. I -- I really do. It -- it doesn't help
9 us one way or another.

10 Now, everything you've heard, they're just
11 allegations. And the -- the allegation that you have to
12 focus on today is the allegation alleged in that
13 indictment. It alleges sexual battery, but a special kind
14 of sexual battery. A bad -- a very bad kind of sexual
15 battery, but only one. It's oral sex.

16 So everything you've heard about touching,
17 penetration, anything like that, you need not even take
18 into the jury room, because that doesn't matter. That is
19 not what the allegation is here today.

20 The allegation here today is oral sex. And has the
21 State proven to you, beyond a reasonable doubt, that oral
22 sex occurred on that night. The police didn't investigate
23 their case. There's extreme inconsistencies in the
24 stories: The room, logically the tightness of the room;
25 the fact that her cousin is there. It -- it -- it makes it

1 difficult. It certainly brings up some doubt.

2 The time that passed between the actual reporting of
3 the event and the first interview, there's plenty of time
4 for adult words to be taught -- or not taught, but to be
5 impressed or shattered onto a child -- "projected," I
6 think, is the term.

7 Ladies and gentlemen, you may remember, at the
8 beginning of this trial, I told you that you have to -- the
9 law requires you to think and leave this room everyday
10 thinking that Cesar is innocent; knowing, holding in your
11 heart that Cesar is innocent.

12 And I told you the only way that that can be changed
13 is for to -- the State to prove, beyond a reasonable doubt,
14 that he committed this crime.

15 The State has a high burden. The State has a terribly
16 high burden, and I respect that. But there's a reason why
17 the State has a high burden. Could you imagine a country
18 where mere allegations would land you in a courtroom like
19 this, to face these accusations without any police work,
20 with nothing? And that's what we have here today, mere
21 allegations.

22 Your job is to be a check on the police, to keep this
23 from being a police state like Communist Russia. And
24 people may laugh about that, but your job is to check the
25 power of the State, the unrestrained power of the State.

1 They have the guns, they have the badges, they have the
2 power to put ---

3 MS. HALL: Objection, ---

4 MR. FARLEY: --- us in prison.

5 MS. HALL: --- Your Honor.

6 THE COURT: Sustained.

7 MR. FARLEY: I will sum up by saying that the
8 solicitor spoke about the law. I've spoken about the law.
9 The judge is the only person that can give you the law in
10 this case. Disregard what we've said. Only pay attention
11 to what the judge has to say, because she is the judge of
12 the law. But you are the judge of the facts.

13 And ladies and gentlemen, after sitting through this
14 case, after hearing the testimony, you will go back into
15 your jury room and you will deliberate. And the only
16 result that I think that can come out of that jury room is
17 a verdict of not guilty.

18 And I ask you, go back there, look at the facts,
19 listen to the law in the case. I beg you to do your job,
20 to defend our constitution, and to find the defendant not
21 guilty.

22 THE COURT: Thank you so much, Mr. Farley.

23 (Addresses jury) Ladies and gentlemen, that first
24 break that I was talking about, stand up. See how good
25 that feels.

1 (The jury stands.)

2 THE COURT: Now, does anybody need to take what is
3 known in Beaufort County as a "comfort break"? Anybody
4 need a comfort break, because it's gonna take me -- it's
5 probably gonna take me about 40 minutes to deliver the
6 charge to you.

7 And I want y'all to listen to me. I don't y'all
8 worried about, oh God, I should have taken that break. But
9 it's okay.

10 Here's what we're gonna do. We're -- here's exactly
11 what we'll do. We're going to -- and there's going to be
12 somebody else. We're gonna take a comfort break. You all
13 are gonna step to your jury room. Everybody take a comfort
14 break. When y'all are finished, y'all knock on the door.
15 We're waiting on you.

16 So you take your comfort break, then when you all are
17 finished your comfort break, knock on the door, and come on
18 back. You know, you've got to wait on the bailiffs, but
19 they'll be there with you.

20 Leave your notebooks in your seats. Do not discuss
21 this matter or allow anyone to discuss it with you. And we
22 will be at your demand, if you will. If you'll step to
23 your jury room.

24 (Jury exits at 11:57 a.m.)

25 THE COURT: All right. We -- we gonna just take a

1 very short break. We'll be -- you all don't -- don't go
2 far, because when the jury is ready, I -- I want us to be -
3 - to -- ready, too.

4 (Off the record at 11:57 a.m.)

5 (On the record at 12:09 p.m.)

6 THE COURT: Let us have the jury.

7 (Jury enters at 12:09 p.m.)

8 THE COURT: (To the jury) Ladies and gentlemen, you
9 have heard the testimony, received the exhibits, you've
10 heard the arguments of counsel. It is now my duty to
11 charge or instruct you regarding the law applicable to this
12 case.

13 Ladies and gentlemen, the indictment in this case
14 charges the defendant Cesar Orlando Portillo with the
15 offense of criminal sexual conduct with a minor in the
16 first degree. If I speak of the defendant, I'm speaking of
17 Cesar Orlando Portillo.

18 Ladies and gentlemen, I remind you that the fact that
19 the defendant -- that Mr. Portillo was arrested, charged,
20 and indicted in this case is not evidence in this case, and
21 it cannot be considered by you as evidence of guilt in this
22 case. Nor does it create any presumption or inference of
23 guilt.

24 Ladies and gentlemen, the indictment is simply a
25 document. It is the formal written instrument which

1 contains the charge made against the defendant. It is the
2 formal document by which this case is brought into this
3 court.

4 The indictment, ladies and gentlemen, alleges (as
5 read): "That in Dorchester County, South Carolina, on or
6 about January the 16th, 2010, the defendant Cesar Orlando
7 Portillo did engage in sexual battery upon a minor who is
8 less than 11 years of age; in that the defendant did
9 perform cunnilingus upon the victim Complainant . This
10 offense is in violation of section 16-3-655 of the South
11 Carolina Code of Laws as amended.

12 Ladies and gentlemen, the defendant Mr. Portillo has
13 pled not guilty to this indictment, and that plea puts the
14 burden on the State to prove the defendant guilty. A
15 person charged with committing a criminal offense in South
16 Carolina is never required to prove himself or herself not
17 guilty, and certainly not required to prove himself or
18 herself innocent.

19 I charge you that it is an important rule of the law
20 that the defendant in a criminal trial, no matter what the
21 seriousness of the charge may be, will always be presumed
22 to be innocent of the crime for which the indictment was
23 issued, unless guilt has been proven by evidence satisfying
24 you of that guilt beyond a reasonable doubt.

25 This presumption of innocence does not end when you

1 begin your deliberations, but it accompanies the defendant
2 -- it accompanies Mr. Portillo throughout the trial until
3 you reach a verdict of guilt, based on evidence satisfying
4 you of that guilt beyond a reasonable doubt.

5 The presumption of innocence is like a robe of
6 righteousness placed about the shoulders of the defendant,
7 which remains with the defendant, with Mr. Portillo, until
8 it has been stripped from him, from the defendant. by
9 evidence satisfying you of the defendant's guilt beyond a
10 reasonable doubt.

11 The presumption of innocence is not a mere legal
12 theory. It is not just a legal phrase. It is a
13 substantial right to which every defendant is entitled
14 unless you, the jury, are satisfied from the evidence of
15 the defendant's guilt beyond a reasonable doubt.

16 What then is a reasonable doubt in the law? A
17 reasonable doubt is the kind of doubt that would cause a
18 reasonable person to hesitate to act. The State has the
19 burden of proving the defendant guilty beyond a reasonable
20 doubt.

21 Some of you may have served as jurors in civil cases
22 where you were told that it was only necessary to prove
23 that a fact is more likely true than not true, such as by
24 the greater weight or the preponderance of the evidence.
25 In criminal cases, the State's proof must be more powerful

1 than that. It must be beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is proof that leaves
3 you firmly convinced of the defendant's guilt. There are
4 very few things in this world that we know with absolute
5 certainty; and in criminal cases, the law does not require
6 proof that overcomes every possible doubt.

7 If, based on your consideration of the evidence, you
8 are firmly convinced that the defendant is guilty of the
9 crime charged, you must find the defendant guilty. If on
10 the other hand, you think there is a real possibility that
11 the defendant is not guilty, you must give the defendant
12 the benefit of the doubt and find him not guilty.

13 I remind you that during this trial you and I have
14 certain duties to perform. As the trial judge, it is my
15 responsibility to preside over the trial of this case, and
16 I also have the duty to rule on the admissibility of
17 evidence offered during this trial. You are to consider
18 only the competent evidence before you. Ladies and
19 gentlemen, you are to consider only the testimony which has
20 been presented from this witness stand, and any exhibits
21 which have been made a part of the record in this case.

22 I have the additional duty to charge you regarding the
23 law applicable to this case. As the presiding judge, I am
24 the sole judge of the law of this case; and it is your duty
25 as jurors to accept, and to apply the law as I now state it

1 to you. If you already have an idea as to what the law is
2 or what it ought to be and it does not agree with what I
3 tell you now the law is, you are, by your oath, sworn to
4 abandon your preconceived idea; because you are, by your
5 oath, bound to accept and apply the law exactly as I state
6 it to you.

7 Now, in every case tried in this court before a jury,
8 the jury -- the jury becomes the sole and exclusive judge
9 of the facts in the case. The trial judge cannot intimate,
10 state, comment on, or make any statement to a trial jury
11 about the facts in the case. Since you the jury are the
12 sole judges of the facts in this case, you are not to infer
13 from what I may have said during the progress of this trial
14 in ruling on the admissibility of evidence or otherwise, or
15 anything that I say to you now during this course -- during
16 the course of this instruction to you, that I have any
17 opinion about the facts in this case.

18 The law doesn't allow me to have an opinion about the
19 facts in this case. This is a matter solely for you to
20 determine. As jurors it is your duty to determine the
21 effect, the value, the weight, and the truth of the
22 evidence presented during this trial.

23 Now ladies and gentlemen, we're gonna talk about two
24 types of evidence that are generally presented during a
25 trial. One is called "direct evidence," and the other's

1 "circumstantial evidence."

2 Direct evidence is the testimony of a person who
3 claims to have actual knowledge of a fact, such as an
4 eyewitness. It is evidence which immediately establishes
5 the main fact to be proved.

6 Circumstantial evidence, the other kind of evidence,
7 is proof of a chain of facts and circumstances indicating
8 the existence of a fact. It is evidence which immediately
9 establishes collateral facts from which the main fact may
10 be inferred. Circumstantial evidence is based on inference
11 and not on personal knowledge or observation.

12 The law makes absolutely no distinction between the
13 weight or value to be given to either direct or
14 circumstantial evidence, nor is a greater degree of
15 certainty required of circumstantial evidence than of
16 direct evidence. You should weigh all the evidence in this
17 case, and after weighing all the evidence, if you are not
18 convinced of the guilt of the defendant beyond a reasonable
19 doubt, you must find the defendant not guilty.

20 Let me give you some examples to illustrate the
21 difference between direct and circumstantial evidence.
22 It's February, it's cold, snow's forecast, got that gray
23 sky up above. Think we bout had -- I think we had that
24 this last February, in fact.

25 You go outside and you see it's snowing. It's

1 snowing. You're an eyewitness to the snow. That is direct
2 evidence that it is snowing. So you would testify, "I was
3 standing outside. I saw it snowing." That's eyewitness,
4 direct testimony that it's snowing.

5 Another scenario: Same day, February, freezing cold,
6 snow is forecast. It's eleven o'clock. You take one more
7 look out your window before you go to bed. You see your
8 little brown, crunchy grass out in front of your house,
9 brown crunchy grass behind the house. You go to bed. You
10 know that snow's forecast. Go to bed, you wake up in the
11 morning, and your lawn and everybody else's lawn is covered
12 in snow.

13 Now, here's what you know: You know it's February,
14 it's cold, snow's forecast, you went to bed, you woke up,
15 snow's all over everything. Those facts, as established,
16 establish an inference that it snowed overnight; proved by
17 inference. Circumstantial evidence is those collateral
18 facts, that point and prove the main fact to be proved, and
19 that is that it snowed overnight.

20 Now, both kinds of evidence, perfectly fine. No
21 distinction between the weight and value to be given to
22 either, nor a greater degree of certainty required of one
23 than the other, certainly not circumstantial evidence than
24 of direct evidence.

25 Now, I'm gonna talk now with you about what's called

1 the "credibility of witnesses." In your role as jurors,
2 necessarily, in your search for the truth, you must
3 determine the credibility of witnesses who have testified
4 in this case. Credibility simply means "believability."
5 It becomes your duty as jurors to analyze and evaluate the
6 evidence, and determine which evidence convinces you of
7 it's truth.

8 In determining the believability of witnesses who have
9 testified in this case, ladies and gentlemen, you can
10 believe one witness, you can believe all of the witnesses;
11 you can believe one witness, and not believe other
12 witnesses; you can believe two witnesses, and not believe
13 some witnesses. In other words, ladies and gentlemen, it
14 is for you to determine -- it is for you to determine which
15 witnesses are believable.

16 You may believe a part of the testimony of a witness
17 and reject the remaining part of that same witness. You
18 can believe all of A witness -- all of A witness's
19 testimony, or you can reject all of the testimony of the
20 same witness.

21 You can consider -- you may consider whether any
22 witness has exhibited to you any interest or bias or
23 prejudice or any other motive in this case. And you may
24 also consider the appearance and the manner of the witness
25 while on the witness stand. You have a right to consider

1 the ability for the witness to have -- to testify regarding
2 -- to have observed the matters of that witness -- the
3 witness may testify.

4 Ladies and gentlemen, these things that I have just
5 mentioned are only examples. You are certainly not limited
6 by -- by what I just mentioned to you as examples. Ladies
7 and gentlemen, jurors do not check their -- their common
8 sense at the door to the courthouse. Determine credibility
9 the way you do it every day in your world and in your
10 lives.

11 Now, ladies and gentlemen, I further instruct you that
12 the testimony of a victim need not be corroborated in
13 prosecution under section 16-3-652 through 16-3-658. And
14 for our record, that was section 16-3-657.

15 Ladies and gentlemen, during this trial you have heard
16 testimony from a child. Where a witness is a child, you
17 must determine, as with any witness, whether that testimony
18 is believable, whether it's credible. In deciding
19 believability, you may consider not only matters that I've
20 already discussed with you, but you may also consider the
21 age of the child; the child's ability to observe and
22 remember facts; and the child's ability to understand and
23 answer questions.

24 Because young children may not fully understand what
25 is happening here, it is up to you to decide whether the

1 child understood the seriousness of appearing as a witness
2 at this trial; whether the child understood the questions;
3 whether the child has as good memory; and whether the child
4 understands the difference between lying and telling the
5 truth.

6 In addition, young children may be influenced by the
7 way the questions are asked. It is up to you to decide
8 whether the witness understood the questions asked.

9 Ladies and gentlemen, in this trial you have also
10 heard from witnesses who were declared to be expert
11 witnesses. Our rules of evidence ordinarily do not permit
12 witnesses to testify regarding their opinions or
13 conclusions. An exception to this rule exists for
14 witnesses deemed to be expert witnesses. A witness who, by
15 virtue of their education and experience, has become an
16 expert in some art or science, profession or calling. And
17 those witnesses may state an opinion as to relevant and
18 material matter in which the witness claims to be an
19 expert, and may also state the reasons for the opinion.

20 You should consider any expert opinion received in
21 evidence in this case, and like any other evidence, you
22 give it the weight you think it deserves. If you decide
23 that the opinion of an expert witness is not based on
24 sufficient education and experience; or if you conclude
25 that the reasons given in support of the opinion are not

1 sound; or that the opinion is outweighed by other evidence,
2 you may disregard the opinion entirely.

3 And expert witness's testimony is to be given no
4 greater weight than that of other witnesses simply because
5 the witness is an expert. Further, you are not required to
6 accept an opinion -- an expert's opinion even though it is
7 not contradicted. Expert opinion, ladies and gentlemen --
8 testimony -- expert opinion testimony is given for the
9 purpose of helping you understand the evidence, and not for
10 the purpose of controlling your judgment.

11 Ladies and gentlemen, I instruct you and I emphasize
12 that the fact that the defendant Mr. Portillo did not
13 testify in this case is not a factor to be considered by
14 you in any way in your deliberation and in your
15 consideration on the issue of whether Mr. Portillo is
16 guilty or not guilty. It must not be considered by you in
17 any manner whatsoever. A defendant has the constitutional
18 right to remain silent, and the assertion of this right
19 must not be considered by you in your deliberations.

20 I repeat, under you oath, you are to draw no
21 conclusion whatsoever from the fact that the defendant in
22 this case did not testify. The fact that this defendant
23 did not testify should not even be discussed in the jury
24 room.

25 The burden of proof, as I have stated it to you is,

1 and remains on the State. The defendant is not required to
2 prove himself not guilty, is not required to prove himself
3 innocent. The burden of proof is and remains on the State
4 to prove guilt beyond a reasonable doubt.

5 Now, we're gonna talk about intent -- intent. In
6 order to establish criminal liability, criminal intent is
7 required. For example, the mental state required to be
8 proven by the State for a particular crime in -- in -- in a
9 general sense might be purpose, intent, knowledge,
10 recklessness, criminal negligence. Criminal intent must be
11 proven by the State beyond a reasonable doubt. Criminal
12 intent is always a matter that must be determined by the
13 jury from the circumstances surrounding the situation.

14 There is no way to prove intent to a mathematical
15 certainty. There's no way medical science could dissect a
16 person's brain and determine what the person had in mind.
17 So the law says that criminal intent may be inferred from
18 the circumstances shown to have existed, and this is how
19 you make a determination of whether or not the element
20 requiring intent was present.

21 It is not necessary to establish intent by direct and
22 positive evidence. But intent may be established by
23 inference in the same way as any other fact, by taking into
24 consideration the acts of the parties, and all the facts
25 and circumstances in the case.

1 Criminal intent is a mental state; it is a mental
2 state, a conscious wrongdoing. It is up to you to
3 determine what the defendant intended to do based on the
4 circumstances shown to have existed

5 Criminal intent can arise from action or failure to
6 act. It may arise from negligence, recklessness,
7 indifference to duty, or circumstances that the law deems
8 to be the equivalent of criminal intent.

9 Now, ladies and gentlemen, I'm going to instruct you
10 regarding the elements of the crime of first degree
11 criminal sexual conduct with a minor, section 16-3-655 of
12 the South Carolina Code of Laws as amended. Ladies and
13 gentlemen, Mr. Portillo is charged with first degree
14 criminal sexual conduct with a minor. The State must prove
15 beyond a reasonable doubt that the defendant engaged in a
16 sexual battery with the victim.

17 What is a sexual battery? A sexual battery is sexual
18 intercourse, cunnilingus, fellatio, anal intercourse; or
19 any intrusion, however slight, of any part of a person's
20 body or of any object to the genital or anal openings of
21 another person's body, except when the intrusion is
22 accomplished for medically recognized treatment or
23 diagnostic purposes.

24 The State must then prove beyond a reasonable doubt
25 that the victim was less than 11 years old at the time of

1 the sexual battery. Consent, willingness, indifference, or
2 ignorance on the part of the minor, if any, as to what was
3 taking place, does not in any way affect the charge of
4 criminal sexual conduct with a minor, because a child under
5 the age of 14 cannot legally consent to sexual intercourse.

6 Now, ladies and gentlemen, in a moment I'm going to go
7 over the verdict form with you. Before I do that, two
8 things I want to share with you. First of all, your
9 verdict must be unanimous. This verdict must be the
10 verdict of all 12 of you. That should be a hint,
11 gentlemen. This is not the verdict of the majority of you
12 or any one of you, but this must be the verdict of each and
13 every one of you. Must be unanimous.

14 The second matter that I want to share with you is
15 that there are two possible verdicts, and I have written
16 these two possible verdicts on this piece of paper. I want
17 you to know that I could have just as easily written these
18 two possible verdicts in the other order. And I tell you
19 in advance, please take no hidden meaning in the order in
20 which these two possible verdicts have been put on this
21 piece of paper.

22 Ladies and gentlemen, it's just simply reality, if
23 you're gonna put two things on a piece of paper, one's got
24 to be first and one's got to be second. So there's no
25 hidden meaning in which the order of the possible verdicts

1 have been placed on paper.

2 Now, I -- I'm gonna pause and ask Mr. -- Mr. Fuss and
3 Mr. Horn, the next time when my jury leaves me, y'all stay
4 here with me, please. Okay?

5 JURORS: (No audible response.)

6 THE COURT: Thank you. Now, ladies and gentlemen, I
7 have created this thing called a "verdict form." And it
8 has the caption here. It says (as read): "The State of
9 South Carolina vs. Cesar Orlando Portillo or Portillo; has
10 the indictment number here; talks about this is the Court
11 of General Sessions and we're in the First Circuit -- First
12 Judicial Circuit. And it says here (as read): "Please
13 circle the appropriate verdict below and follow the
14 accompanying instructions carefully.

15 Now, No. 1 reads as follows (as read): "As to the
16 charge of criminal sexual conduct with a minor in the first
17 degree, we the jury unanimously find the defendant..." --
18 unanimously -- my children think I'm a nag -- "unanimously"
19 as a reminder -- "find the defendant..." and there are two
20 possible verdicts. Whichever is the verdict of this jury,
21 once the jury's deliberations are completed, you will
22 circle that verdict, Mr. Presiding Juror, your duty as one
23 of your tasks.

24 Now, the two possible verdicts are guilty/not guilty.
25 Now, please I could have just as easily said "not guilty"

1 and "guilty." There is, please, no hidden meaning.

2 Ladies and gentlemen, once you have completed your
3 deliberations and circled the verdict of the jury, you will
4 sign here -- and you know who you are. Today is July the
5 21st, 2011 just for your reference. Today is July the
6 21st, 2011.

7 Once you have finished your deliberations and signed
8 your verdict form, you'll knock on the door, you will
9 return to the courtroom. You will then pass your verdict
10 form to one of our bailiffs, who will in turn pass that to
11 me. You do not publish the verdict. Pass it to them, and
12 they'll pass it to me.

13 Now, ladies and gentlemen, in just a moment I'm going
14 to ask you to step to your jury room. And I'm gonna give
15 you this instruction: Do not discuss this matter or allow
16 anyone to discuss it with you.

17 And you would be 100 percent correct at this point to
18 say, "Now, wait a minute. You've been telling us that when
19 we hear the evidence, the arguments, your charge, we're
20 supposed to deliberate."

21 That's right. So I'm gonna real quickly tell you
22 what's gonna happen exactly when you step to your jury room
23 on this next occasion. I'm gonna turn to these lawyers and
24 I'm gonna ask them two questions: Have I given this jury
25 all of the law that they might need for their

1 deliberations; and have I stated it for them correctly?

2 Now, I may need to bring you back out, because I have
3 failed to give you an instruction that you may need for
4 your deliberations. And these lawyers help me know that.
5 In the event that I need to bring you back out for that
6 reason, I ask you in advance, please allow me to charge you
7 that additional charge without any emphasis.

8 In the event that I have made an error, and sometimes
9 something just comes out wrong, and these lawyers are kind
10 and they help me know that. That gives me an opportunity
11 to bring you back out and to correct my error. In the
12 event that I need to bring you back out for that reason, I
13 ask in advance, please allow me to correct my error in your
14 minds.

15 Ladies and gentlemen, understand this is my one chance
16 to get this right, to give you all of the law that you may
17 need for your deliberations, and to state it for you
18 correctly.

19 Now, in the event that I do not need to bring you back
20 out, you will be brought the verdict form, your notes, and
21 the exhibits, and an instruction to begin your
22 deliberations.

23 Now, that's probably gonna be Mr. Taylor, because he
24 and I have been doing this a long time. And I'm confident
25 that he will actually give you that instruction to begin

1 your deliberations. However, you will not have the
2 exhibits and the verdict form and your notes unless it is
3 time to begin your deliberations. And you would begin at
4 that point.

5 Your lunch is, if not here and awaiting you, it will
6 be very shortly. And it is perfectly fine for you to -- to
7 dine and -- and deliberate. I will mention this to you, if
8 during the course of your deliberations, for whatever
9 reason, you need to take a break, stop, take your break --
10 meaning, stop your deliberations and take your break. And
11 then you may reconvene your deliberations when all 12 of
12 you are together again. All 12 of you must be present for
13 you to deliberate. So please, all of you keep that in mind
14 as well.

15 Ladies and gentlemen, I'm now going to conclude and
16 I'm going to do that with this statement: The word
17 "verdict" comes from the Latin phrase *veredicto*, which
18 means "to speak the truth," "to speak the truth," which is
19 now your task.

20 Please step to your jury room. Do not discuss this
21 matter or allow anyone to discuss it with you. Please
22 leave your notebooks here.

23 (Jury exits at 12:45 p.m.)

24 THE COURT: (To alternate jurors) Gentlemen, Mr. Fuss
25 and Mr. Horn, this is what I'm gonna ask you all to do for

1 me and I want to tell you why. First of all, I want you to
2 get your lunch. I mean, I'd feel bad if you didn't have
3 something. Jewish mother: You gotta eat. So I'd love for
4 you all to have your lunch. I do think it's here. If not,
5 it's -- it's gonna be here very, very shortly.

6 But what I'm going -- is it here? Lunch is here?

7 THE BAILIFF: Yes, ma'am.

8 (Brief discussion between the bailiff and the Court.)

9 THE COURT: And what's that's about, I think that I
10 can ask you all to remain for about another 15 minutes,
11 maybe 20 minutes. Because I believe that should something
12 happen to one of our jurors -- and occasionally it does
13 happen -- I believe that I could seat one of you as the
14 alternate, and if you will, save the trial, continue with
15 the deliberations. Actually they have to begin the
16 deliberations in there, but we certainly could do that.

17 So I'm gonna ask for just a little bit more of your
18 time. You all watch your watch, and just let us know when
19 about 20 minutes is up. But meanwhile, enjoy your lunch.
20 It looks pretty good -- sounds pretty good, I should say.

21 Thank you, gentlemen, so much. Leave your notebooks
22 here. We will secure them. And if you will go -- I guess
23 Ms. Salisbury wants you to go get some food, and then
24 she'll put you in the other jury room. Thank you all so
25 much.

1 (Alternate jurors exit at 12:47 p.m.)

2 THE COURT: (Addresses attorneys) Any objection to
3 letting them get -- go into the jury room to get some food?

4 MR. FARLEY: No, Your Honor.

5 MS. HALL: None from the State, Your Honor.

6 THE COURT: Very well. All right. Any exceptions or
7 additions from the State?

8 MS. HALL: None, Your Honor.

9 THE COURT: From the Defense?

10 MR. FARLEY: No, Your Honor.

11 THE COURT: Very well. Counsel, please do this for
12 me. Please look at the exhibits one more time to be sure
13 that what is going to the jury is what is supposed to be
14 going to the jury. Please look at the verdict form one
15 more time to satisfy yourselves, yet again, that -- that it
16 is in due form. And then we will be in recess until we
17 hear from the jury.

18 Let me just say for our record, that the way that this
19 case proceeded was that I understood that the Defense was
20 going to rest off the record to argue motions. It was my
21 understanding there would be no defense. And I take that
22 as being not only a directed verdict at the end of the
23 State's case, but a renewal of the directed verdict motion
24 at the conclusion of the case.

25 And I would just put on the record that I didn't

1 change my ruling in between that very short period where
2 you told me that -- that there would -- you would be
3 calling no witnesses.

4 MR. FARLEY: And we would also renew all of our other
5 motions made throughout the trial.

6 THE COURT: Thank you so much. And -- and likewise, I
7 will just continue with the same rulings.

8 And at this point -- and y'all look at the exhibits.
9 And again, we will be in recess until we hear from our jury
10 in this case.

11 (Brief conversation between the Court and Mr. Hilton
12 on unrelated matters.)

13 THE COURT: And Mr. Portillo, I need you to remain
14 here with us now that we have concluded the trial. We'll
15 get you some lunch and we'll try to make you as comfortable
16 as we can. Okay?

17 DEFENDANT: That's fine, Your Honor.

18 THE COURT: Thank you so much. Very well. We'll be
19 adjourned.

20 (Off the record at 12:49 p.m.)

21 (On the record at 1:34 p.m.)

22 MR. HILTON: It's my understanding we have a verdict?

23 THE COURT: That's my understanding, too.

24 (Brief pause.)

25 THE COURT: (To all attorneys) Counsel, let me see you

1 just a second, please.

2 (Bench conference.)

3 THE COURT: Anything further before we bring the jury
4 out from the State?

5 MS. HALL: Nothing from the State, Your Honor.

6 THE COURT: From the Defense?

7 MR. FARLEY: No, Your Honor.

8 THE COURT: Very well.

9 MR. FARLEY: We need a clerk.

10 THE COURT: Yeah. We do.

11 (The Court confers with court security briefly.)

12 THE COURT: All right. It is my understanding that
13 the jury has reached its verdict; is that correct?

14 PRESIDING JUROR: Yes, we have, Your Honor.

15 THE COURT: If you'll pass it, please, to Mr. Taylor
16 he will pass that to me.

17 (The presiding juror complies, and Mr. Taylor passes
18 it to the Court.)

19 THE COURT: Thank you. All right. I find that the
20 verdict is in appropriate -- due and appropriate form.

21 (As read) State of South Carolina vs. Cesar Orlando
22 Portillo, indictment no. 2010-GS-18-357, as to the charge
23 of criminal sexual conduct with a minor in the first
24 degree, we the jury unanimously find the defendant guilty.
25 Signed by Douglas Stenson, 7/21/11, presiding juror."

1 Ladies and gentlemen, if this was your verdict in the
2 jury room, and if it continues to be your verdict here in
3 the courtroom, please indicate by raising your right hand.

4 (All jurors raise their right hands.)

5 THE COURT: Let me observe for our record that all of
6 our jurors have their right hands raised. And you may put
7 them down.

8 (To counsel) Anything from the State before we excuse
9 the jury.

10 MR. HILTON: Nothing before we dismiss the jury.

11 THE COURT: Very well. Anything from the Defense
12 before we dismiss the jury?

13 MR. FARLEY: We'd just renew all of our motions, Your
14 Honor.

15 THE COURT: All right. Very well. All right.
16 Counsel, let me see you just a one second before I dismiss
17 the jury.

18 (Bench conference.)

19 THE COURT: Ladies and gentlemen, in just a moment I'm
20 gonna call your name, I'm going to ask you to stand, and
21 I'm going to ask you two questions: Was this your verdict
22 in your jury room, and does it continue to be your verdict
23 here in the courtroom.

24 So if you'll just bear with me for just a second.

25 (Brief pause.)

1 THE COURT: All right. Ms. Vivian Green.

2 (Ms. Green stands.)

3 THE COURT: Ms. Green, was this your verdict in your
4 jury room?

5 MS. GREEN: Yes, ma'am.

6 THE COURT: Is it continue -- does it continue to be
7 your verdict?

8 MS. GREEN: Yes.

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

10 (The juror complies.)

11 THE COURT: And Ms. Ulfet, Ms. -- Ralph. Is it Ralph
12 Ulfet or Ulfet Ralph?

13 MS. RALPH: Ralph is the last name.

14 THE COURT: Thank you. All right. Ms. Ulfet Ralph,
15 was this your verdict in your jury room?

16 MS. RALPH: Yes, ma'am.

17 THE COURT: And does it continue to be your verdict?

18 MS. RALPH: Yes, ma'am.

19 THE COURT: Thank you. And Sean Taylor.

20 (Mr. Taylor stands.)

21 THE COURT: Was this your verdict in your jury room?

22 MR. TAYLOR: Yes, ma'am.

23 THE COURT: And does it continue to be your verdict?

24 MR. TAYLOR: Yes, ma'am.

25 THE COURT: Mr. David Brownlee, Jr.

1 (Mr. Brownlee stands.)
2 THE COURT: Was this your verdict in your jury room?
3 MR. BROWNLEE: Yes, ma'am.
4 THE COURT: Does it continue to be your verdict?
5 MR. BROWNLEE: Yes, ma'am.
6 THE COURT: Matthew Murdaugh.
7 (Mr. Murdaugh stands.)
8 THE COURT: Was this your verdict in your jury room?
9 MR. MURDAUGH: Yes
10 THE COURT: Does it continue to be your verdict?
11 MR. MURDAUGH: Yes.
12 THE COURT: Douglas Stenson.
13 (Mr. Stenson stands.)
14 THE COURT: Was this your verdict in your jury room?
15 MR. STENSON: Yes, ma'am.
16 THE COURT: And does it continue to be your verdict?
17 MR. STENSON: Yes, ma'am.
18 THE COURT: And Jeffrey McAlhany.
19 (Mr. McAlhany stands.)
20 THE COURT: Was this your verdict in your jury room?
21 MR. MCALHANY: Yes, ma'am.
22 THE COURT: Does it continue to be your verdict?
23 MR. MCALHANY: Yes, ma'am.
24 THE COURT: Susan Wilson.
25 (Ms. Wilson stands.)

1 THE COURT: Was this your verdict in your jury room?
2 MS. WILSON: Yes, ma'am.
3 THE COURT: Does it continue to be your verdict?
4 MS. WILSON: Yes, ma'am.
5 THE COURT: Mr. Kevin Crenshaw.
6 (Mr. Crenshaw stands.)
7 THE COURT: Was this your verdict in your jury room?
8 MR. CRENSHAW: Yes, ma'am.
9 THE COURT: Does it continue to be your verdict?
10 MR. CRENSHAW: Yes, ma'am.
11 THE COURT: And Ms. Gail Bunch.
12 (Ms. Bunch stands.)
13 THE COURT: Was this your verdict in your jury room?
14 MS. BUNCH: Yes, ma'am.
15 THE COURT: Does it continue to be your verdict?
16 MS. BUNCH: Yes, ma'am.
17 THE COURT: And Christina Southward.
18 (Ms. Southward stands.)
19 THE COURT: Was this your verdict in your jury room?
20 MS. SOUTHWARD: Yes, ma'am.
21 THE COURT: And does it continue to be your verdict?
22 MS. SOUTHWARD: Yes, ma'am.
23 THE COURT: And Stephen Penley.
24 (Mr. Penley stands.)
25 THE COURT: Was this your verdict in your jury room?

1 MR. PENLEY: Yes, ma'am.

2 THE COURT: Does it continue to be your verdict?

3 MR. PENLEY: Yes, ma'am.

4 THE COURT: All right. Very well. All the jurors
5 have been polled, and the verdict stands.

6 Anything further from the Defense before we excuse the
7 jury?

8 MR. FARLEY: No, Your Honor.

9 THE COURT: Very well. (To the jury) I want to thank
10 you for your service on this jury and on this jury panel.
11 That should be an indication to you that your service for
12 this term of court has come to an end.

13 And as we have discussed each time when you have gone
14 home about not discussing this matter, you are at liberty
15 to discuss this matter if you wish. If you want to talk
16 about it, fine; if you don't want to talk about it, fine.

17 And should anyone press upon you to discuss this
18 matter when you have said I don't want to talk about it,
19 you all just let -- please let our Clerk of Court know, and
20 she will certainly contact me. And I will intercede on
21 your behalf.

22 Let me tell you that that is the rarest of
23 circumstances, but I always tell jurors that, because the
24 one time that I don't, I will have needed to do that. So I
25 do that -- I tell you that in an abundance of caution.

1 Let me share with you that those of you, of course,
2 that need something for your employer, we will be delighted
3 to get that for you down in the clerk's office, which is
4 right below us. And Ms. Salisbury will give you more
5 direct directions. But if you take the elevator, you'll
6 take a left and go all the way down. If you are a stair
7 descender, you would take a right and go all the way down,
8 and they will be delighted to get that for you in the
9 clerk's office.

10 I used to tell folks -- jurors often wonder about, you
11 know, where is my -- you know, what -- what is the
12 circumstances regarding my -- my check for my jury service.
13 And I used to tell people that it was in the mail, and then
14 Ms. Graham told me, "Don't tell jurors that, because that's
15 not true. And you not supposed to say things like that."

16 So your check is not in the mail, but it will be
17 shortly. They're very efficient about getting that to you.
18 But lo and behold, our trip to Tahiti, it will get you to
19 Jedburg. It is a very small token of all that you have
20 given to us, which is, of course, your dear and precious
21 time. And for your participation in our system, I am so
22 truly grateful to you.

23 Now, ladies and gentlemen, it is -- it is -- oft times
24 -- oft times, when jurors want to remain in court -- and
25 that is perfectly fine, because in just a moment, I am

1 going to be returning you to your status as members of our
2 community and members of the public. This is a place for
3 members of the public. You are welcome to stay with us if
4 you wish. We're delighted to have you stay with us.
5 You're welcome to stay right where you are. You can go in
6 the audience. We're delighted to have you remain with us,
7 if that's what you wish. However, if you wish to go about
8 your business, I equally want you to be comfortable doing
9 that.

10 I do want to thank you, though, for all that you have
11 given to our system of justice this week. You've given
12 your time and your energy, and for that I am so very
13 grateful.

14 And at this time, you are free to go if you wish, and
15 you're free to stay. Very well. Thank you, again, so
16 much.

17 (Jurors exit at 2:05 p.m.)

18 (Marked Court's Exhibit No. 2, Juror Note.)

19 THE COURT: All right. With regards to the matter
20 that we spoke of prior to the verdict coming in, and that
21 involves the provision of 16-3-655, that states this (as
22 read): "In the case of a person convicted at trial for a
23 violation of subsection A-1, criminal sexual conduct with a
24 minor in the first degree, the judge or jury, whichever is
25 applicable, must designate as part of the verdict, whether

1 the conduct that constituted the sexual battery involved
2 sexual or anal intercourse by a person or intrusion by an
3 object."

4 I'd told counsel that I was -- that it was my
5 intention that in the event that the jury returned with a
6 verdict of guilt, that I would send the jury back out and
7 have them make this determination. And we had a discussion
8 at sidebar, and it is my understanding that they -- that
9 both sides had agreed to enter into a stipulation, and that
10 that stipulation is that this section would be inapplicable
11 to Mr. Portillo; is that correct?

12 MR. HILTON: That's correct, Your Honor.

13 THE COURT: Is that your understanding?

14 MR. FARLEY: Yes, Your Honor.

15 THE COURT: Very well. All right. (To Mr. Portillo)

16 If you'd please come forward for -- for sentencing.

17 (The defendant complies.)

18 MS. HALL: May I approach, Your Honor?

19 THE COURT: Sure.

20 (Ms. Hall hands a document to the Court.)

21 (Mr. Farley confers with the defendant.)

22 THE COURT: All right. I need to know what, if any,
23 record Mr. Portillo has, please.

24 MS. HALL: Your Honor, he has no prior record.

25 THE COURT: And of course I -- I heard the testimony

1 from the witnesses, and I would certainly, at this point,
2 would afford them an opportunity to speak.

3 MS. HALL: Just a moment.

4 (Ms. Hall confers with the victims.)

5 MS. HALL: I don't believe they do, Your Honor.

6 THE COURT: All right.

7 MR. FARLEY: Thank you, Judge. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 MR. FARLEY: You've sat through this trial. All I can
11 tell you is that my client still maintains he's innocent.
12 He did invoke his right to a trial, and oft times you hear
13 stories of well, I went to trial and I got a lot worse of a
14 deal than I would have if I pled. And I -- you know, "h"
15 case is what it is.

16 But we would ask the Court to give him the minimum
17 sentence of 25 years. We know the sex offender registry's
18 coming. That's a life in prison sentence. I -- I -- I
19 think that's pretty much agreed, both with the solicitor's
20 office and us.

21 Your Honor, he's a veteran, fought in our country, has
22 a Purple Heart. He had a good job. He was working. No
23 record whatsoever. I -- I think all of these things and --
24 and with his age, I think 25 years is more than enough
25 punishment.

1 I am terribly, terribly sorry for the victims that
2 they had to go through this trial. I know he did not want
3 this to happen in more ways than one, and I don't know if
4 he wants to address the Court, but I -- I would like to
5 give him that opportunity.

6 THE COURT: Of course. Of course.

7 (Mr. Farley confers with the defendant briefly.)

8 MR. FARLEY: He's indicated that he doesn't want to
9 say anything, Your Honor.

10 THE COURT: Very well. Is this correct, that Mr.
11 Portillo is 34 years old?

12 MR. FARLEY: Yes, Your Honor.

13 (Brief pause.)

14 THE COURT: All right. I apologize to you all, but
15 there's some parts of this that are not filled out.

16 MR. FARLEY: Do you need a "Strickler," Your Honor?

17 THE COURT: No. I've got it.

18 (Brief pause.)

19 THE COURT: All right. I have entered the sentence.
20 I'm going to pass the sentence, but -- and -- and I've done
21 that. But I absolutely feel compelled and really want to
22 speak to Complainant.

23 ((Complainant comes forward.))

24 THE COURT: Come on over here. I just wanted to tell
25 you how impressed I am by you, and how brave I think you

1 are, and how courageous I think you are. And that it takes
2 a lot of courage, a lot of courage, even when you're an old
3 lady like me, to stand up for yourself and to stand up for
4 what you know is right and what you know is wrong. And
5 you've done that.

6 And to be able to do that as a 9 year old and a 10
7 year old and an 11 year old is remarkable. I mean, I see
8 you like a Joan of Arc, except I think I'd put you on a
9 pony instead of a big old horse.

10 And I just want you to know that for your whole life,
11 you need to be pretty proud of yourself, and you need to
12 think one day, when you have people that -- that you're in
13 charge of that you love, you teach them to be advocates for
14 themselves, and true just like your mom and dad have taught
15 you. It's a wonderful thing to see.

16 And I want you to know that I am very sorry that you
17 have had to go through what you've had to go through. I
18 really am. But I want you to know this, you did the right
19 thing. You must always know that. You did the right
20 thing.

21 MS. HITCHENS: Thank you.

22 THE COURT: And you had no role in anything negative
23 that might occur, all right? It now lies with me. You
24 understand?

25 MS. HITCHENS: Yes, ma'am.

1 THE COURT: And it is my job for here on out. You
2 understand?

3 MS. HITCHENS: Yes, ma'am.

4 THE COURT: It is my job and my job alone.

5 MS. HITCHENS: Yes, ma'am.

6 THE COURT: You have no role in what happens here out.
7 You understand that?

8 MS. HITCHENS: Yes, ma'am.

9 THE COURT: And I expect you to heal, and you go right
10 on and do the things that you would normally do. Okay?

11 MS. HITCHENS: Uh-huh.

12 THE COURT: All right?

13 MS. HITCHENS: Yes, ma'am.

14 THE COURT: And I expect you to leave these things as
15 best as you can to leave them behind, because you've left
16 them with me. Okay.

17 MS. HITCHENS: Okay.

18 THE COURT: Very well. Thank you so much for letting
19 me talk to you.

20 MS. HITCHENS: You're welcome.

21 THE COURT: All right. Now I know you want to go back
22 to mom. Go right on back there to mom and dad, okay?

23 MS. HITCHENS: Okay.

24 THE COURT: All right.

25 (The victim returns to the audience.)

1 THE COURT: Again before I spoke to the victim, I had
2 entered sentence. And -- and I want to talk a little about
3 it, but I'll pass it first.

4 Mr. Portillo, I am going to commit you to the State
5 Department of Corrections for a period of 25 years. You
6 will receive, of course, credit for the time that you have
7 served. This is a violent sentence, this is a most serious
8 sentence. You must register as a sex offender, and if
9 deemed appropriate at the time of you release, there may
10 very well be an inquiry into whether or not your are a
11 sexually violent predator. And Mr. Portillo, that will
12 conclude the -- the order of the Court, the sentence of the
13 Court.

14 It is a day-for-day sentence. I -- I would mention
15 that. It is a day-for-day sentence. Interestingly enough,
16 I have given your age, given the age of Complainant, Complainant will
17 be 36 years old when you are out. Complainant will be
18 protecting probably her own family by that point, and --
19 and I'm quite confident she will do that magnificently.

20 Sir, you will be 59 years old. And at that point I am
21 confident that at that age we, as a community, will be
22 safe.

23 Very well. That would be the order of the Court.

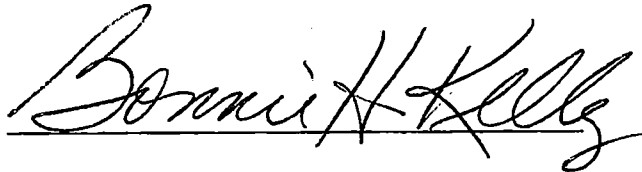
24 (Off the record at 2:21 p.m.)

25 -- End of transcript of record --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth 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 hearing of the captioned cause, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 19th through the 21st days of July, 2011.

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

A handwritten signature in cursive script, reading "Bonnie H. Kelly", written over a horizontal line.

Bonnie H. Kelly,
Court Reporter

Columbia, South Carolina

February 19, 2011

FORM 5

FILED - RECORDED

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

2015 AUG 20 PM 4:42

IN THE COURT OF COMMON PLEAS

CHERYL GRAHAM
CLERK OF COURTDORCHESTER COUNT 2015-CP-18- 1665

Mr. Cesar O. Portillo # 346989

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence General Sessions/Dorchester
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-18-0035 // CSC-First degree
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 21, 2011/25 years/Day for day
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Writ of Certiorari with the South Carolina Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The conviction was affirmed
- ii. Affirmed in Part. Vacated in Part
- iii. _____
- (c) the date of each such result:
- i. Filed on April 9, 2014
- ii. Filed on February 25, 2015
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 5216
- ii. Opinion No. 2015-MO-007
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Trial Counsel was ineffective
- (b) Ineffective Assistance of Trial Counsel
- (c) Ineffective Assistance of Appellate Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached Memorandum
- (b) See attached Memorandum
- (c) See attached Memorandum
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal
- ii. _____
- iii. _____
- iv. Writ of Certiorari
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- iv. South Carolina Supreme Court
- (c) the disposition thereof:
- i. Conviction was Affirmed
- ii. _____
- iii. _____

- iv. Affirmed in Part. Vacated in Part
- (d) the date of each such disposition:
- i. April 9. 2014
- ii. _____
- iii. _____
- iv. February 25. 2015
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes _____
- (c) your sentencing? Yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Mitch Farley Esq/100 South Main Street, Summerville, S.C. 29483
- ii. Mary LeMatty Esq/100 South Main Street, Summerville, S.C. 29483
- iii. Kathrine H. Hudgins-Esq
1330 Lady Street, Suite 401, Columbia, S.C. 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Trial and Sentencing
- iii. Direct Appeal and Writ of Certiorari
19. State clearly the relief you seek in filing this application:
New Trial/Vacation of Sentence
20. Are you now under sentence from any other court that you have not challenged?
No

MEMORANDUM IN SUPPORTING QUESTION 11

(a) Trial Counsel was ineffective

The trial counsel was ineffective in failing to preserve the vouching issue for appellate review.

The trial counsel was ineffective in failing to object to Dr. Elsey's expert testimony as it improperly vouched for the child/witness' testimony.

(b) Ineffective Assistance of Trial Counsel

Trial counsel failed to object to the qualification of Dr. Elsey to testify as an expert in regard to the significance of the child's language and hand gestures as such testimony exceeded the scope of expertise pursuant to rule 702 (SCRE). The Court of Appeals found this issue was not preserved.

(c) Ineffective Assistance of Appellate Counsel

This is in regard to the PTSD testimony by Dr. Elsey. The Court of Appeals found that the Appellate Counsel abandoned the issue. That portion, however, of the Court of Appeals opinion seems to have been affirmed by the Supreme Court.

STATE OF SOUTH CAROLINA

County of Dorchester

)

)

)

VERIFICATION

I, Cop, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

LOP

SWORN to and subscribed before me this 6th
day of August, 2015.

Michael Gamme
Michael Gamme (L.S.)
Notary Public

My Commission Expires: July 9, 2025

FILED - RECORD
28 SEP 2015 PM 4:50
CLERK OF COURT
DORCHESTER COUNTY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2015-CP-18- 11665

I, Col, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

[Signature]

Applicant

SWORN or affirmed to and subscribed before me this
6th day of August, 2015.

Michael Canine *Michael Canine*
Notary Public

My Commission Expires: July 9, 2015

FILED - RECORD.
2015 AUG 20 PM 4:40
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Cesar O. Portillo, #346989,

Applicant,

v.

✓ State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2015-CP-18-1665

RETURN

2015 DEC -4 PM 12:05
RECORDED
CLERK
DORCHESTER COUNTY

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed

August 20, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. Applicant was indicted at the March 2010 term of the Court of General Sessions for Dorchester County for criminal sexual conduct with minor, first degree (2010-GS-18-0357). Applicant was represented by Mitch Farley, Esq. and Mary LeMatty, Esq. On July 19, 2011, Applicant proceeded to trial before the Honorable Diane Schafer Goodstein. The jury found Applicant guilty as indicted. Judge Goodstein sentenced Applicant to twenty five (25) years' imprisonment.

Applicant filed a timely notice of appeal. Kathrine H. Hudgins, Esq., of the Office of Appellate Defense represented applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on April 09, 2014. State v. Portillo, 408 S.C. 66, 757 S.E.2d 721 (Ct. App. 2014). The South Carolina Supreme Court granted petitions for writs of certiorari filed by both the State and Applicant, and in an unpublished opinion filed on February 25, 2015, the Court affirmed Applicant's conviction and sentence but vacated a portion

of Court of Appeals' opinion. State v. Portillo, 2015 WL 790299 (S.C. filed February 25, 2015).

The remittitur was returned to the lower court on March 13, 2015.

Attached herewith and incorporated herein by reference are the records of the Dorchester County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial, and Applicant's records for the Department of Corrections, and records from appellate proceedings. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
 - a. Failed to preserve vouching issue for appeal
 - b. Failed to object to Dr. Elsey's expert testimony
 - c. Failed to object to Dr. Elsey's qualifications
2. "Ineffective Assistance of Appellate Counsel"
 - a. Counsel abandoned the issue of PTSD testimony by Dr. Elsey

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 18, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. *Id.* Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Skarper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is also without merit. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S.

387, 105 S.Ct. 830 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 526; Strickland, 466 U.S. at 687. When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of appellate counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of trial and appellate counsels. As to all other allegations, Respondent

moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCF application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not either expressly admitted, qualified or explained is hereby denied.

[SIGNATURE BLOCK ON NEXT PAGE]

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

12/3, 2015

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2015-CP-18-01665

CESAR O. PORTILLO, #346989

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

CLERK OF COURT
DORCHESTER COUNTY

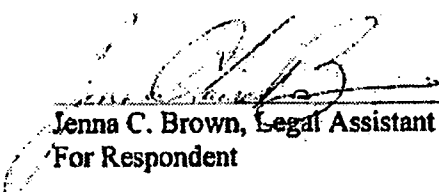
2015 DEC -4 PM 12:05

REC'D

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, South Carolina 29405

DATED this 3rd day of December, 2015.


Jenna C. Brown, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF DORCHESTER) CASE NO.: 2015-CP-18-1665

CESAR O. PORTILLO)

APPLICANT(S))

v.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)

RESPONDENT(S))

ORIGINAL

Wednesday, May 24, 2017

COMMENCING AT:
 Dorchester County Courthouse
 St. George, South Carolina
 Before The Honorable Robert E. Hood, Judge

APPEARANCES:

For the Applicant:

Rodney D. Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, South Carolina 29405

For the State (Respondent):

Ruston W. Neely, Esquire
 Office of the Attorney General
 Post Office Box 11549
 Columbia, South Carolina 29211-1549

Heather R. Landry, CVR
 Official State Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>

NO EXHIBITS INTRODUCED

1 (The proceeding began at 12:13 p.m.)

2 THE COURT: All right. We're on the record in
3 2015-CP-18-1665, Cesar O. Portillo, P-o-r-t-i-l-l-o, against
4 the State of South Carolina. The State is present
5 represented by Mr. Neely. And the applicant is present
6 represented by Mr. Rodney Davis. Are you Mr. Portillo?

7 APPLICANT: Yes, sir.

8 THE COURT: All right. Stand up for me. Raise your
9 right hand.

10 (The applicant, Cesar O. Portillo, is duly sworn.)

11 THE COURT: All right. You understand me okay?

12 APPLICANT: Yes, sir.

13 THE COURT: And you understood -- put your hand down.
14 You understood your conversations with your lawyer?

15 APPLICANT: Yes, sir.

16 THE COURT: Okay. Now, I don't know anything about
17 your case other than what you were originally charged with,
18 okay?

19 APPLICANT: Yes, sir.

20 THE COURT: You were originally charged with criminal
21 sexual conduct with a minor in the first degree.

22 APPLICANT: Yes, sir.

23 THE COURT: And you understand that the mandatory
24 sentencing on that is 25 years in the Department of
25 Corrections up to life without parole?

1 APPLICANT: Yes, sir.

2 THE COURT: And did you go to trial or did you plead?

3 APPLICANT: No. I went to trial.

4 THE COURT: You had a trial?

5 APPLICANT: Yes, sir.

6 THE COURT: And you were convicted at that trial, I
7 assume. Is that right?

8 APPLICANT: Yes, sir.

9 THE COURT: Okay. And then whoever the judge -- who
10 was your judge? Do you remember?

11 APPLICANT: No. No, sir.

12 THE COURT: Okay. Whoever your judge was -- not me,
13 obviously -- whoever your judge was at your trial gave you
14 25 years. Do you understand that?

15 APPLICANT: Yes, sir.

16 THE COURT: Okay. Now, do you understand that if you
17 prevail, or let's call it win, on this PCR the only thing I
18 can do, the only thing an appellate court can do, is start
19 your case over back on day number one, and you would be back
20 to facing life without parole. Do you understand that?

21 APPLICANT: Yes, sir.

22 THE COURT: That means if you went through another
23 trial and you lost, another judge could give you more than
24 25 years up to life without parole. Do you understand that?

25 APPLICANT: Yes, sir.

1 THE COURT: And understanding and knowing all of that,
2 do you still want to go forward with your PCR?

3 APPLICANT: Yes, sir.

4 THE COURT: And you understand what I've just talked to
5 you about?

6 APPLICANT: Yes.

7 THE COURT: Okay. Great. Grab a seat.

8 MR. DAVIS: --- in the sequence, Judge.

9 THE COURT: Okay.

10 (Brief pause.)

11 MR. DAVIS: Thank you, Your Honor.

12 THE COURT: Okay. All right. Mr. Neely?

13 MR. NEELY: Thank you, Your Honor. This is the case of
14 Cesar Portillo versus the State of South Carolina.
15 Applicant was indicted the March 2010 term of the Court of
16 General Sessions for Dorchester County for criminal sexual
17 conduct with a minor in the first degree, indictment number
18 2010-GS-18-0357. He was represented at trial by Mr. Farley
19 and Mary LeMatty on July 19, 2011. The jury found the
20 applicant guilty as indicted. Judge Goodstein sentenced
21 applicant to 25 years of imprisonment. Applicant did file a
22 timeliness appeal. Katherine Hudgins represented applicant
23 on appeal with the Office of Indigent Defense. South
24 Carolina Court of Appeals affirmed applicant's conviction
25 and sentence on April 9, 2014. South Carolina Supreme Court

1 did grant permission for writ of certiorari filed by both
2 the State and the applicant. An unpublished opinion filed
3 on February 25, 2015, the Court affirmed applicant's
4 conviction and sentence was vacated. A portion of the Court
5 of Appeals opinion, the remitter, was returned to the lower
6 court on March 13, 2015.

7 THE COURT: All right. We're going to take a witness
8 out of order. So we're going to start with Ms. Hudgins so
9 we can take a lunch break here in just a few minutes, and
10 she can get back to Columbia. She's been here since -- I
11 don't know what time she got here. But I got here at 9:05
12 or 9:10. She was present or suppose to be present, so we're
13 gonna try to get her out of here. So do you mind calling
14 Ms. Hudgins out of order?

15 MR. DAVIS: Not at all, Your Honor.

16 THE COURT: Okay. All right. Let's go ahead and start
17 with her. Come on up, Ms. Hudgins.

18 (KATHERINE HUDGINS, was duly sworn and provided the
19 following testimony.)

20 THE COURT: All right, Mr. Davis.

21 MR. DAVIS: Thank you very much, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. DAVIS:

24 Q. Ms. Hudgins, you heard the procedural history. But you
25 were the attorney for both the appeal, the Court of Appeals

Direct Examination of Ms. Hudgins by Mr. Davis

1 and the Supreme Court; correct?

2 A. That's correct.

3 Q. Okay. And you raised three different issues on the
4 Court of Appeals about the testimony of Dr. Don Elsie (ph).
5 Is that right?

6 A. That's correct.

7 Q. Ultimately, the finding of the Court of Appeals was
8 that any errors were harmless beyond a reasonable doubt.
9 That was from the Court of Appeals. Is that correct?

10 A. That was on the first issue having to do with
11 qualifying the forensic interviewer as an expert and the
12 improper vouching and bolstering. The Court of Appeals, as
13 to issue number two, found that -- I think it's in a
14 footnote of the Court of Appeals' opinion -- found that
15 issue number two was not preserved. It had to do with the
16 qualification in regard to the language that the child was
17 using, and I think some hand gestures that she used. The
18 expert was allowed to testify to that. And the issue that
19 was raised was that it was beyond the scope of his expertise
20 under Rule 702. The Court of Appeals found that that was
21 not preserved for appellate review. And then the third
22 issue, the Court of Appeals -- the third issue had to do
23 with the doctor testifying -- the forensic interviewer who
24 was also a doctor -- testifying as to symptoms of PTSD that
25 were exhibited by the child, the complaining child, the

1 witness. And the Court of Appeals found that I abandoned
2 that issue. That's what the Court of Appeals found.

3 Q. But cert was granted and you were able to argue those
4 matters in front of the Supreme Court; correct?

5 A. We submitted cert petitions, both the State and we did.
6 And the cert -- both cert petitions were granted. The
7 Supreme Court ultimately found that issue number one was
8 also not preserved for appellate review and did not address
9 the issue number three, the abandonment issue. So basically
10 that leaves two unpreserved issues and an abandonment issue.

11 Q. And just so -- I'll follow your numbering on it. Issue
12 one dealt with -- so when we refer to them as issue one,
13 two, or three, I want to be sure I state them accurate?

14 A. Sure. And I apologize. I have the benefit of my
15 brief, so. Issue number one had to do with the error in
16 qualifying the forensic interviewer as an expert.

17 Q. Okay. And issue two, your argument was?

18 A. In allowing the forensic interviewer to testify about
19 the significance of words used by the child witness when the
20 testimony exceeded the scope of any purported expertise.

21 Q. And issue three?

22 A. That the trial judge erred in allowing the expert to
23 testify that the child witness had symptoms of PTSD even
24 though the doctor was unable to make that actual diagnosis.
25 So, again, it's exceeding the scope of the doctor's

1 qualifications.

2 Q. I'll circle back around to that in just a second. But
3 in the Supreme Court's ruling, they specifically commented
4 on the fact that improper vouching was not preserved for
5 appellate review under -- was that one, two, or three in
6 your mind?

7 A. That was raised in issue number one. And the way it
8 was raised is trial counsel raised challenges to the
9 forensic interviewer. This case came out post State versus
10 Douglas but pre State versus Kromah. So we were operating
11 before we had the benefit of State versus Kromah in terms of
12 what exactly was allowed in terms of a forensic interviewer.
13 So there were Douglas objections made. Obviously, with the
14 use of the hand gestures and the language and the PTSD, I
15 incorporated all of those into issue number one to show why
16 the error in qualifying the forensic interviewer as an
17 expert, why that was not harmless and how Mr. Portillo was
18 prejudiced by that testimony.

19 Q. The ultimate arbiter, the Supreme Court, indicated you
20 couldn't even make that argument though because it was not
21 preserved; correct?

22 A. That's correct.

23 Q. Okay. And then the Supreme Court, if I recall
24 correctly, on issue two, which was the hand gestures or the
25 words that the child used, the Supreme Court also found that

1 was not preserved. Is that correct?

2 A. Well, yes. The hand gestures were used to show
3 prejudice in terms of qualifying the forensic interviewer as
4 an expert. The hand gestures also went to the forensic
5 interviewers expertise and the second issue, which went to
6 that was beyond the scope of his expertise; that there was
7 no showing that he was an expert at hand gestures or
8 language.

9 Q. So really the only one that was ruled on was the third
10 one which dealt with outside the scope as far as
11 post-traumatic stress disorder testimony by Dr. Elsie?

12 A. Right. And the Court of Appeals found that was
13 abandoned.

14 Q. What was their rationale even though it was breached by
15 you?

16 A. You would have ask the Court of Appeals. I will say
17 this: If you look at my brief -- I wouldn't suggest you do
18 that necessarily -- but it was the third issue. Based on
19 the amount of the case load of public defense at the time, I
20 may have simply run out of time to really fully write on
21 that issue. I cited Rule 702, and that issue in the brief
22 did not fill in with any case law because I had gone into
23 quite a lengthy discussion of Rule 702 and Watson under my
24 issue one. Didn't think it was necessary to rephrase that,
25 but I will not do that again.

1 Q. Let's start there then. Had you developed that more
2 fully in your brief so that the Court of Appeals would not
3 have ruled it abandoned, but it's your opinion on how the
4 Supreme Court would have ruled -- the Court of Appeals or
5 the Supreme Court would have ruled on that issue if it had
6 not been deemed abandoned?

7 A. Just on the PTSD?

8 Q. Yes.

9 A. I felt like it was a meritorious issue. I wouldn't
10 have raised it had I not felt it was meritorious. I felt
11 the testimony of this particular forensic interviewer was
12 particularly damaging because it really did vouch for the
13 credibility of the child witness. It only -- by saying that
14 she exhibited symptoms of PTSD, it's bolstering the fact
15 that something in fact happened to this child, which I think
16 is strictly now prohibited by Kromah.

17 Q. So let's dovetail into that, the vouching; so the issue
18 one. The Supreme Court ultimately says it shouldn't have
19 even been dealt with, and it was not preserved for appeal.
20 Based on your experience in appellate court, do you believe
21 that was a meritorious claim had it been preserved?

22 A. That was the strongest claim. And the Court of Appeals
23 found that it was preserved, and actually found that and
24 ruled on the issue; but, ultimately, ruled that it was
25 harmless. Obviously, my position is that it was not

1 harmless. It can certainly be distinguished from Kromah
2 based on the other evidence that was present in the Kromah
3 case, simply was not present in this case. The credibility
4 of the child witness was crucial in this case. And I think
5 this issue involving the bolstering was the strongest issue
6 in the case.

7 Q. Then to issue two which was hand gestures and the like.
8 If that had been preserved, what's your opinion on whether
9 that was a meritorious claim?

10 A. And, of course, that goes again to the basic -- you
11 know, the role of the trial judge as the gatekeeper.
12 Unfortunately, there was not a Rule 702 analysis done to
13 sort of flesh out whether or not this forensic interviewer
14 was even qualified to testify about hand gestures and
15 language. This, you know, I used -- again, I used that
16 testimony in two ways. I said that it was beyond the scope
17 of the forensic interviewer. But I also used that testimony
18 to demonstrate how it bolstered. The only way you can read
19 this testimony about the hand gestures and about the
20 language that the child used was that this forensic
21 interviewer believed this witness. And while he didn't come
22 right out say I believe this witness, that's the only
23 conclusion that the jury could've made from that testimony,
24 which, again, like I said, is strictly prohibited by Kromah.

25 Q. And just as background, for the record, you've been a

Direct Examination of Ms. Hudgins by Mr. Davis

1 practicing attorney how long?

2 A. Twenty-five years. This is the twenty-five reunion
3 this year.

4 Q. And how long in appellate defense?

5 A. Eleven years at appellate defense.

6 Q. What is your recollection of -- what's your
7 recollection of any testimony about physical injuries in
8 this case?

9 A. There was very slight physical evidence. The
10 allegation was oral sex. And so that type of allegation.
11 wouldn't result in much physical evidence anyway. Very,
12 very slight.

13 Q. And given the line of cases where physical evidence is
14 lacking, having our court's rule that then the testimony of
15 the expert even becomes more critical, more crucial?

16 A. Exactly.

17 MR. DAVIS: Your Honor, if we could have just a moment?

18 THE COURT: Yes, sir.

19 (Brief pause.)

20 MR. DAVIS: Ms. Hudgins, thank you. No other
21 questions. Thank you, Your Honor.

22 MR. NEELY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. NEELY:

25 Q. Good morning, Ms. Hudgins.

1 A. Good morning.

2 Q. When you testified that you believed your strongest
3 issue was concerning the vouching and hand gestures done by
4 the forensic interviewer?

5 A. The vouching. The strongest issue was the fact that
6 this testimony by the forensic interviewer vouched for the
7 credibility of the child witness. The way it did that was
8 by talking about the hand gestures, the forensic interviewer
9 was basically saying because she made these hand gestures,
10 she's telling the truth. Now, that's not verbatim what the
11 testimony was, but that's the only conclusion that could
12 really be drawn from that testimony. So the bolstering was
13 the strongest issue in my opinion.

14 Q. And the Court of Appeals reviewed that, found it was
15 harmless beyond a reasonable doubt?

16 A. They found it was harmless.

17 Q. And then the argument about the PTSD symptoms, the
18 Court of Appeals found that you had abandoned those
19 arguments. But they also went further beyond that and said
20 furthermore we find it need error to be harmless beyond a
21 reasonable doubt on that issue as well?

22 A. That's correct.

23 Q. So on both those issues, and even the second one where
24 they found you had abandoned the issue, they still made an
25 almost advisory ruling on it covering themselves if the

Cross-Examination of Ms. Hudgins by Mr. Neely

1 Supreme Court would have reasonable doubt that you hadn't
2 preserved that issue?

3 A. That's correct.

4 MR. NEELY: That's all the questions I have.

5 MR. DAVIS: Nothing further, Your Honor.

6 THE COURT: All right. Can she be excused?

7 MR. NEELY: Certainly.

8 MR. DAVIS: She may.

9 THE COURT: Okay. Have a good one. Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Okay. It's 12:30. Let's start at, I'd
12 say, 1:15. Is that okay for everybody, or do we need to do
13 1:30? Y'all tell me.

14 (Parties confirm 1:15.)

15 THE COURT: Okay. Let's do 1:15 and see if we can't --
16 we're coming back and finishing your hearing. I'm going to
17 let everybody eat lunch, okay?

18 APPLICANT: Okay.

19 THE COURT: All right. 1:15. Thank you very much.

20 (The proceedings recessed for lunch at 12:32 p.m. and
21 resumed at 1:24 p.m.)

22 THE COURT: All right. Everybody ready?

23 MR. NEELY: Yes, sir, Your Honor.

24 THE COURT: All right. Let's keep going.

25 MR. DAVIS: We call Mr. Portillo to the stand.

1 (CESAR PORTILLO, was duly sworn and provided the
2 following testimony.)

3 THE COURT: All right. Now, you got to speak up, okay?

4 APPLICANT: Yes, sir.

5 THE COURT: So I can hear you and this young lady right
6 in front of you. Do you see her?

7 APPLICANT: Yes, sir.

8 THE COURT: So she can hear you too, okay?

9 APPLICANT: Yes, sir.

10 THE COURT: All right. Mr. Davis.

11 MR. DAVIS: Thank you very much, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. Mr. Portillo, how old are you today?

15 A. I'm 40 years old.

16 Q. Okay. And so when this case went to trial, how old
17 were you then?

18 A. Thirty-four.

19 Q. Okay. Had you ever been to trial before?

20 A. No, sir.

21 Q. Okay. Now, can you tell the judge where you born and
22 raised?

23 A. I was born in Honduras. And I lived 18 years in
24 Honduras and that's when I came here.

25 Q. Okay. Once you came here, what education do you have?

Direct Examination of Mr. Portillo by Mr. Davis

1 A. I went to learn how to speak English. And then I have
2 -- I went to Miami-Dade Community College for a couple of
3 semesters. And now -- oh, I went to Trident Tech about '90
4 -- no -- 2007, 2008. And now I just got an associate
5 degree, an associate in arts -- here in prison.

6 Q. Okay. So you've lived here in the United States most
7 of your adult life?

8 A. Yes, sir.

9 Q. Okay. Now, did you actually serve in the military?

10 A. Yes, sir.

11 Q. Can you tell the judge about that a little bit.

12 A. I served three years in active duty, and I served three
13 years in National Guard.

14 Q. For the United States?

15 A. Yes, sir.

16 Q. Okay. Now let's -- well, before we get into the
17 details of it, the judge talked to you before we took a
18 break about the risks and benefits of this whole process
19 that we're doing today; right?

20 A. Yes, sir.

21 Q. You're a little nervous, aren't you?

22 A. Yes, sir.

23 Q. Okay. Take your time. I've got some questions for you
24 and then the attorney general has some questions for you,
25 okay?

1 A. Uh-huh.

2 Q. You went to trial convicted for a charge of criminal
3 sexual conduct with a minor in the first degree; correct?

4 A. Yes, sir.

5 Q. And who was your attorney on that charge?

6 A. Mr. Mitch Farley.

7 Q. Do you see him in the courtroom today?

8 A. Yes, sir.

9 Q. Okay. Now, was he appointed to you or did you hire
10 him?

11 A. No. He was appointed to me.

12 Q. Okay. One quick thing: How soon after arrest, if at
13 all, did you get released on bond?

14 A. I think I only stayed about ten days.

15 Q. Okay. And so from the time that you got released until
16 when you went to trial, do you recall how long that was?

17 A. I believe it was about a year and maybe about a year
18 and a half.

19 Q. Okay. Now, during that year, year and a half, was
20 Mr. Farley always your attorney?

21 A. Yes.

22 Q. Okay.

23 A. In the beginning, yes. I mean, yes, he was my
24 attorney.

25 Q. Okay. And during that time frame before you went to

Direct Examination of Mr. Portillo by Mr. Davis

1 trial, how often would you say you met with him?

2 A. In person, about maybe three times.

3 Q. So what other type of meetings would you have?

4 A. Over the phone.

5 Q. Okay. So you met with him in person about three times.

6 How many times would you figure you spoke with him on the
7 phone about your case?

8 A. About three months, about three times, four times.

9 Q. Okay. Now, in general during this year and a half that
10 you were out on bond waiting for your trial, what was Mr.
11 Farley's advice, instruction to you?

12 A. Not to do anything. I remember he said you're not
13 going to win. He said because you're Hispanic.

14 Q. Okay. We'll come back to that in just a second. As
15 far as day-to-day, you know, reporting in or checking in
16 with him or coming to review evidence or anything like that,
17 did he want you to do that a bunch or did he not want you to
18 worry about it?

19 A. No, not to worry about it.

20 Q. Okay. Did he say that to you?

21 A. Yes, sir.

22 Q. Just once or on several occasions?

23 A. Several occasions.

24 Q. Okay. Did you and he have a discussion about what you
25 were accused of doing?

1 A. Yeah. He told me.

2 Q. Okay. And what was your response to him about that?

3 A. I'm innocent.

4 Q. You denied you had done it?

5 A. No, sir.

6 Q. You told him you had not done it; right?

7 A. Yes, sir.

8 Q. Okay. During these meetings and phone calls, what
9 conversations at all did you have about what he was doing to
10 prepare for trial?

11 A. Nothing.

12 Q. Did you ask any questions about what he was doing to
13 investigate the case to prepare for trial?

14 A. No. Not because I didn't know what was involved.

15 Q. Did he ask your help on anything in getting prepared
16 for trial?

17 A. No. Never.

18 Q. Okay. Do you recall at trial a Dr. DeMarco (ph)
19 testifying?

20 A. At trial, yes.

21 Q. Okay. And do you recall that she testified about just
22 physically -- physically observing Complainant, her body. Do you
23 remember that?

24 A. Yes, sir.

25 Q. Okay. So now back to the year, year and a half,

Direct Examination of Mr. Portillo by Mr. Davis

1 leading up to your trial, did you and Mr. Farley ever talk
2 about Dr. DeMarco?

3 A. I spoke to him at the beginning.

4 Q. Okay. And did he give you any indication that he had
5 spoken with Dr. DeMarco?

6 A. Never.

7 Q. Now, at some point during that time before trial there
8 was an offer that you and Mr. Farley discussed. Is that
9 right?

10 A. Yeah.

11 Q. Okay. Do you remember what that offer was?

12 A. I think it was -- I believe it was like 15 years.

13 Q. Okay. Do you recall what the charge was that the State
14 was offering?

15 A. It was a minor, but I really don't know how to say.

16 Q. Okay. Well, let me go a step further. Did he ever
17 discuss with you what the elements of criminal sexual
18 conduct in the first degree with a minor are?

19 A. No, sir.

20 Q. What about the elements of a charge called a lewd act
21 on a minor?

22 A. No, sir.

23 Q. You may have already answered this, but I don't want to
24 get out of order. When y'all were discussing this offer
25 from the State, was it his opinion that you should accept

1 the plea or go to trial? Do you recall?

2 A. No. He never -- the only thing, like I said, he told
3 me that I was going to lose because I'm Hispanic.

4 Q. Did he leave the decision about accepting a plea or
5 going to a trial up to you?

6 A. He told me it's your decision.

7 Q. And in response to the offer -- what was your response
8 to the offer?

9 A. To -- say it again.

10 Q. Did you want to accept the plea offer from the State or
11 not?

12 A. No.

13 Q. Why not?

14 A. No, because I was innocent.

15 Q. Okay. So you ultimately then went to trial on what you
16 were arrested on which was criminal sexual conduct with a
17 minor, first degree; correct?

18 A. Yes, sir.

19 Q. Okay. Did you have discussions with your attorney
20 about what the element -- I asked that. I apologize. Did
21 you have discussions with your attorney about what the range
22 of punishment for criminal sexual conduct with a minor,
23 first degree, were?

24 A. I don't understand.

25 Q. Did he talk to you about what you could be sentenced to

Direct Examination of Mr. Portillo by Mr. Davis

1 if you're convicted of the CSC first degree ---

2 A. Yes, 25 years.

3 Q. Okay. Did he talk to you about if convicted of that
4 and sentenced 25 years, what percentage of that you would
5 have to serve?

6 A. Never said.

7 Q. Okay. Let's go back to what the offer was. Did he
8 talk to you about what the punishment for the lower offered
9 charge, a lewd act on a minor? Did he talk to you about the
10 punishment on that?

11 A. My time?

12 Q. Yes, sir?

13 A. Yes, 15 years.

14 Q. Okay. And did he discuss on that charge how much
15 percentage of that time, if convicted and sentenced, you
16 would have to serve?

17 A. Never said.

18 Q. Other than you denying the accusations against you, did
19 you have any discussions with your lawyer about how you
20 would present a defense at trial?

21 A. Never.

22 Q. Before you went to trial, did you know how a trial took
23 place in South Carolina state court?

24 A. No, sir.

25 Q. The process at all?

1 A. No, sir.

2 Q. Calling witnesses?

3 A. No, sir.

4 Q. So that was never discussed with your attorney?

5 A. No.

6 Q. And I think I may have asked this, but have you ever
7 been to trial before this?

8 A. No, sir.

9 Q. In leading up to your trial in the year, year and a
10 half that you were out on bond, were you ever sent a stack
11 of papers from your attorney often referred to as discovery
12 or a Rule 5: police reports, doctors' reports, anything like
13 that. Were you ever given that by your attorney?

14 A. No, sir. No. No.

15 Q. Now, you were aware there were videos of two
16 interviews. Do you recall that?

17 A. Yes, sir.

18 Q. Okay. Were you able -- did you ever see those videos?

19 A. I saw both of them. One way in the beginning, and the
20 other one, right at the last day of my trial, the second
21 one.

22 Q. Okay. Let's deal with the second you saw during your
23 trial right before the last day of your trial. That was a
24 video of an interview with who?

25 A. With E.B. .

Direct Examination of Mr. Portillo by Mr. Davis

1 Q. E.B. .

2 A. That's my stepdaughter.

3 Q. Your stepdaughter. Not the accuser in this case?

4 A. No, the accuser was way before.

5 Q. Okay. There's a second video that Complainant, the accuser,
6 was recorded; right?

7 A. No. Just one video that I know.

8 Q. Okay. Let me ask it again. You saw a video before
9 your last day of trial; right?

10 A. Yeah. That was E.B. 's video.

11 Q. Right. And there's also one of Complainant; right?

12 A. Yes. Yes, sir. Yes, sir.

13 Q. Okay. The one of Complainant, did you get to view it at
14 some point?

15 A. Yes, sir.

16 Q. When?

17 A. I think in the beginning.

18 Q. Meaning soon after you were arrested?

19 A. Pretty much. Yes, sir.

20 Q. Or soon after you got out on bond?

21 A. Yes. After I got out on bond.

22 Q. Okay. But do you don't recall reviewing any paperwork
23 with your attorney?

24 A. No.

25 Q. Doctors' reports?

1 A. No, sir.

2 Q. Medical records?

3 A. No, sir.

4 Q. Police reports?

5 A. No, sir.

6 Q. Okay. In watching the videos you knew there was a
7 gentleman, a doctor, in the interview with the two minor
8 children; right?

9 A. Uh-huh. Yes, sir.

10 Q. Okay. And that was Dr. Elsie. Is that right?

11 A. Yes, sir.

12 Q. Okay. Was there any discussion before trial about how
13 your attorney might deal with Dr. Elsie's testimony?

14 A. Never, sir.

15 Q. Did your attorney ever give an opinion to you about the
16 weight or the strength of the State's evidence against you?

17 A. Never.

18 Q. May be an obvious question, but now that you've watched
19 the entire trial and the witnesses that testify, do you have
20 a better understanding about that evidence that the State
21 had against you?

22 A. Yes.

23 Q. Talking about witnesses and testimony, was there any
24 discussion about whether you should testify or not?

25 A. Yes, sir.

Direct Examination of Mr. Portillo by Mr. Davis

1 Q. And did you express an opinion to your attorney about
2 whether you wanted to testify not?

3 A. Yes.

4 Q. What did you say?

5 A. Well, they told me not to testify. I don't know if it
6 was because it wasn't enough evidence to defend. I don't
7 know. But they told me not and that's the reason why we
8 didn't do it.

9 Q. Prior to that advice, what was your thought process
10 about whether you would testimony or not?

11 A. That everybody knows one side of the story but not
12 mine.

13 Q. So were you wanting to testify on your behalf or not?

14 A. Yeah. Yes, sir.

15 Q. Okay. But your attorneys advised you not to?

16 A. Yes, sir.

17 Q. And you didn't?

18 A. I didn't.

19 Q. You've already testified that obviously after seeing
20 the witnesses testify, you had a better understanding of the
21 State's evidence against you; correct?

22 A. Yes, sir.

23 Q. If that had been more fully explained to you when you
24 had the option of the offer, would you have accepted the
25 offer or would you have gone to trial?

1 A. I would've accepted the offer.

2 Q. Did you understand at that the time that not only was
3 it a lower charge that carried a lower possible punishment?
4 Did you understand that then?

5 A. Never. I didn't know it. I never been in trouble.
6 Never.

7 Q. Okay. Did you understand then that any sentence you
8 served on the CSC with a minor, first, you had to serve 85
9 percent of it? Did you understand that then?

10 A. No. No, sir.

11 Q. Did you understand that any sentence you would have
12 gotten on a lewd act charge you would not have to serve 85
13 percent? It would've been something less.

14 A. No, sir.

15 Q. Had you understood that, had that been explained to you
16 fully, would you have accepted that offer or would you have
17 gone to trial?

18 A. No. I would accept that offer.

19 Q. Now, you told your attorney and you've told the judge
20 today that you denied these facts; right?

21 A. Yes, sir.

22 Q. Okay. Did your attorney ever discuss with you another
23 way of pleading guilty which is an Alford plea?

24 A. No, sir.

25 Q. Did he ever use that term?

Direct Examination of Mr. Portillo by Mr. Davis

1 A. Never knew what it was.

2 Q. Okay.

3 A. Until now.

4 Q. Before we discussed that in preparation for your
5 hearing, did you understand that that was even an option?

6 A. No. I never -- never knew about that.

7 Q. If you knew, you could have taken the reduced charge,
8 pled to lewd act, and yet still maintain your innocence at a
9 guilty plea, would you have pled guilty or gone to trial?

10 A. No. I plead guilty.

11 Q. Finally, you did go to trial and the jury convicted
12 you, but you did not testify; correct?

13 A. Yes, sir.

14 Q. Okay. And that was on the advice of your attorneys?

15 A. Uh-huh. Yes, sir.

16 Q. Knowing what you know now, if you could -- if you could
17 make that decision today, again, would you have testified at
18 your trial or not?

19 A. If it is necessary, I will.

20 Q. Okay. And if you were to have testified at trial, can
21 you tell the judge what your testimony would've been about
22 what did or did not happen in that bedroom?

23 A. Yes, sir.

24 Q. Can you please tell the judge.

25 A. That night I was suffering with some rashed on my body.

1 And I had it on my legs and on my body, and I was suffering
2 for that for like three days. And I went to -- I went to
3 take my medicine and then I went to take a shower. I went
4 to the room and got a towel and then I went -- I just went
5 to the restroom. And that's it.

6 Q. Was there anyone else in the bedroom were you got the
7 towel?

8 A. I think so; yes, sir. I didn't know anybody was at
9 home that day.

10 Q. So before you went in the room, you didn't expect
11 someone to be there; right?

12 A. No. No, sir. I thought I was by myself in the house.

13 Q. But when you went in the room, was there someone else
14 in that room?

15 A. Yes, sir. Yes.

16 Q. Who was in that room?

17 A. It was my stepdaughter, E.B. , and it was Complainant.

18 Q. Okay. Did you have any discussions with them?

19 A. No. She was awake and she asked what are you doing. I
20 said I'm going to take a shower.

21 Q. Okay. Who is she?

22 A. Complainant.

23 Q. Okay. Did you have any physical contact with Complainant?

24 A. No, sir.

25 Q. Why were you in that room?

Direct Examination of Mr. Portillo by Mr. Davis

1 A. I went to get a towel to go take a shower. All the
2 towels were in that room.

3 Q. All the towels you kept in that ---

4 A. From the house, yes, sir.

5 Q. Okay. And once you had the towel and had that brief
6 discussion with Complainant about why you were in there, what did
7 you then do?

8 A. I just grabbed a towel and I left. I went to take a
9 shower.

10 MR. DAVIS: Your Honor, if I could just have one
11 moment.

12 (Brief pause.)

13 Q. Do you recall Complainant's testimony at trial?

14 A. Yes, sir.

15 Q. Okay. Did you provide any information to your
16 attorneys about how she might be able to testify about
17 things of a sexual nature?

18 A. I don't understand what . . .

19 Q. Okay. Did you provide your attorneys about any other
20 exposure that Complainant might've had to sexual content?

21 A. Yes, sir.

22 Q. What would that have been?

23 A. I told him that in Thanksgiving on the year before,
24 about three months prior to this, her mother was talking in
25 the kitchen that she caught Complainant watching adult videos on

1 somebody's computer.

2 Q. Okay. Other than a video or a movie that she watched,
3 did you tell your attorneys about any physical contact that
4 she might have had previously?

5 A. My wife at the time, she's the one that told me that
6 she approached him and told him about some things like that.

7 Q. When you "say things like that," can you help the judge
8 understand a little better.

9 A. Like, she already was having sex with somebody, I
10 think, or something like that. I don't know. I didn't
11 want because -- I didn't ask my wife clearly.

12 Q. But you gave that information to attorneys?

13 A. No. My wife told me that she gave information to my
14 attorney.

15 Q. Okay.

16 MR. DAVIS: Mr. Portillo, thank you so much. The
17 attorney general has some questions for you, okay.

18 CROSS-EXAMINATION.

19 BY MR. NEELY:

20 Q. Very briefly, Mr. Portillo. So if I understand you
21 correctly, you maintain the fact that you were innocent the
22 entire time after you were charged?

23 A. Yes, sir.

24 Q. And you told your attorneys that you were innocent the
25 entire time?

Cross-Examination of Mr. Portillo by Mr. Neely

1 A. Yes, sir.

2 Q. And your side of the story is, from what I understand,
3 is basically that nothing happened?

4 A. Yes, sir.

5 Q. So there is no proof or evidence that you had that
6 would discredit her story. You're just saying none of that
7 ever happened; right?

8 A. I got the medicine I was taking. At the time, I was
9 quitting smoking, and I think that's what made my rashes.
10 That's all that I have.

11 Q. Smoking what?

12 A. Smoking no cigarettes.

13 Q. Cigarettes. So you're taking medicine for your
14 cigarettes?

15 A. To quit smoking.

16 Q. So you were taking nicotine?

17 A. I was taking some pills given to me at the VA hospital,
18 and I was taking some patches that was given to me at the VA
19 hospital.

20 Q. And why would that have anything to do with this case?

21 A. Because I had rashes on my body.

22 Q. What do the rashes have to do with this case?

23 A. Huh?

24 Q. What do your rashes have to do with this case?

25 A. That's the reason why I got up down there.

1 Q. Okay. So the rashes don't have anything to do with
2 Complainant's story, do they?

3 A. What do you mean?

4 Q. Are the rashes part of the reason you're accused?

5 A. No, sir. No.

6 Q. But your story is that you went in the bedroom, got a
7 towel, and left?

8 A. Yes, sir.

9 Q. And that's what actually happened?

10 A. Yes, sir.

11 Q. And you testified that you would go to jail for 15
12 years for doing that?

13 A. I don't understand.

14 Q. The plea offer was 15 years; right?

15 A. Yes, sir.

16 Q. And you said if you had known that she was going to say
17 that you did these thing to her that you would have taken
18 the plea offer?

19 A. No, sir. Not about that.

20 Q. Okay. So you would not have taken the plea offer?

21 A. No. It was all about all that evidence and what
22 percent that I didn't know.

23 Q. Okay. You would've gone to jail for 15 years even
24 though all you did was walk into her room and walk out of
25 it?

Cross-Examination of Mr. Portillo by Mr. Neely

1 A. I didn't want -- that's why I didn't take plea because
2 I was innocent.

3 Q. Okay. Right. So you didn't want the plea. You wanted
4 to go to trial because you're innocent?

5 A. Yes, sir.

6 Q. And so despite what the State had against you, you
7 didn't take a plea offer because you wanted to assert that
8 you were innocent and didn't do it; correct?

9 A. Yes, sir. Yes, sir.

10 Q. And you're still asserting that you're innocent today;
11 right?

12 A. Yes, sir.

13 Q. And so even today, you wouldn't take that plea offer
14 because it would say you are guilty; right?

15 A. What do you mean?

16 Q. Well, you said that you didn't want to take a plea
17 offer because you're innocent.

18 A. Yes, sir.

19 Q. Right. And so you wouldn't take -- if you could have
20 another trial, you wouldn't want to plead guilty. You would
21 want a trial; right?

22 A. Well, I didn't know how serious was everything, sir.

23 Q. Okay. But you're saying so you would've taken the
24 15-year offer and gone to jail for 15 years even though you
25 didn't do it?

1 A. No. What I said is that I didn't know how serious it
2 was everything. I was never briefed. I was never informed
3 about how everything, how serious was this. I thought it
4 was just I say, you know, like he hit me. No, I didn't hit
5 you. You know, something simple like that. That's what I
6 thought.

7 Q. Well, you testified that they told you that it was
8 going to be 25 years?

9 A. Yes, sir.

10 Q. That's pretty serious, isn't it?

11 A. Well, I guess every sentence got a time limit.

12 Q. I'm sorry. I don't understand what that means.

13 A. Like, that's what it carries, so . . .

14 Q. Right. That's what it carries. So going to jail for
15 25 years is pretty serious; right?

16 A. Yeah. But I was suspecting that it wasn't going to
17 happen.

18 Q. Right. And going to jail for 15 years is pretty
19 serious; right?

20 A. I don't know how serious it was. I don't know.

21 Q. You don't know how serious going to jail for 15 years
22 is?

23 A. No.

24 Q. Okay. So you're proclaiming -- you were saying I was
25 innocent then and that's why I wanted a trial; right?

Cross-Examination of Mr. Portillo by Mr. Neely

1 A. Yes, sir.

2 MR. DAVIS: Your Honor, I think this has been asked and
3 answered several times.

4 THE COURT: Yeah. Overruled. I'm going to go back
5 through it. I mean, we don't need to drag it out forever.
6 But I think there's enough there to go back through it
7 again.

8 Q. I just want to make sure I understand. Because you
9 didn't take the plea offer because you're innocent; right?

10 A. Yes, sir.

11 Q. And you're still saying your innocent; right?

12 A. Yes, sir.

13 Q. And so now you wouldn't take a plea offer either;
14 right?

15 A. Well, he was -- my lawyer was saying about a Alford
16 plea or something like that.

17 Q. Right. But you were offered a plea back then before
18 your trial?

19 THE COURT: He's saying Alford, like North Carolina
20 versus Alford.

21 MR. NEELY: Oh, I thought he said offer.

22 THE COURT: No. He's saying Alford like A-l-f-o-r-d.

23 MR. NEELY: Okay. I understand.

24 THE WITNESS: Yes, sir. Yes, sir.

25 THE COURT: Okay. I gotcha. I follow what he's

1 saying.

2 MR. NEELY: Okay.

3 Q. So you would take an Alford plea and go to jail for 15
4 years now?

5 MR. DAVIS: Your Honor, I'm going to object. It's zero
6 to 15. There was no -- I got paperwork here. So it wasn't
7 a negotiated 15.

8 THE COURT: Okay.

9 Q. So you would take an Alford plea now even knowing it
10 could take 15 years?

11 A. Now; yes, sir.

12 Q. Okay.

13 MR. NEELY: That's all I was trying to get at. Thank
14 you.

15 THE COURT: Okay. Mr. Davis?

16 MR. DAVIS: Nothing further.

17 THE COURT: All right. You can step down. Call your
18 next witness.

19 MR. DAVIS: Actually, I spoke to Ms. LeMatty earlier.
20 I will need her testimony, please. Ms. LeMatty.

21 THE COURT: All right. Come on up Ms. LeMatty.

22 (MARY LEMATTY, was duly sworn and provided the
23 following testimony.)

24 DIRECT EXAMINATION

25 BY MR. DAVIS:

Direct Examination of Ms. LeMatty by Mr. Davis

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. On this case, it was assigned to Mr. Farley; correct?

4 A. Yes.

5 Q. But you assisted as what we commonly refer to as second
6 chair?

7 A. Yes.

8 Q. Okay. But in this case, both in pretrial and during
9 testimony in front of the jury, you dealt with Dr. Elsie;
10 correct?

11 A. In front of the jury, yes. I'm not sure I'm recalling
12 on pretrial.

13 Q. Glance at the transcript to remind you.

14 A. Absolutely. It's been a long time.

15 MR. DAVIS: May I approach, Your Honor.

16 THE COURT: Sure. (Brief pause.) You showing her where
17 to go?

18 MR. DAVIS: Yes. And, Judge ---

19 THE WITNESS: Absolutely.

20 MR. DAVIS: --- in the main packet I got, which is
21 actually all the documents from the appeal, it's page two
22 and three which is an index.

23 THE COURT: Thank you.

24 Q. Do you recall now both in-camera and in front of the
25 jury?

1 A. If the transcript says that's what I did, that's what I
2 did.

3 Q. Would it surprise you that of the entire transcript,
4 which is ---

5 MR. DAVIS: Your Honor, if my addition is wrong,
6 forgive me. But I believe the transcript of the trial is
7 around 300-some pages. It's slightly off because we have an
8 appendix -- or we have other documents in this binding.
9 But -- I'm sorry. 405. There we go. I'm on the last page
10 of the actual transcript for the trial, 405.

11 Q. Would it surprise you that about 25 to 30 percent of
12 the trial deals with Dr. Elsie's testimony?

13 A. I've not done that math, but . . .

14 Q. He was a key witness in this case. Is that fair?

15 A. I wouldn't say the most significant one, but of course.

16 Q. We have Complainant that gave the story. Dr. DeMarco that
17 physically observed her and Dr. Elsie that then did the
18 forensic interviews; right?

19 A. Yes.

20 Q. Okay. You were here earlier when Ms. Hudgins testified
21 about the appeal and the issues on appeal; right?

22 A. Yes.

23 Q. And those all dealt with Dr. Elsie's testimony; right?

24 A. Yes.

25 Q. Okay. And not only did you have an in-camera hearing

Direct Examination of Ms. LeMatty by Mr. Davis

1 dealing with the proposed testimony, you also made
2 objections during testimony in front of the jury; correct?

3 A. Whatever is in the transcript is what I did.

4 Q. And cross-examining him as to his testimony?

5 A. Yes.

6 Q. Okay. Were you aware prior to cross-examining Dr.
7 Elsie information that Complainant may have been exposed to
8 sexual activity or sexual acts through watching videos or a
9 video?

10 A. I don't recall anything like that.

11 Q. Okay. Do you recall prior to cross-examining Dr. Elsie
12 any indication that she me have been sexually active in some
13 way with someone else?

14 A. No.

15 Q. Okay. You were able to review both of the interviews,
16 the taped and written portion of the interviews with Complainant
17 and E.B. , that the Lowcountry Children's Center provided?

18 A. Yes.

19 Q. Okay. The questioning of E.B. , a potential witness
20 versus the questioning of Complainant, were handled with Dr.
21 Elsie a bit differently. Do you recall that?

22 A. I'm sorry. Not in any specific way, no.

23 Q. Okay. Certainly as to the three issues I just
24 mentioned, you didn't question him at all about any other
25 source of her knowledge of sexual activity other than the

1 accusation?

2 A. No, I don't think so.

3 Q. And there was no specific questioning on why he handled
4 his interview with E.B. differently than he did with
5 Complainant, the accuser?

6 A. No.

7 Q. Okay. Would you have been present for any meetings
8 that Mr. Farley would've had with Mr. Portillo?

9 A. I was present for one that I can recall in the office,
10 and when we were up here the courthouse. (Brief pause.) I
11 remember coming in to see Mr. Farley several times, but
12 there was only one that I can recall that I sat in there
13 too.

14 Q. And, again, you had a particular witness, a particular
15 issue, but this was Mr. Farley's case?

16 A. Yes.

17 Q. Okay. Final thing, I think, Ms. LeMatty. We heard
18 some testimony earlier, but the record does not appear to
19 show any objection to Dr. Elsie's testimony under the
20 argument that it's vouching. Was that a conscious decision
21 or just an omission on your part?

22 A. That would have been an omission on my part.

23 MR. DAVIS: Your Honor, if I could have just a moment.
24 (Brief pause.) Thank you. That's all the questions I have.
25 Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. NEELY:

3 Q. Very briefly, Ms. LeMatty. It's been almost seven
4 years since this trial took place. It that right?

5 A. Yes.

6 Q. All right. Is it fair to say that your specific
7 memories of this trial are fairly vague?

8 A. Yes.

9 Q. You said that Dr. Elsie's testimony was not the most --
10 or he was not the most important witness. In your opinion,
11 who were the most important witnesses?

12 A. The child.

13 Q. Would you say the doctor, the physical examination,
14 that had come in as physical evidence was more important
15 than Dr. Elsie?

16 A. That was. But this was not a case with a lot of
17 physical evidence to it. I mean, just the nature of the
18 allegations were not ones that lend themselves to physical
19 manifestations on a large scale. But I think the child and
20 her credibility were critical.

21 Q. Okay. Just briefly, has Kromah changed the way that
22 you questions forensic ---

23 A. Yes.

24 Q. --- examiners?

25 A. Yes.

1 Q. Has Kromah changed the way that you object to forensic
2 examiners?

3 A. Yes.

4 Q. And, obviously, Kromah was not out when this case was
5 tried?

6 A. It was not.

7 Q. Based on Kromah, would you do things differently in
8 this trial had you know that was going to be the case?

9 A. Yes. I think that's the direction in general I was
10 working in. But, unfortunately, Kromah was not out then and
11 so I didn't handle things the way that they certainly would
12 be handled now under Kromah.

13 Q. But you did make a number of objections to the forensic
14 examiner?

15 A. I did. And, like I said, if I didn't put bolstering in
16 my laundry list of things that I included, that was just
17 simply, you know, because that was just one word that I did
18 not use. I mean, I did attempt to object to everything I
19 thought was proper to object to. But, apparently, didn't
20 get that one in there from reading the transcript.

21 Q. And, just again, has Kromah changed some of the
22 keywords that you use when you object?

23 A. Absolutely.

24 MR. NEELY: Thank you. That's all the questions I
25 have.

1 MR. DAVIS: Nothing in addition.

2 THE COURT: Have a good one.

3 THE WITNESS: Thank you.

4 THE COURT: Kromah is K-r-o-m-a-h for the court
5 reporter.

6 MR. DAVIS: We call Mr. Farley.

7 THE COURT: Come on up, Mr. Farley. You've been here
8 all day. Thank you very much for your patience.

9 THE WITNESS: Yes, sir. No problem.

10 THE COURT: Thank you, Ms. LeMatty.

11 MS. LeMATTY: Thank you, Your Honor.

12 (MITCHELL E. FARLEY, was duly sworn and provided the
13 following testimony.)

14 THE COURT: You got everything you need?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay.

17 DIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q. Mr. Farley, you were the lead attorney on Mr.
20 Portillo's case; correct?

21 A. That's correct.

22 Q. And how many times would you have met with him prior to
23 going to trial?

24 A. I looked on the -- I have four office appointments with
25 him. One time I went to the actual crime scene, which was

1 his house, and met with him. I couldn't tell you, but
2 there's three listed telephone conversations. I believe it
3 was more than that.

4 Q. And he was out on bond almost the entire time?

5 A. That's correct.

6 Q. And divying up who gonna handle the witnesses, you
7 cross-examined Dr. DeMarco; correct?

8 A. That's correct.

9 Q. And her role in this was she did an initial physical
10 exam before Complainant was taken to the Lowcountry Children's
11 Center?

12 A. That's correct.

13 Q. Do you recall that the exam was not done at a hospital
14 or a clinic but at someone's house?

15 A. She was a friend of the family. I think it was in
16 Walterboro. They said, hey, come in and we'll check this
17 out.

18 Q. And so, therefore, she had no written report. There
19 were no admission paperwork or anything like that?

20 A. That's correct.

21 Q. Okay. And I believe her -- I'll skip ahead. You
22 certainly made point that she prepared in her report and one
23 of her excuses was that the law enforcement told her not to.

24 A. I believe so. It sounds like ---

25 THE COURT: Someone help me with how old the alleged

Direct Examination of Mr. Farley by Mr. Davis

1 victim is. How old?

2 THE WITNESS: Six, I believe.

3 MR. DAVIS: It was single digit, five or six. Forgive
4 me, Judge ---

5 THE WITNESS: There was a six-year-old and a
6 ten-year-old ---

7 MR. DAVIS: Okay. The six ---

8 THE WITNESS: The six-year-old was the victim and the
9 ten-year-old was the witness.

10 MR. DAVIS: Right.

11 THE COURT: Got it. Thank you.

12 MR. DAVIS: Sorry, Your Honor.

13 THE COURT: That just helps me process through. Thank
14 you.

15 Q. During direct examination, the best that Dr. DeMarco
16 could testify, she was a little bit red --

17 MR. DAVIS: And, Your Honor, this is 177 of the big
18 packet; 247 of the trial transcript, lines 16 through 18.

19 Q. She was a little bit red and irritated there which is
20 the area that's around the vagina and the urethra?

21 A. I don't have the benefit of the transcript in front of
22 me at this moment.

23 MR. DAVIS: May I approach, Your Honor?

24 THE COURT: Sure. Of course.

25 Q. Can I ask -- take as much time as you need -- but do

1 you recall other than that physical description of any
2 apparent injury, do you recall any other physical injury
3 noted by the physical examiner which was Dr. DeMarco?

4 A. I don't believe so. Yes to your first question. I
5 don't believe so on the second.

6 Q. Thank you. In your questioning of her, again, you
7 pointed out that there was no ---

8 THE COURT: Dr. DeMarco?

9 MR. DAVIS: Yes. I'm sorry.

10 THE COURT: Okay.

11 MR. DAVIS: DeMarco. I apologize.

12 Q. You pointed out that there was no records of this exam?

13 A. Yes.

14 Q. You got her to admit her reasoning why?

15 A. Right. Yes.

16 Q. And you ended it there showing that law enforcement had
17 gotten involved, we don't need your stinking report, let us
18 do our job basically?

19 A. That's correct.

20 Q. So you didn't go into any other causes for the redness
21 or irritation that she observed?

22 A. I can't remember. It would be in the transcript. But
23 I believe that the examination was several days later, and I
24 think I brought that out in order to leave that kind of
25 lingering question for the jury. Seven years.

Direct Examination of Mr. Farley by Mr. Davis

1 Q. So in your mind the delay was obvious enough of an
2 issue that the jury would've picked up on that it could've
3 been from some other cause?

4 A. I almost swear that I said something along those lines
5 in closing.

6 Q. Okay. But as far as when you had DeMarco, Dr. DeMarco
7 on the stand, could've questioned her about any other
8 numerous reasons for a child to have irritation or redness?

9 A. I don't think so, no.

10 Q. Okay. Would you agree that the three -- I'll not do
11 one. I'll do three key witnesses -- was a minor child
12 accuser, victim; correct?

13 A. Yes.

14 Q. Dr. DeMarco because she does see some physical
15 manifestation and then Dr. Elsie who talks about the
16 interview with the minor child?

17 A. I think Dr. Elsie is a witch doctor. I think the child
18 was very believable on the stand. And I think that that was
19 the most powerful witness in the case.

20 Q. Were you provided information prior to the trial of
21 other possible sources of knowledge of sexual activity that
22 Complainant would have had? For example, viewing a video and
23 movie? A sexual video and movie.

24 A. Yes. I have my notes about that.

25 Q. And, likewise, were you provided information that she

1 may have had sexual activity of some sort with another child
2 or adolescent?

3 A. This is the first time that I was told that the
4 six-year-old was sexually active.

5 THE COURT: You didn't know that prior to today?

6 THE WITNESS: I did not know that, yes.

7 THE COURT: Okay.

8 Q. You and Ms. LeMatty would have worked together in
9 preparing for the trial; correct?

10 A. Yes.

11 Q. You would have at least reviewed if not helped each
12 other on questions for witnesses?

13 A. Yes.

14 Q. And any pretrial motions?

15 A. Right.

16 Q. I think you may have just testified to this a moment
17 ago. But based on the minor physical observations, is it
18 your opinion this became a credibility trial on the
19 testimony of the minor child?

20 A. It's a completely he said, she said, Dr. Elsie said
21 case.

22 MR. DAVIS: Thank you. No other questions. Thank you,
23 Your Honor.

24 CROSS-EXAMINATION

25 BY MR. NEELY:

Cross-Examination of Mr. Farley by Mr. Neely

1 Q. Did you ever tell Mr. Portillo that he wasn't going to
2 win a jury trial because he's Hispanic?

3 A. No.

4 Q. Is it ever your policy or practice to tell a client not
5 go to a jury trial based on a non-fact of the case?

6 A. No.

7 Q. Did you ever tell Mr. Portillo not to worry about
8 meeting with you?

9 A. Absolutely not.

10 Q. Did you discuss what he was accused of?

11 A. Absolutely. I have a copy of the plea offer I sent to
12 him in January and May. And each one of those letters he
13 contacted me to talk about it. I'm quite sure that prior to
14 trial we talked about the ramifications. And I believe one
15 of the major things that Mr. Portillo reasons he didn't want
16 to plead to either was because the sex offender registry was
17 going to happen.

18 Q. And you kind of mentioned this, but he said that y'all
19 didn't have any discussions about trial preparations. Is
20 that accurate?

21 A. That's ridiculous.

22 Q. And did you do any private investigation of this case?

23 A. If you consider going to the crime scene and meeting
24 him there and taking a walk through of the house. I mean,
25 that's investigation. I mean, I don't even know where to --

1 how to list out. You know, it's seven years.

2 Q. Did you ever ask if he had any help or information he
3 could give you to help with the case?

4 A. Absolutely. I mean, I've got notes, you know, where
5 we've talked about this stuff.

6 Q. And did you ever dispute with Dr. DeMarco before the
7 trial?

8 A. I cannot recall that. I believe that we spoke in the
9 hallway briefly. And I can't remember if it was one of
10 those conversations where I don't want to talk to you or
11 what it was.

12 Q. Did you go over the elements of crime he was charged
13 with Mr. Portillo?

14 A. Absolutely.

15 Q. And did you discuss the elements and penalties of a
16 lewd act on a minor?

17 A. Absolutely.

18 Q. Did you tell him it was his decision whether he wanted
19 to plead or go to trial?

20 A. Absolutely.

21 Q. And did he tell you he didn't want the plea offer
22 because he was innocent?

23 A. That's correct.

24 Q. Did you discuss the percentages and collateral
25 consequences of CSC, first degree, versus lewd act?

Cross-Examination of Mr. Farley by Mr. Neely

1 A. We went over -- we went over the maximum possible
2 penalties. We went over collateral consequences.
3 Obviously, the biggest one being the registry; all of the
4 elements of the crime. I did not -- there was not the SCDC
5 sentence calculator at the time. I did not give him any
6 specific facts of 65, 85 percent. I did say parole
7 eligibility for -- I went over parole eligibility with him.
8 But my advice to him and my advice to all clients is there's
9 this stuff out here that, you know, is a possibility. But
10 when you plead guilty, you need to think that you're gonna
11 get a day-for-day sentence because that all can change. So
12 did I go over parole eligibility? Yes. Did I go over
13 collateral consequences? Yes. Did I go over violent,
14 nonviolent? No. I mean yes. But as far as telling him
15 specifically, oh, you'll only serve 65 percent, you'll only
16 serve 85 percent, you'll be out, you know, before you know
17 it. I didn't go into that, no.

18 Q. Did you discuss potential defenses of the crime?

19 A. We did.

20 Q. And did you tell him or discuss trial procedures and
21 what was going to happen if he went to trial?

22 A. Absolutely. Before I -- just about every time before
23 someone pleads guilty, if not every time, we go over what a
24 trial consists of. I mean, even when I have speeding
25 tickets, I go over what a trial consists of. So absolutely.

1 I cannot imagine that I did not.

2 Q. Did you ever give Mr. Portillo a copy of the discovery
3 that you had?

4 A. I do not have the letter with me. But it is the policy
5 of the public defender's office, when I worked at the public
6 defender's office, to automatically give them a copy of the
7 discovery. So at the exact same time that we receive the
8 discovery from solicitor's office, I get the original from
9 the solicitor's office and the paralegals make a copy and
10 send it to him without me doing a thing except for signing
11 the cover letter.

12 Q. As you said, this is kind of a he said, she said case.
13 I can't imagine there's a whole lot more discovery than just
14 a small Rule 5 packet?

15 A. Yeah. There was the Rule 5 packet and the two videos
16 from the children's center.

17 Q. Okay. Did you watch and review those videos with your
18 client?

19 A. I know for fact that we watched the one. I believe
20 that we watched the other one. I don't want to, you know,
21 mistake. I do have notes where I know that when I watched
22 the video, I put the time and then a note about the child or
23 the doctor would say. And I can't from my notes decipher if
24 did that on one video or there's, you know, several pages of
25 notes with those time stamps and notes. I just can't

Cross-Examination of Mr. Farley by Mr. Neely

1 determine from that whether or not it's two videos, multiple
2 videos, or from one. Does that make sense?

3 Q. Okay. Yes. But you had two videos in your file?

4 A. That's correct.

5 Q. And you reviewed the entire case with your client?

6 A. That's correct.

7 Q. Okay. Did you discuss with him the doctor's testimony
8 before trial?

9 A. Which doctor? The witch doctor or the real doctor?

10 Q. Both.

11 A. Yes, we did. We went over all the testimony, the
12 potential testimony.

13 Q. And did you discuss the strength of the case against
14 him?

15 A. Yes.

16 Q. Do you remember what your advice or counsel was
17 regarding the strength of this case?

18 A. I believe that he was gonna be convicted, and I told
19 him that. I also told, you know, I don't care if you plead
20 guilty, I don't care if you plead not guilty. That's your
21 decision. I'll support whatever you do. Obviously, he
22 chose to go to trial.

23 Q. Did you tell him that you don't believe he should
24 testify?

25 A. Yes.

1 Q. And why did you tell him that?

2 A. His defense was -- first of all -- let's go into the
3 facts of the case. And I hate to do that. But,
4 essentially, and long story short, two girls were in the
5 room. One of them was his stepdaughter, one of them was his
6 step-niece, I guess. I may be getting the familial
7 relationship messed up. He goes into the room. It's
8 alleged or he was found guilty of having orally penetrating
9 the one girl while she was asleep. She woke up in the
10 middle of it. He made some kind of excuse and then went to
11 the other room. That girl immediately reported to the aunt,
12 which was across the hall. The aunt or the mother or
13 whoever it was which was directly across the hall. So we
14 have a report of sexual misconduct immediately after the
15 crime. So, you know, the fact of the matter is is what she
16 said. Mr. Portillo's defense that he wanted to raise was
17 that he was rubbing lotion for his rash that was caused by
18 Wellbutrin and some other kind of drug that we looked at,
19 and I didn't see rash as a major side effect or effect of
20 that drug. So his testimony was going to be that it didn't
21 happen, and what she saw was him rubbing lotion for his
22 rash. So I don't believe he had anything else to add, and I
23 certainly didn't want to open him up to cross-examination.

24 Q. Okay. You believe that his defense wasn't that strong
25 and that it was more potentially harmful than good?

Cross-Examination of Mr. Farley by Mr. Neely

1 A. That's correct.

2 Q. But did you tell him it was his decision whether he
3 wanted to testify?

4 A. Absolutely.

5 Q. Did you encourage him to accept the plea offer when it
6 was made?

7 A. I put it on the table. I told him this is the
8 potential benefit, this is the potential -- you know, it's
9 your choice. But I can't imagine me, with this overwhelming
10 evidence against him, I can't imagine me not recommending
11 that he take the offer. I don't try to force people to do
12 anything that they don't want to. But I cannot imagine me
13 not recommending that he can't do that.

14 Q. Do you recall or have in your notes discussing an
15 Alford plea?

16 A. If someone is telling me that they are not guilty, and
17 there is a plea offer out there which I think is a good plea
18 offer, I cannot imagine me not mentioning North Carolina
19 versus Alford.

20 THE COURT: You said what about Alford?

21 THE WITNESS: If ---

22 THE COURT: There's a tornado warning. The tornado
23 sounds like a train. I wasn't aware that we're that close
24 to a train. So I was checking to see if was a train or a
25 tornado.

1 THE WITNESS: It comes every time ---

2 THE COURT: They think it's -- the clerk's office is
3 convinced it's a train, so I'm taking judicial notice of
4 that. What did you say about Alford plea?

5 THE WITNESS: If someone is telling me that they're
6 innocent ---

7 THE COURT: Right.

8 THE WITNESS: --- and there is a plea offer that I
9 think is out there that is excellent, I cannot imagine
10 myself not mentioning that ---

11 THE COURT: Not saying ---

12 THE WITNESS: --- to an Alford plea.

13 THE COURT: Okay. Got it.

14 Q. And you didn't hear him testify, but no information
15 came to you that the six-year-old was sexually active with a
16 different partner?

17 A. That's correct. I never heard that. Today is the
18 first I heard.

19 Q. Or that did his wife come to you and tell you that she
20 had been watching -- the six-year-old had been watching
21 porn?

22 A. I cannot remember talking to his wife. I don't think
23 his wife and him were getting along too well at the point.
24 That's me speculating.

25 Q. Okay. But that you just don't recall that conversation

Cross-Examination of Mr. Farley by Mr. Neely

1 taking place?

2 A. I just do not recall that conversation.

3 Q. Even if that conversation had taken place, do you
4 think you would've tried to use that at trial? The
5 six-year-old.

6 A. I really don't think so, no. I was thinking about that
7 as he was saying it.

8 Q. But he did maintain his innocence the entire time?

9 A. He did.

10 Q. And did you and Ms. LeMatty go over potential
11 objections for Dr. Elsie's testimony?

12 A. I really don't recall.

13 Q. You know, I realize that you didn't personally
14 cross-examine Dr. Elsie, but has Kromah changed the way that
15 you question forensic examiners?

16 A. Absolutely.

17 Q. And change any objections that you would make?

18 A. Absolutely.

19 Q. And the words that you used, key objections?

20 A. If we had used those words in that trial, it would
21 probably be Portillo instead of Kromah.

22 MR. NEELY: That's all the questions I have, Your
23 Honor.

24 REDIRECT EXAMINATION

25 BY MR. DAVIS:

1 Q. Just so we're clear, you were talking earlier about
2 watching at least one of the two videos. Do you recall
3 which?

4 A. It must have been the one of the victim.

5 Q. Okay. You don't have specific notes as to which?

6 A. I can tell you. Give me a second. (Brief pause.) I
7 have notes of questions that I wrote from the videos without
8 time stamps and those were for Complainant. And then I have notes
9 -- and I think that's when Cesar and I looked at it
10 together. I think we both came up with questions that were
11 weird -- about things that were weird. And then I got notes
12 with time stamps. Looks like with time stamps on it, it
13 looks like Complainant. So definitely from this, my notes, it's
14 certain that it was Complainant's video that we definitely did
15 watch. And I can't -- I just can't recall . . .

16 Q. And for the record, that's the accuser that's the
17 alleged victim or the victim -- Complainant is; correct?

18 A. That's correct.

19 Q. Three things, just to be clear. You talked about the
20 public defender policy at the time you worked there to send
21 out Rule 5. But you don't have specific notes that it was
22 sent; correct?

23 A. I have nothing, no.

24 Q. As to whether you recommend to accept the offer that
25 was made or not, again, I understand your general policy

Redirect Examination of Mr. Farley by Mr. Davis

1 that you don't -- your personal one that you don't have
2 notes on -- whether you recommended that are not?

3 A. I did not. But I can't see myself not.

4 Q. And same question as to the advising of Alford. Can't
5 imagine you didn't, but there's no notes you have that you
6 did discuss Alford; correct?

7 A. That's correct.

8 Q. You said you did discuss -- you warned that -- want you
9 to assume that you'll serve the sentence day for day; right?

10 A. That's correct.

11 Q. You talked about violent and non-violent; correct?

12 A. That's correct.

13 Q. But you did not talk about the separate statute, the no
14 parole statute, which requires at least 85 percent service
15 of certain offenses?

16 A. Yeah. I would have talked about -- certainly, I talked
17 about no parole. I think I have it in my notes with the
18 initial meeting.

19 Q. Okay. And then, finally, as to any other sources of
20 knowledge of sexual activity, you certainly could have used
21 that to question Dr. DeMarco about the injury or redness she
22 observed?

23 A. Yes.

24 Q. If the child themselves are sexually active they could
25 have caused the injury themselves; correct?

1 A. I don't know if I would have posed that to DeMarco or
2 Elsie.

3 Q. My follow up ---

4 A. Potentially, yes.

5 Q. If you also use it in questioning or Ms. LeMatty could
6 have in questioning Dr. Elsie as opposed to impeaching the
7 minor child with that information; right?

8 A. That's correct.

9 Q. Okay.

10 MR. DAVIS: Thank you. No other questions, Your Honor.

11 MR. NEELY: Just very briefly.

12 RECROSS-EXAMINATION

13 BY MR. NEELY:

14 Q. If the record indicates on page 298 that you did
15 discuss the redness occurring or being seen three days after
16 the incident and there were multiple explanations that could
17 have been given for that, and that the doctor had no history
18 with the child and could not know that it could have been
19 the child's existing condition. That's what you did?

20 A. Sounds like something I would say.

21 Q. All right.

22 MR. NEELY: That's all the questions I have.

23 MR. DAVIS: No questions.

24 THE COURT: All right. You can step down.

25 MR. DAVIS: And that's applicant's presentation, Your

Recross-Examination of Mr. Farley by Mr. Neely

1 Honor. The only other thing we would add, and I appreciate
2 Mr. Portillo, and if the State and if Mr. Farley, I'm
3 looking at a report from the child advocacy center, and it's
4 talking about Complainant, the minor child, age nine.

5 THE COURT: Okay.

6 MR. DAVIS: So just to clear the record on that. Other
7 than that, Your Honor, the applicant has no additional.

8 THE COURT: All right. You got any witnesses?

9 MR. NEELY: No, sir, Your Honor.

10 THE COURT: Okay. Do y'all want to make a brief
11 summary?

12 MR. DAVIS: Judge, it's two-fold, obviously. I'll do
13 kind of reverse order the way it was presented. We would
14 argue that there were errors at the trial that could have
15 affected the outcome in one of two ways. That if the
16 testimony of the witness would've been handled more
17 appropriately, there's evidence that the jury might not have
18 heard from the expert, which, you know, the entirety of the
19 appeal is on the expert testimony. And so if that were
20 handled appropriately at trial both by proper objections and
21 proper cross-examination and by allowing Mr. Portillo to
22 testify, we argue that the outcome of the trial could have
23 been different. The jury could have, should have and would
24 have acquitted, or certainly we would argue that it would
25 not have been a unanimous, so it would have been a mistrial.

1 Either way, it's not a conviction. The outcome would have
2 been different. We think that we have provided sufficient
3 evidence to show that. Additionally, Ms. Hudgins testified
4 right before lunch, testified that there are issues not
5 preserved on appeal that she felt were meritorious that had
6 she been able to argue them, she would likely had succeeded.
7 She also ---

8 THE COURT: Well, she got to argue some of them.

9 MR. DAVIS: She did.

10 THE COURT: And then the Court of Appeals ruled and
11 then the Supreme Court came back and said they weren't
12 preserved. And then she briefed one and the Court of
13 Appeals said she abandoned it; right?

14 MR. DAVIS: Correct. It's ---

15 THE COURT: Okay.

16 MR. DAVIS: That's accurate.

17 THE COURT: It's fairly complicated.

18 MR. DAVIS: It is.

19 THE COURT: I mean, it's not -- I understand the
20 Supreme Court ultimately determined that one of the issues,
21 some of the issues, weren't preserved. But the Court of
22 Appeals also ruled on those same exact issues; right?

23 MR. DAVIS: Correct. That's correct.

24 THE COURT: Okay. Okay.

25 MR. DAVIS: Yeah. What we've argue is the Supreme

1 Court simply said you shouldn't have ruled on that one
2 issue; it wasn't preserved.

3 THE COURT: Right.

4 MR. DAVIS: Had it been, not only could the Court of
5 Appeals had ruled -- the way they did, which we argue is an
6 error, but then the Supreme Court could have actually
7 reviewed that.

8 THE COURT: Right. I understand.

9 MR. DAVIS: And we would argued they would have
10 overturned it on that issue. She also, to her credit,
11 indicated that, you know, perhaps she did not fulfill her
12 obligations in fully briefing the one they claimed she
13 abandoned. And so if you would find fault there, obviously,
14 that would -- if she had fully briefed that and argued that
15 then that could have been grounds for reversal on appeal on
16 that one issue.

17 So we think we made the case. Either at the trial
18 level, the outcome would have been different had the trial
19 attorneys performed their duties. Certainly, we argue then
20 that the issues were unpreserved for appellate counsel to
21 perform their duties. And at either stage, the outcome
22 would have likely been different. Finally, one of the first
23 things I took up with Mr. Portillo, and it got a little
24 complicated a little bit because of his -- a little bit of
25 an accent. He certainly maintained and still does maintain

1 his innocence. And yet he now knows we in court know that
2 CSC with a minor first is a mandatory minimum of 25 up to
3 life. It's an 85 percent. We also know that lewd act is
4 zero to 15. It is not. He at trial learned the weight of
5 the State's evidence. And he testified before that he
6 didn't understand how significant the evidence was against
7 him. So now, certainly, he's testifying to the Court that
8 if given an Alford plea option, which allows him to maintain
9 his innocence and yet not risk the 25 to life, that as a
10 educated -- and he told you about his education. An
11 educated man, served in the military -- that now he
12 understands more fully the risks that he was taking back
13 then. And had he understood it then -- again, we lay blame
14 on his attorneys that he would have taken that option
15 instead of going to trial and risk what ultimately happened
16 to him. So we argue certainly that the ineffective
17 assistance in explaining the risks versus the benefit of
18 that offer was not complied with. And had it been done, the
19 outcome would have been different because he would've taken
20 that offer in the first place. So we've given the Court
21 three different ways that you could rule on the application
22 and relief for our client. We would argue we met our
23 obligation. Thank you, Your Honor.

24 THE COURT: All right.

25 MR. NEELY: I guess, start with the Court of Appeals

1 stuff. Obviously, the Supreme Court did hold that it was
2 not preserved. And the Court of Appeals held that one of
3 the issues was not preserved. However, on Ms. Hudgins
4 words, two strongest issues she had were vouching and the
5 PTSD. And the Court of Appeals ruled on both those and
6 found that error was present but that it was harmless
7 because of the strength of the case.

8 I think this case is a very good example of hindsight
9 being 20/20. If Mr. Portillo had known he was going to be
10 found guilty, certainly he would have taken the plea. If he
11 would've know he was going to be found guilty, he certainly
12 would have testified. And then now with Kromah in the
13 background, certainly the attorneys present would have
14 questioned and objected differently. However, a PCR is not
15 about finding attorneys guilty of deficient performance
16 whenever they weren't clairvoyant of what case law is going
17 to be. And that's the case we have here is that they didn't
18 know the words to use or how to object, and they didn't know
19 Kromah was going to come out. There's hundreds of cases
20 like this where the forensic examiner was used extensively
21 and, you know, the Court of Appeals and the Supreme Court
22 found that those are all vouching now. By the time they
23 objected as best they could -- they objected to the expert
24 testimony on a number of different ways and attempted to
25 keep it out and then vigorously cross-examined the experts

1 on that testimony. And then, again, the Court of Appeals
2 found it was harmless that it came in.

3 So I think that that is basically the nature of the
4 case is that this is a prejudicial argument. I think that
5 certainly Ms. Hudgins made an error by not or by abandoning
6 an issue. It was error that it was not preserved for
7 appeal. But those errors are harmless based on the strength
8 of the case based on the Court of Appeals' findings.

9 THE COURT: All right. Anything else?

10 MR. NEELY: Well, I mean, I guess just briefly that for
11 the applicant to prevail, he has to prove not only that
12 there was deficient performance but also that he was
13 prejudiced. And prejudiced for appellate review is that the
14 case would've been reversed or overturned. We have rulings
15 in the Court of Appeals saying it was harmless error.

16 THE COURT: All right. I'll let you all know by the
17 end of the week. Good luck, Mr. Portillo.

18 (The proceeding concluded at 2:33 p.m.)

19 - - - - -

20 (End of Record)

21

22

23

24

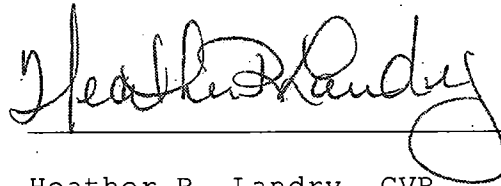
25

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF REPORTER
COUNTY OF CHARLESTON)

I, HEATHER R. LANDRY, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
hearing of the captioned case, in the Court of Common Pleas
for Dorchester County, South Carolina, on the 24th day(s) of
May 2017.

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

December 4, 2017

A handwritten signature in cursive script, reading "Heather R. Landry", written over a horizontal line.

Heather R. Landry, CVR
Official Court Reporter

This is a certified original of the Transcript of Record
requested by and provided to the following party: S.C.
Commission on Indigent Defense .

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP1801665

Cesar O Portillo

2017 JUL 10 PM 3:59 State of South Carolina

PLAINTIFF(S)

CLERK OF COURT
DORCHESTER COUNTY

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Robert E. Hood
Circuit Court Judge

2164
Judge Code

7/10/2017
Date

For Clerk of Court Office Use Only

This judgment was entered on 7/10/2017, and a copy mailed first class or placed in the appropriate attorney's box on 7/10/2017, to attorneys of record or to parties (when appearing pro se) as follows:

Cesar O Portillo #346989 McCormick Correctional FL-230
386 Redemption Way McCormick, SC 29899
Rodney Duane Davis 4000 Faber Place Drive Suite 300
Charleston, SC 29405

Ruston Wesley Neely PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)
2011 JUL 10 PM 3:50)
) FOR THE FIRST JUDICIAL CIRCUIT

Cesar O. Portillo, #346989)

Case No. 2015-CP-18-1665

Applicant,)
) CLERK OF COURT
) DORCHESTER COUNTY

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)
_____)

This Court convened an evidentiary hearing into this matter on May 24, 2017, at the Dorchester County Courthouse. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's trial counsel was Mitch Farley, Esquire, and Mary LeMatty, Esquire, (Counsels) who were present and testified. Applicant's counsel on appeal was Kathrine H. Hudgins, Esquire, (Appellate Counsel). This Court also had the opportunity to hear the testimony of Applicant, Counsels, and Appellate Counsel. This Court had before it a copy of the trial transcript, the records of the Dorchester County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the appellate record, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was indicted at the March 2010 term of the Court of General Sessions for Dorchester County for criminal sexual conduct with minor, first degree (2010-GS-18-0357). On July 19, 2011, Applicant proceeded to trial before the Honorable Diane Schafer Goodstein. The jury found Applicant guilty as indicted. Judge Goodstein sentenced Applicant to twenty five (25) years' imprisonment.

Applicant filed a timely notice of appeal. Appellate Counsel represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on April 09, 2014. State v. Portillo, 408 S.C. 66, 757 S.E.2d 721 (Cl. App. 2014). The South Carolina Supreme Court granted petitions for writs of certiorari filed by both the State and Applicant, and in an unpublished opinion filed on February 25, 2015, the Court affirmed Applicant's conviction and sentence but vacated a portion of Court of Appeals' opinion. State v. Portillo, 2015 WL 790299 (S.C. filed February 25, 2015). The remittitur was returned to the lower court on March 13, 2015.

II. ALLEGATIONS

Applicant alleged the following grounds in his PCR application:

1. "Ineffective Assistance of Trial Counsel"
 - a. Failed to preserve vouching issue for appeal
 - b. Failed to object to Dr. Elsey's expert testimony
 - c. Failed to object to Dr. Elsey's qualifications
2. "Ineffective Assistance of Appellate Counsel"
 - a. Appellate counsel abandoned the issue of PTSD testimony by Dr. Elsey

III. SUMMARY OF FACTS

Victim testified she spent the night with her cousin (Cousin) on the night in question.

Victim testified to the abuse, stating she awoke when she felt a slight touch on her hand.

Applicant, her uncle, moved her hand to his private parts and moved her hand back and forth.

Applicant pulled down her pajama pants and placed his hands on her private parts. He then licked her privates. Victim witnessed Portillo touching his own private parts and "something was coming out of him, going into Cousin's polka-dotted trash can." Applicant wiped himself with a towel and left the room. He returned to retrieve a towel from Cousin's closet and entered the

bathroom. When Victim heard the shower turned on, she ran into Portillo's bedroom and told her aunt (Aunt), about the assault. Victim was nine years old at the time of the sexual assault.

During the trial, Aunt testified she was married to Applicant, and Victim was her niece. Victim was spending the night in question with the Applicant's daughter, Cousin. Applicant fell asleep in his work clothes in Applicant and Aunt's bedroom. Aunt testified she eventually fell asleep and was awakened by Victim at approximately 1:30 a.m. Aunt described Victim as confused and startled. Victim told Aunt about the assault. At the time, Applicant was in the shower. When Aunt confronted Applicant, his demeanor was upset, "very shaky [, ...] kind of, like, trembling." Aunt took Victim and Cousin to Victim's grandmother's house.

Victim's mother (Mother), a registered nurse, testified she met Aunt and Victim at the grandmother's house, and Mother later called Dr. Linda DeMarco, MD. The following day, Dr. DeMarco examined Victim. At trial, the court qualified Dr. DeMarco as an expert in the fields of pediatrics and pediatrics in sexual assault cases. Dr. DeMarco found redness and irritation between the labial lips consistent with Victim's allegations of sexual assault.

Approximately one week after the incident, Victim met with Dr. Donald Elsey for a forensic interview. A videotape of the interview was viewed by the jury. When Dr. Elsey was asked at trial what certain language used by Victim signified, he responded, "she was just telling what she was seeing.... She just described something that she said she saw." Dr. Elsey opined Victim's language was age-appropriate. According to Dr. Elsey, Victim "did not appear to ... [have] words for what she was describing, other than just to describe what she was seeing." He further opined, "It appeared to me she, again, was just describing what she said she was seeing. She wasn't using language that it seemed somebody else had given to her. It was just what she said she experienced." When asked about the significance of hand gestures Victim used, Dr.

Elsey responded, "I think she was just trying to help me understand what she was trying to tell me, because I don't think she fully understood ... understood what she was describing."

At a second interview, conducted a week after the first interview, Victim's family expressed concern to Dr. Elsey regarding symptoms Victim was experiencing, such as the inability to sleep, nightmares, and the ability to focus on school work. Dr. Elsey testified Victim said there was a connection between the alleged molestation and the symptoms. He opined the symptoms could be indicative of post-traumatic stress disorder (PTSD), but due to the short period of time between the incident and his interviews with Victim, it would be inappropriate for him to diagnose her with PTSD. However, Dr. Elsey admitted the symptoms could be indicative of a traumatic experience. He testified he referred Victim to a therapist for "trauma-focused cognitive behavioral therapy." Dr. Elsey concluded his testimony by testifying a forensic interview is "a piece of the investigation," and he could not state what happened to Victim and had made no determination in regard to the information reported to him.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

This Court finds that Applicant has failed to satisfy his burden to prove that Counsels were deficient or that he was prejudiced by Counsels' alleged deficiencies. Applicant bears the

burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984). The proper measure of performance is whether Counsels provided representation within the range of competence required in criminal cases. Id.

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels' deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant's testimony lacked credibility and Counsels' testimony was credible. This Court finds that Applicant has failed to satisfy his burden to prove that Counsels were deficient. Applicant also failed to prove he was prejudiced by the alleged deficiencies. For

the reasons below, Applicant has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and it is therefore denied and dismissed:

Counsel Failed to Object to Expert's Qualifications and Vouching

The record reflects Counsels objected extensively to Dr. Elsey's testimony. However, the trial took place on July 19, 2011, before State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), was decided. Kromah held testimony by a forensic interviewer asserting that a victim's statements were compelling is inadmissible. Kromah, 401 S.C. at 358, 737 S.E.2d at 500.

Counsels did not have the benefit of Kromah at the time of the trial and could not have worded their objection to coincide with the findings in Kromah. See Gilmore v. State, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) ("We have never required an attorney to be clairvoyant.") Accordingly, despite Counsels' objections, the Court of Appeals found the grounds on which Kromah was reversed were not preserved for appeal by Counsels. Counsels testified the phrasing of their objections would have been consistent with Kromah, if it had been decided before the trial. Counsels cannot be expected to predict future case law, or word their objections according to case law not yet in existence. Therefore, this Court finds that Applicant has failed to prove Counsels were deficient in failing to word their objections within the framework of Kromah.

The standard of review for harmless error is analogous to the standard required to find prejudice in a PCR case. Both standards require the error to change the end result of the trial. After reviewing the facts of the case, the Court of Appeals found the qualification of the expert and the alleged vouching were harmless beyond a reasonable doubt. Portillo, 408 S.C. at 69, 757 S.E.2d at 723. "Error is harmless when it 'could not reasonably have affected the result of the trial.'" State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012). To prove prejudice for

purposes of PCR, Counsels' deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Both standards require a reasonable probability that the error changed the result of the trial.

Counsels objected extensively to Dr. Elsey's testimony. This Court also finds Applicant has failed to prove deficiency. Counsels cannot be expected to word their objections in accordance with case law not yet in existence. The Court of Appeals found that the trial court's potential error in allowing Dr. Elsey's qualification and testimony in could not reasonably have affected the result of the trial. Portillo, 408 S.C. at 76, 757 S.E.2d at 727. Therefore, this Court finds Applicant was not prejudiced by Counsels' alleged error in failing to object appropriately because, as the Court of Appeals found, the qualifications and testimony of Dr. Elsey did not have a reasonable probability of affecting the outcome of the trial. Therefore, this allegation is denied and dismissed.

B. Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show appellate counsel's performance was deficient and he was prejudiced by the deficiency. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court

must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Appellate Counsel Abandoning Issue of Dr. Elsey PTSD Testimony

It is clear Appellate Counsel erred in failing to properly support the arguments in their brief to the Court of Appeals with supporting authority. The Court of Appeals found Applicant abandoned the issue of whether the trial court should have allowed Dr. Elsey to testify concerning PTSD symptoms of the victim. Portillo, 408 S.C. at 75, 757 S.E.2d at 726. Therefore, this Court finds Appellate Counsel's performance was deficient.

Despite this deficiency, the Court of Appeals found the underlying testimony was harmless beyond a reasonable doubt. Portillo, 408 S.C. at 75, 757 S.E.2d at 727. The standard of review for harmless error is analogous to the standard required to find prejudice in a PCR case. Both standards require the error to change the end result of the trial. "Error is harmless when it 'could not reasonably have affected the result of the trial.'" State v. Tapp, 398 S.C. 376, 389, 728 S.E.2d 468, 475 (2012). To prove prejudice for purposes of PCR, Counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Both standards require a reasonable probability that the error changed the result of the trial.

Here, the Court of Appeals found the error in allowing Dr. Elsey to testify concerning the victim's PTSD symptoms could not reasonably have affected the result of the trial. Portillo, 408 S.C. at 76, 757 S.E.2d at 727. Therefore, this Court finds Appellate Counsel's error in failing to

properly support their argument with authority did not prejudice Applicant because, as the Court of Appeals found, Dr. Elsey's testimony did not have a reasonable probability of affecting the outcome of the trial. This Court finds Applicant has failed to prove prejudice. Therefore, this allegation is denied and dismissed.

V. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 5 day of July, 2017.

Re Hood

ROBERT E. HOOD
Presiding Judge
1st Judicial Circuit

Columbia, South Carolina

WITNESSES

Ann Reese

Dorchester County Sheriff

10-000711

ARREST WARRANT NUMBER
M119875

Arrested: February 4, 2010

ACTION OF GRAND JURY

TRUE BILLDATE 3/4/10Foreperson of Grand Jury
Date: March 4, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS18-0357

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

March 8, 2010 TERM

THE STATE
vs.

Cesar Orlando Portillo

Indictment for

CRIMINAL SEXUAL CONDUCT WITH
MINOR - FIRST DEGREE

SC Code: 16-3-655(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED COPY
2010 JAN - 4 PM 3:01
Clerk of Court
DORCHESTER COUNTY

RECORDED
2010 MAR - 4 AM 11:55
CHERYL GRAYAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2010GS18-0357

At a Court of General Sessions, convened on March 8, 2010 the Grand Jurors of
Dorchester County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINOR - FIRST DEGREE

That in Dorchester County, South Carolina, on or about January 16, 2010, the
Defendant, Cesar Orlando Portillo, did engage in sexual battery upon a minor
who was less than eleven (11) years of age in that the defendant did perform
cunnilingus upon the victim, Complainant . This offense in violation of Section
16-3-655 of the South Carolina Code of Laws, as amended.

CERTIFIED COPY
2013 JAN -4 PM 3:01
Clerk of Court
DORCHESTER COUNTY

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


Jean M. Popowski, Solicitor